

Invitation for Bid 2022-CNG-01
For
Yolo County Transportation District (YCTD)
CNG Tank Replacement for Five Orion VII Buses

September 21, 2022

Submission Deadline:

October 5, 2022 at 5:00 PM Pacific Time to Procurement@yctd.org

1. Scope of Work

The Yolo County Transportation District (hereinafter “YCTD”) is seeking bids from responsible firms for **YCTD IFB 2022-CNG-01, CNG Tank Replacement for Five Orion VII Buses.**

The scope of work for this project is to replace all existing CNG tanks, pressure relief valves, wear components and stainless steel lines (as necessary) and all other components required to ensure an OEM quality installation on five 2008 Orion VII CNG Buses. The work may be performed at YCTD’s facility, 350 Industrial Way, Woodland, California. If the work is proposed to be performed elsewhere, the bid must include the cost and time involved in transporting the buses to the proposed work site. All work must be certified as in compliance with applicable Federal Motor Vehicle Safety Standards (FMVSS), National Fire Protection Association (NFPA) and all other state and federal requirements. All labor and materials must be warranted for a minimum of two years.

Work is subject to the delivery and acceptance provisions included in the Contract Terms and Conditions provided as Exhibit C.

2. Procurement Schedule

The procurement process schedule is as follows:

Issue date of IFB	September 21, 2022
Deadline for Questions	September 28, 2022
Submission Deadline	October 5, 2022 at 5:00 PM Pacific Time

This schedule may be extended at YCTD’s discretion.

3. Questions and Site Visits

Effective immediately upon release of the Invitation for Bid (IFB) and until notice of contract award, all official communications from Bidders regarding the requirements of this IFB shall be directed to procurement@yctd.org.

By appointment, potential bidders may visit YCTD’s Woodland, California facility (at 350 Industrial Way, Woodland, California, 95776) to inspect the buses that will receive the CNG related work. To schedule a date and time, please e-mail procurement@yctd.org.

4. Bid Requirements

A. Schedule

The bid must include a schedule for completion of the scope of work and delivery of the buses to YCTD’s facility if the work is completed at another location. The schedule must be no later than 160 calendar days after execution of the contract for the work. Any delays incurred in excess of the schedule included in the bid will be subject to the schedule-related provisions of the standard contract terms and conditions included in Exhibit C of this IFB.

B. Acceptance Period

Bids shall remain valid for a period of at least sixty calendar days from the date of submission.

C. References

Minimum experience requirements shall be that the bidders have satisfactorily completed similar tank replacement work on CNG buses for at least two separate clients within the United States, at least one of which involved Orion VII buses, during the two years prior to the bid. References must be included in the bid using Exhibit B. YCTD reserves the right to check references for prior jobs included in the bid to demonstrate satisfactory completion of relevant experience and to disqualify the bid if the referenced work is found not to demonstrate relevant experience and satisfactory performance. Satisfactory performance shall be defined as the client accepting the referenced work without any associated litigation.

D. No Disqualification or Debarment from Participation in Federal or State Programs

Bidders must warrant that no conditions or events now exist which give rise to Bidder or any of its officers, agents, employees, contractors, subcontractors, volunteers, or five percent owners being excluded or debarred from, any Federal or State program.

5. General Terms and Conditions

YCTD's Standard Contract Terms and Conditions are included as Exhibit C.

Any contract resulting from this IFB may be subject to a financial assistance contract/agreement between YCTD and the California Department of Transportation (Caltrans), and between YCTD and the U.S. Department of Transportation, Federal Transit Administration (FTA). The contract shall be governed by all applicable state and federal regulations.

Submission of a bid constitutes an offer to perform the work specified and to be bound by the terms contained in this IFB. Upon acceptance of the offer, and upon award of the contract to the successful bidder (if any), this procurement solicitation document, together with the completed and executed forms required herein, and all Exhibits hereto, together with the contract shall collectively constitute the contract documents. The contract shall be a firm, fixed-price contract. Bidder warrants that employees who participate in this project will be compensated in accordance with the law.

6. Bid Submissions

Bids are to be submitted electronically via email to procurement@yctd.org before the submission deadline. The YCTD email system does not accept attachments larger than 10 MB. If your bid is near this size or greater, please email only the cover letter and include a link to a secure download for the rest of your bid.

All bid responses must include the following:

1. Exhibit A - Bid and Submission Form
2. Exhibit B – References

7. Responsiveness

In order for a Bidder to be eligible to be awarded the Contract, the bid must be responsive to the IFB, and YCTD must be able to determine that the Bidder is responsible to perform the Contract satisfactorily. Responsive bids are those complying in all material aspects of the solicitation.

A Bidder may, at any time after the submission of the bid, be requested to submit further written evidence verifying that the firm(s) meets the criteria necessary to be determined a responsible bidder. Refusal to provide requested information may result in the bidder being declared nonresponsive, and the bid may be rejected.

Bidders are expected to agree with the terms contained or referenced herein. Bidders should therefore not make any changes to these terms, nor restate any provisions in their bid or supporting material. However, if the Bidder has any specific exceptions, such exceptions should be set forth in a separate letter included with its response to the IFB. YCTD is under no obligation to entertain or accept any such specific exceptions.

8. Amendment and/or Postponement

YCTD reserves the right to postpone, for its own convenience, the deadline for submitting bids. Further, YCTD reserves the right to unilaterally revise or amend the scope of work up to the time set for submitting bids. Such revisions and amendments, if any, shall be announced by addenda to this solicitation. Copies of such addenda shall be furnished to all prospective Bidders and a copy will be posted on YCTD's website. The deadline for submitting bids shall be at least five working days after the last addendum and the addendum shall include an announcement of the new date, if applicable, for submitting bids. Bidders are requested to acknowledge receipt of all addendums as part of the bid. Failure to acknowledge an addendum will not automatically disqualify a Bidder. Any Bidder whose bid has already been submitted to YCTD when the decision to postpone is made will be afforded the opportunity to revise or withdraw their bid.

9. Contract Award

Award will be made to the lowest price responsive and responsible bidder, selected from among those who submit bids in response to the IFB.

10. Protests

Protests dealing with restrictive specifications or alleged improprieties in the solicitation must be filed no later than five working days prior to bid opening or closing date for receipt of proposals. Any other protest must be filed no later than five working days after award of contract.

Protests shall be in writing and addressed to the Executive Director. The protest shall contain a statement describing the reasons for the protest and any supporting documentation, and indicate the ruling or relief desired from YCTD. . Additional materials in support of the initial protest will only be considered if filed within the time limit specified in this section.

Exhibit A - Bid and Submission Form, YCTD IFB 2022-CNG-01

Legal Name of Company:	
Primary Office Address:	
Telephone Number:	
Email Address:	
DUNS or UEI Number:	

1. Bidder acknowledges its familiarity with requirements defined in Scope of Work.
2. Bidder provides a firm fixed price of \$_____ for completion of the scope of work as described in the YCTD Invitation for Bid (IFB) 2022-CNG-01, subject to the terms and conditions included in the IFB Exhibit C.
3. Bidder warrants that the scope of work will be completed within _____ days of execution of a contract, subject to the schedule-related provisions of the terms and conditions included in the IFB Exhibit C.
4. Bidder will warranty the labor and materials for _____ years following YCTD acceptance of work.
(minimum 2)
5. This offer shall remain valid for _____ calendar days from the date of submission.
(minimum 60)
6. Bidder warrants that no conditions or events now exist which give rise to Bidder or any of its officers, agents, employees, contractors, subcontractors, volunteers, or five percent owners being excluded or debarred from, any Federal or State program.

Signatory's Name:	
Signatory's Title:	
Email:	
Date Signed:	

Exhibit B – References, YCTD IFB 2022-CNG-01

Bidder warrants that the references listed below represent two separate clients for whom Bidder has satisfactorily completed CNG tank replacement work, at least one of which was on Orion VII buses during the two years prior to this bid:

1. **Client 1**

Agency/Organization:

Location (City/State):

Relevant Work performed:

Month(s)/Year(s) work performed:

Client Contact

- Name:
- Title:
- Phone:
- Email:

2. **Client 2**

Agency/Organization:

Location (City/State):

Relevant Work performed:

Month(s)/Year(s) work performed:

Client Contact

- Name:
- Title:
- Phone:
- Email:

Exhibit C - Standard Contract Terms and Conditions

GENERAL TERMS AND CONDITIONS

1. **CONTRACTOR'S RESPONSIBILITY**

- 1.1 The CONTRACTOR shall be responsible for the Work performed under the terms of this Contract to the extent provided by law. The CONTRACTOR agrees not to disclose information identified by YCTD as proprietary to third parties, unless approved in advance by YCTD or required by law.

YCTD shall not be held liable or responsible for the maintenance and/or safety of any CONTRACTOR'S equipment or supplies placed upon YCTD's property in accordance with this Contract. The CONTRACTOR acknowledges that it assumes full responsibility for any loss or damage to its equipment and supplies, unless such damage is the result of YCTD's gross negligence or willful misconduct

- 1.2 If, during the term of this Contract, CONTRACTOR performs repairs on Bus CNG fueling system at YCTD's facility while the Bus worked on is covered by CONTRACTOR' s limited warranty, CONTRACTOR shall repair, replace or correct any materials, equipment or work found to be damaged or defective as a result of such repairs or reimburse YCTD for performing such repair m accordance with the limited warranty provided that such damage or defect is discovered by YCTD and reported to CONTRACTOR within thirty days of the occurrence, unless such damage is the result of YCTD's gross negligence or willful misconduct.
- 1.3 CONTRACTOR shall pay all applicable taxes, including excise taxes, if any, and California Sales Tax. CONTRACTOR shall secure and pay for all permits and governmental fees, licenses, and inspections necessary for the proper execution and completion of this Contract.

2. **WAIVER**

Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Contract.

3. **ASSIGNMENT**

The CONTRACTOR may not assign or subcontract its rights or obligations under the Contract without prior written permission of YCTD, and no such assignment or subcontract will be effective until approved in writing by YCTD. Notwithstanding the foregoing, CONTRACTOR may assign its right to receive the payments from YCTD without such consent; however, YCTD

shall not be under any obligation to pay any third party unless CONTRACTOR and/or its assignee have given YCTD at least thirty days advance written notice of such assignment.

4. SUCCESSORS AND ASSIGNS

Subject to any provision under this Contract restricting assignment or subcontracting by CONTRACTOR, the provisions of this Contract shall be binding upon and inure to the benefit of the respective successors, assigns, heirs, and personal representatives of the parties to this Contract.

5. STATUS OF CONTRACTOR

5.1 It is understood and agreed by all the parties hereto that Contractor is an independent contractor and that no relationship of employer-employee exists between YCTD and CONTRACTOR. Neither CONTRACTOR nor CONTRACTOR'S assigned personnel shall be entitled to any benefits payable to employees of YCTD. CONTRACTOR hereby indemnifies and holds YCTD harmless from any and all claims that may be made against YCTD based upon any contention by any unaffiliated third party that an employer-employee relationship exists between YCTD and such third party by reason of this Contract or any services provided pursuant to this Contract.

5.2 It is further understood and agreed by all the parties hereto that neither CONTRACTOR nor CONTRACTOR'S assigned personnel shall have any right to act on behalf of YCTD in any capacity whatsoever as an agent or to bind YCTD to any obligation whatsoever.

6. GOVERNING LAW

This Contract shall be deemed to be executed within the State of California. and construed in accordance with and governed by the laws of the State of California. Any action or proceeding arising out of this Contract shall be filed and resolved in the Superior Court of the County of Yolo, or in the United States District Court, Eastern District of California, Sacramento Division.

7. TIME OF THE ESSENCE

Time is of the essence in the performance of every term, covenant, condition, and provision of this Contract.

8. PUBLIC RECORDS ACT

Upon its execution, this Contract (including all Exhibits) shall be subject to disclosure pursuant to the California Public Records Act.

9. TERMINATION OF CONTRACT, DISPUTES, AND LITIGATION

9.1 TERMINATION OF CONTRACT

9.1.1 TERMINATION FOR CONVENIENCE

- A. The performance of Work under this Contract may be terminated in whole, or from time to time in part, by the Contracting Officer for the convenience of YCTD whenever the Contracting Officer determines that such termination is in the best interest of YCTD. Any such termination shall be effected by delivery to the CONTRACTOR of a written Notice of Termination for Convenience specifying the extent to which performance of Work under the Contract is terminated, and the date upon which such termination becomes effective.
- B. After receipt of a Notice of Termination for Convenience, and except as otherwise directed by the Contracting Officer, the CONTRACTOR must:
- (1) Stop the Work under the Contract on the date and to the extent specified in the Notice of Termination for Convenience;
 - (2) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;
 - (3) Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated as set out in the Notice of Termination for Convenience;
 - (4) Assign to YCTD in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the CONTRACTOR under the orders and subcontracts so terminated, in which case YCTD shall have the right, in its discretion, to settle or pay for all claims arising out of the termination of such orders and subcontracts;
 - (5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he/she may require, which approval or ratification shall be final for all the purposes of this Section;
 - (6) Transfer title to YCTD and deliver in the manner, at the times, and to the extent, if any, directed. by Contracting Officer the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as part of or acquired in connection with the performance of, the Work terminated, and the completed or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to YCTD;
 - (7) Use its best efforts to sell, in the manner, at the times, to the extent, and at the price(s) directed or authorized by the Contracting Officer, any property of the types referred to above, provided,

however, that the CONTRACTOR shall not be required to extend credit to any purchaser, and may acquire any such property under the conditions prescribed by and at a price(s) approved by the Contracting Officer, and provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by YCTD to the CONTRACTOR under this Contract or shall otherwise be credited to the price or cost of the Work covered by this Contract or paid in such other manner as the Contracting Officer may direct;

- (8) Complete performance of such part of the Work as shall not have been terminated by the Notice of Termination for Convenience; and
- (9) Take such action as may be necessary, or as the Contracting Officer may direct., for the protection or preservation of the property related to this Contract which is in the possession of the CONTRACTOR and in which YCTD has or may acquire an interest.

C. After receipt of a Notice of Termination for Convenience, the CONTRACTOR shall submit to YCTD its termination claim, in the form and with certification prescribed by YCTD. Such claim shall be submitted promptly but in no event later than six months from the effective date of termination, unless one or more extensions in writing are granted by YCTD, upon request of the CONTRACTOR made in writing within such six month period or authorized extension thereof. However, if YCTD determines that the facts justify such action, it may receive and act upon any such termination claim at any time after such six months period or any extension thereof. Upon failure of the CONTRACTOR to submit its termination claim within the time allowed, YCTD may determine, on the basis of information available, the amount, if any, due the CONTRACTOR by reason of the termination and will thereupon pay the CONTRACTOR the amount so determined.

Subject to the provisions of subsection C above, the CONTRACTOR and YCTD may agree upon the whole or any part of the amount or amounts to be paid to the CONTRACTOR by reason of the total or partial termination of work pursuant to this Section, which amount or amounts shall include an allowance for profit on work done; provided that such agreed amount or amounts exclusive of settlement costs, shall not exceed the total Contract.

Consideration as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. The Contract will be amended accordingly, and the CONTRACTOR will be paid the agreed amount.

To the extent not resolved by the preceding paragraphs, settlement of claims by the Contractor under this "Termination for Convenience" Article shall be in accordance with the provisions set forth in Federal Acquisition Regulations (FAR), 48 C.F.R. §§ 52-249-2 (d), (f), (g), (h), (i), and (k) except that wherever the word "Government" appears it shall be deleted and the word "YCTD" shall be substituted in lieu thereof.

- D. If the termination hereunder is partial, prior to the settlement of the terminated portion of the Contract, the CONTRACTOR may file with YCTD a written request for an adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and such adjustment as may be agreed will be made in the price or prices.
- E. YCTD may from time to time, at its sole discretion and under terms and conditions it may prescribe, make partial payments and payments on account against cost incurred by the CONTRACTOR in connection with the terminated portion of the Contract whenever, in the opinion of YCTD, the aggregate of payments does not exceed the amount to which the CONTRACTOR will be entitled hereunder. If the total of the payments is in excess of the amount finally agreed or determined to be due under this Section, the excess shall be paid by the CONTRACTOR to YCTD upon demand, together with interest at the rate of ten percent (10%) per annum or the maximum rate permitted by applicable law, whichever is less, for the period from the date which is thirty days after CONTRACTOR's receipt of YCTD's notice to repay the excess payment to the date on which the excess payment is repaid to YCTD.
- F. The payment to CONTRACTOR determined in accordance with this Section 9.1.1 constitutes the exclusive remedy available to CONTRACTOR for a termination for convenience.

9.1.2 TERMINATION FOR DEFAULT

- A. YCTD may, subject to paragraphs B and .1 below, by written Notice of Default to the CONTRACTOR, terminate the whole or any part of the Contract in any one of the following circumstances:
 - (1) If the CONTRACTOR fails to perform the Work within the time specified or any extension thereof;
 - (2) If the CONTRACTOR violates any of the provisions of the Contract.
- B. The CONTRACTOR shall be provided a period of ten days to cure such failure (or such longer period as the Contracting Officer may authorize in writing) after receipt of the Notice of Default from YCTD specifying such failure.

- C. In the event the CONTRACTOR does not cure the breach to the reasonable satisfaction of YCTD within the time period specified by the Contracting Officer in the Notice of Default, the Contracting Officer will send the CONTRACTOR a written Notice of Termination for failure to cure the breach; provided, however, that if a period of longer than the allotted cure period is needed to cure the failure specified in the Notice of Default, CONTRACTOR shall not be in default, and YCTD shall refrain from sending the Notice of Termination, as long as prior to the expiration of the cure period in the Notice of Default, CONTRACTOR has provided YCTD with its written proposal for effecting the cure by a date certain, commenced its cure of such breach, and is diligently pursuing the completion of same. Upon receipt of such written Notice of Termination from YCTD, CONTRACTOR shall:
- (1) Stop Work on the date of, and to the extent specified in, the Notice of Termination;
 - (2) Place no further orders or subcontracts for materials, equipment, services, or facilities, except that which is necessary to complete the portion of the Work which is expressly not cancelled under the Notice of Termination;
 - (3) Cancel all orders or subcontracts to the extent that they relate to the performance of Work cancelled under the Notice of Termination; and
 - (4) Comply with all other reasonable requirements of YCTD specified in the Notice of Termination.
- D. If the Contract is terminated as provided in this Section, YCTD may require CONTRACTOR to transfer title and deliver to YCTD, as directed by YCTD, such partially completed supplies and materials, installations, parts, tools, plans, drawings, information, and contract rights ("manufacturing materials") that the CONTRACTOR has specifically produced or acquired for the cancelled portion of this Contract. The CONTRACTOR shall also take reasonable steps to protect and preserve property in its possession in which YCTD has an interest at the CONTRACTOR's sole expense.
- E. Upon YCTD's Termination of the CONTRACTOR's right to proceed with the Work because of the CONTRACTOR'S default under the Contract, YCTD will have the right to complete the Work by whatever reasonable means and method it deems advisable. YCTD will not be required to obtain the lowest prices for completing the Work but shall make such reasonable expenditures as, in YCTD's sole judgment, best accomplish such completion.
- F. The expense of completing the Work, together with a reasonable charge for engineering, managerial and administrative services, as certified by

YCTD, will be charged and will be deducted by YCTD out of such monies as may be due or may at any time thereafter become due to the CONTRACTOR. In case such expense is in excess of the sum which otherwise would have been payable to the CONTRACTOR under the Contract, then the CONTRACTOR or its surety shall promptly pay the amount of such excess to YCTD upon notice of the excess so due, together with interest at the rate of ten percent (10%) per annum or the maximum rate permitted by applicable law, whichever is less, for the period from the date which is thirty (30) calendar days after Contractor's receipt of YCTD's notice to repay the excess payment to the date on which the excess payment is repaid to YCTD.

- G. CONTRACTOR shall insert in all subcontracts that the Subcontractor or Supplier will stop work on the date of or to the extent specified in a Notices of Termination from YCTD and shall require the Subcontractors and Suppliers to insert the same provision in any of their subcontracts.
- H. The CONTRACTOR shall immediately upon receipt communicate any Notice of Termination issued by YCTD to the affected Subcontractors and Suppliers at any tier.

The CONTRACTOR shall not be liable for its failure to perform if the failure to perform the Contract is covered by Section 11.3.

- J. If, after issuance of the Notice of Termination of this Contract, it is determined for any reason that the CONTRACTOR was not in breach, or that the breach was excusable, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued pursuant to the Termination for Convenience Section, and the Contractor shall be reimbursed for costs incurred under the terms of that Section.

9.2 DISPUTES

9.2.1 NOTICE OF POTENTIAL CLAIM

With respect to disputes arising under this Contract, the CONTRACTOR shall have no right to additional compensation for any claim that may be based on any act, failure to act, event, thing, or occurrence for which no written notice of potential claim has been filed with YCTD. The written notice of potential claim shall set forth the reasons for which the CONTRACTOR believes additional compensation will or may be due, the nature of the costs involved, and, insofar as possible, the amount of the potential claim. The notice must be received by YCTD within the time allowed by applicable law after the CONTRACTOR knew, or should have known, of the happening of the act, failure to act, event, thing, or occurrence giving rise to the potential claim. CONTRACTOR shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing, or occurrence for which no written notice of potential claim as herein required was filed.

9.2.2 NEGOTIATION

The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Contract promptly by negotiation. Within thirty days after receipt of the claim notice, both parties shall meet at a mutually acceptable time and place in an attempt to resolve the dispute.

9.2.3 DECISION BY CONTRACTING OFFICER

Any dispute concerning a question of fact arising during the performance of the Contract which is not disposed of by negotiation will be decided by the Contracting Officer who will reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the CONTRACTOR. The decision of the Contracting Officer will be final and binding unless, within thirty days from the date of issuance of the Contracting Officer's final decision, the Contractor notifies "KID in writing of the Contractor's disagreement with the final decision.

9.2.4 MEDIATION AND ARBITRATION

- A. Upon receipt of Contractor's notice under 17.23, the parties shall mediate the dispute by referring it to the Judicial Arbitration and Mediation Services, Inc. (JAMS) office nearest to Woodland, California for mediation. Each party shall provide the other with a list of four mediators. The parties shall confer on the lists and select a mutually agreeable mediator from the lists or other agreeable source. Mediation shall consist of an informal, non-binding conference or conferences between the parties and the mediator jointly, then in separate caucuses wherein the mediator will seek to guide the parties to a resolution of the case. All conferences shall take place within fifty miles of Woodland, California. All mediation proceedings shall be without prejudice and the cost of the proceedings shall be shared equally by the parties. The mediation process shall continue until the case is resolved or until such time as the mediator makes a finding that there is no possibility of resolution, then the mediation will be terminated and each party may pursue all remedies available to it at law or in equity except as specifically limited elsewhere in this Contract.
- B. If the parties mutually agree, any dispute or claim in law or equity between YCTD and CONTRACTOR arising out of this Contract which is not settled through mediation shall be decided by neutral binding arbitration and not by court action, except as provided by California law for judicial review of arbitration proceedings. All arbitration sessions shall take place within fifty miles of Woodland, California. The arbitration shall be conducted in accordance with the rules of Judicial Arbitration Mediation

Services, Inc. (JAMS). The parties to an arbitration may agree in writing to use different rules and/or arbitrators.

9.3 LITIGATION

9.3.1 The interpretation and enforcement of the Contract shall be governed by the laws of the State of California, the state in which the Contract will be signed. If any action is filed arising directly or indirectly from any dispute under this Contract or from any matter submitted to arbitration pursuant to this Contract, proper jurisdiction and venue for such action shall lie in the Superior Court of the County of Yolo.

10. **GRATUITIES, CONTINGENT FEES AND CONFLICTS OF INTEREST**

10.1 COVENANT AGAINST GRATUITIES

A. PROHIBITED CONDUCT

1. During the term of this Contract, CONTRACTOR, its officers and employees and their immediate families are prohibited from offering or giving a gratuity in any form including, without limitation, entertainment, favors, loans, gifts or anything of greater than nominal value for any reason including personal reasons to any YCTD officer or employee or their immediate families. For the purpose of this section, nominal value means anything: (1) having an aggregate value of \$35.00 or less per year; or (2) any perishable item (flowers or food) of any value except that prepared meals are subject to the \$35.00 limit. A campaign contribution is not a gratuity and is not prohibited by this Section.
2. Violation of subparagraph A(1) of this provision is a material breach of this Contract, and YCTD shall have the right to debar CONTRACTOR from participating at any tier in any YCTD contract for a period of up to five years.
3. CONTRACTOR shall include a copy of subparagraphs A(1) and A(2) of this provision in any agreement it makes with its subcontractors.

B. COVENANT

CONTRACTOR covenants that prior to award of this Contract, CONTRACTOR has disclosed, (using the Interests and Gratuities Certification which is incorporated into the Contract by this reference) any gratuity, as described above, that it, its officers, employees, or their immediate families have offered or given to any YCTD officer, employee, or their immediate families for any reason including personal non-business related reasons within the twelve months prior to award of this Contract. Any gratuity offered or given after submission of the initial Certification shall be provided in an amended Certification with the

executed Contract and shall be incorporated into the Contract by this reference. Violation of this covenant is a material breach of this Contract.

10.2 COVENANT AGAINST CONTINGENT FEES

CONTRACTOR covenants that no person or selling agency has been employed or retained to solicit or secure the Contract upon agreement or understanding for a commission, percentage, brokerage, or contingent fee; excepting bona fide employees or bona fide established commercial or selling agencies maintained by CONTRACTOR for the purpose of securing business. For breach or violation of this covenant, YCTD shall have the right to cancel the Contract without liability for payment of any services provided or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

10.3 CONFLICT OF INTEREST

A. Prohibited Interests

1. During the term of this Contract, CONTRACTOR, its officers, employees and their immediate families shall not acquire any interest, direct or indirect, that would conflict with the performance of services required to be performed under this Contract.
2. Violation of subparagraph A(1) is a material breach of this Contract, and YCTD shall have the right to debar CONTRACTOR from participating at any tier in any YCTD contract for a period of up to five years.
3. CONTRACTOR shall include a copy of subparagraphs A(1) and A(2) of this provision in any agreement it makes with its subcontractors.

B. COVENANT

1. CONTRACTOR covenants that prior to award of this Contract, CONTRACTOR has disclosed (using the Interests and Gratuities Certification referenced in 17.1B) any present interest and any interest existing within twelve months prior to award of this Contract including, without limitation, any business or personal relationship that creates an appearance of a conflict of interest. Disclosable interests and relationships are those that may reasonably be viewed as creating a potential or actual conflict of interest. Any disclosable interest acquired or occurring after submission of the initial Certification and prior to the date of this Contract shall be provided in an amended Certification with the executed Contract and shall be incorporated in the Contract by this reference. Violation of this covenant is a material breach of this Contract.
2. In addition, CONTRACTOR shall disclose in writing to the YCTD's Executive Director and Legal Counsel any interest or relationship

described in subparagraph B(1) acquired or occurring during the term of this Contract in the manner required by law.

3. Violation of the above disclosure obligations is a material breach of this Contract.

11. DELIVERY AND ACCEPTANCE

11.1 DELIVERIES

A. BUS DELIVERY LOCATION

1. If work is completed at an off-site location, delivery of YCTD's Re-tanked Buses shall be to:

Yolo County Transportation District
350 Industrial Way
Woodland, CA 95776

B. ACCEPTANCE OF BUSES

Within ten calendar days after arrival at the designated point of delivery as set out in Section 11.1(A), each Bus shall undergo inspection by YCTD or YCTD's agent. Buses shall be deemed to have been accepted on the earlier of (i) the date the Bus passes these inspections, (ii) the tenth day after delivery if CONTRACTOR is not notified of any defects precluding acceptance, or (iii) the date YCTD places the Bus in revenue service. If the Bus fails these inspections, it shall not be accepted by YCTD until the Bus has been repaired in accordance with the procedures defined in "Repairs After Non-acceptance" (Section 11.2).

11.2 REPAIRS AFTER NON-ACCEPTANCE

- A. The CONTRACTOR, or its designated representative, shall perform the repairs after non-acceptance. YCTD shall re-inspect the Bus(es) within four days after the CONTRACTOR repairs are completed. If the repairs are acceptable to YCTD, it shall provide CONTRACTOR with a written acknowledgment confirming acceptance within four days after such re-inspection occurs unless a condition of non-acceptance remains, then such process will be repeated until YCTD finally accepts the Bus(es). Failure to provide a written notice of non-acceptance shall constitute acceptance four days after such repairs were completed.
- B. The CONTRACTOR shall provide, at its own expense, all spare parts and tools required to complete the repairs. At YCTD's option, the CONTRACTOR may be required to remove the Bus from YCTD's property while repairs are being effected. If the Bus is removed from YCTD's property, repair procedures must be diligently pursued by the CONTRACTOR's representatives, and the CONTRACTOR shall assume risk of loss while the Bus is under its control.

11.3 UNAVOIDABLE DELAYS

A. CONTRACTOR'S DELAY

1. Any failure by CONTRACTOR to perform the Contract and any failure to make progress in this prosecution of the Work sufficient to ensure its timely and satisfactory performance, shall be excused, if the failure arises out of causes that are both beyond CONTRACTOR's control and without fault or negligence on its part. Such causes may include, but are not limited to, Acts of God or of the public enemy, floods, fires, epidemics, quarantine, restrictions, strikes, freight embargoes, and unusually severe weather. If the failure to perform is caused by the failure of a subcontractor or Supplier to perform or make sufficient progress, and if such failure arises out of causes beyond the control of both CONTRACTOR and the subcontractor or Supplier and without the fault or negligence of either of them, then the failure shall be excused unless (1) the supplies or services to be furnished by the subcontractor or Supplier could have been obtained from other sources, and (2) CONTRACTOR, without reasonable cause, shall have failed to do so. If CONTRACTOR wishes to be excused on the basis of any of the foregoing, it shall submit its claim for such relief in accordance with Section 11.3(B), and the Contract schedule or schedules will be adjusted commensurately with the effects of any excusable delays that are found to have occurred. A timely and complete claim for such relief shall be a condition precedent to CONTRACTOR's right to any relief based thereon. As used in this Article, the terms "subcontractor" and "subcontractors" include those of any tier.
2. Notwithstanding the foregoing, the CONTRACTOR will not be relieved of its liability for the payment of liquidated damages owing from its failure to complete the Work in accordance with the Delivery Schedule pursuant to "Liquidated Damages" (Article 12) for delays occurring prior to the occurrence of an excusable delay or subsequent to the end of the excusable delay period.
3. YCTD reserves the right to rescind or shorten any time extension previously granted, if YCTD subsequently determines that any information provided by CONTRACTOR in support of a request for a time extension was erroneous. Notwithstanding the foregoing sentence, YCTD will not rescind or shorten any time extension previously granted if CONTRACTOR acted in reliance upon the granting of such extension and such extension was based on information which, although later found to have been erroneous, was submitted in good faith by the CONTRACTOR.

B. NOTIFICATION OF CONTRACTOR DELAY

No extension or adjustment of time shall be granted under Section 11.3(A) above unless: (1) the CONTRACTOR provided written notice of a delay in completion of the Work or compliance with the Delivery Schedule to YCTD no later than

fourteen days from the date the CONTRACTOR knew or should have known of the circumstances causing such delay; and (2) a written application therefor, stating in reasonable detail the causes, the effect to-date, the portion or portions of the Work affected, and the probable future effect on the performance by the CONTRACTOR and the Delivery Schedule is filed within thirty calendar days after the date the initial notice under subparagraph (1) above was sent. YCTD shall make its determination on the request within thirty calendar days after receipt of a completed application. A time extension, if granted, will not be deemed a waiver of the rights of either party under this Contract.

12. LIQUIDATED DAMAGES

- 12.1 It is mutually understood and agreed by and between the parties to the Contract that time is of the essence with respect to the completion of the Work and that in case of any failure on the part of the CONTRACTOR to complete the Work within the time specified in the Delivery Schedule, except for any excusable delays as provided in "Unavoidable Delays" (Section 11.3), or any extension thereof, YCTD will be damaged thereby. The amount of said damages, being difficult if not impossible of definite ascertainment and proof, it is hereby agreed that the amount of such damages due YCTD shall be fixed at \$100 per work day per bus for each work day that the bus is not delivered to YCTD's Bus Delivery Location (Section 11.1(A)) in accordance with CONTRACTOR'S delivery schedule as set out in the Contract Documents in substantially as good condition as the Bus was when it was inspected by YCTD's inspector at the time the Bus was released for shipment.
- 12.2 The CONTRACTOR hereby agrees to pay the amounts provided in Section 12.1 as fixed, agreed and liquidated damages, and not by way of penalty, to YCTD and further authorizes YCTD to deduct the amount of the liquidated damages from money due the CONTRACTOR under the Contract, computed as aforesaid. If the monies due the CONTRACTOR are insufficient or no monies are due the CONTRACTOR, the CONTRACTOR shall pay YCTD the difference or the entire amount, whichever may be the case, within thirty calendar days after receipt of a written demand by the Contracting Officer.
- 12.3 The payment of aforesaid fixed, agreed and liquidated damages shall be in lieu of any damages for any loss of profit, loss of revenue, loss of use, or for any other direct, indirect, special or consequential losses or damages of any kind whatsoever that may be suffered by YCTD arising at any time from the failure of the CONTRACTOR to fulfill the obligations referenced in this Article in a timely manner.
- 12.4 In addition to the foregoing, YCTD specifically reserves the right, without limitation of any other rights, to terminate the Contract in accordance with the termination provisions of this contract.

13. AUDIT AND INSPECTION OF RECORD

- 13.1 In accordance with 49 C.F.R. § 1836(0)(10), provided YCTD is the Federal Transit Administration ("FTA") Recipient or a subgrantee of the VIA Recipient, the CONTRACTOR agrees to provide YCTD, FTA, the Comptroller General of the United States, the Secretary of the U.S. Department of Transportation,, or any of their duly authorized representatives access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to or relate to this Contract: (1) for the purpose of making audits, examinations, excerpts, and transcriptions; and (2) when conducting an audit and inspection.
- 13.2 In the event of a sole source Contract, or single Offer, single responsive Offer, or competitive negotiated procurement, the CONTRACTOR shall maintain and the Contracting Officer, the U.S. Department of Transportation (% of applicable), or the representatives thereof, shall have the right to examine all books, records, documents, and other cost and pricing data related to the Contact price, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, or combinations thereof. YCTD acknowledges that CONTRACTOR's cost data is confidential and proprietary and to the extent it is requested for review or examination, CONTRACTOR shall be entitled to protect such confidential information from disclosure by requiring a nondisclosure agreement be executed prior to such disclosure.
- 13.3 For Contract Amendments, the Contracting Officer, the U.S. Department of Transportation, or their representatives shall have the right to examine all books, records, documents, and other cost and pricing data related to a Contract Amendment, under the same conditions as under section 13.2. If an examination made after execution of a Contract Amendment reveals inaccurate, incomplete, or out-of-date data, the Contracting Officer may renegotiate the Contract Amendment and YCTD shall be entitled to any reductions in the price that would result from the application of accurate, complete or up-to-date data.
- 13.4 Subject to any applicable nondisclosure agreements, the materials described in Sections 13.2 and 13.3 above shall be available at the CONTRACTOR's office at reasonable times for inspection, audit, and making excerpts and transcriptions until three years from the date of final payment under the Contract. For records relating to appeals under "Disputes", "Litigation", or the settlement of claims, records as specified in this Article shall be kept available until final resolution of such claims, litigation, or appeals.
- 13.5 The Contracting Officer and his/her representative and any other parties authorized under this Contract shall employ sound business practices to protect the confidentiality of the data specified under this clause or under any nondisclosure agreement between the parties, for which the CONTRACTOR provides access, against disclosure of such information and material to third parties except as permitted by the Contract. The CONTRACTOR shall be responsible for ensuring that any confidential data bears appropriate notices relating to its confidential character.

14. RISK

14.1 RISK OF LOSS

- A. CONTRACTOR shall bear all costs and assume all risks and liability associated with the pick-up, possession, and delivery of the Buses and parts until each Bus and part is delivered to and accepted by YCTD, unless the loss is caused by or arises out of the willful misconduct or negligent act or omission of YCTD.
- B. If YCTD rejects a Bus or part as non-conforming, CONTRACTOR shall bear the risk of loss to such Bus or part from any cause whatsoever from the date of YCTD's rejection until the non-conformity is cured and the Bus or part is accepted by YCTD.

14.2 INSURANCE

At its own expense, CONTRACTOR shall procure and maintain during the term of this Contract, at least the following coverage and limits of insurance.

- A. Workers' Compensation Insurance. In accordance with the laws of the State of California. Additionally, if during the term of this Contract, CONTRACTOR should hire an employee in California, then CONTRACTOR must immediately obtain workers' compensation insurance in accordance with the laws of California.
- B. Commercial General Liability Insurance. Commercial General Liability Insurance coverage must be on an "occurrence" basis, and shall include, but need not be limited to, coverage for bodily injury, property damage, products liability, and general aggregate coverage with, at minimum, the following limits:

<u>Coverage</u>	<u>Limit</u>
Personal Injury and Advertising.	\$2,000,000 per occurrence
Contractual	\$2,000,000 per occurrence
General Aggregate	\$4,000,000

- C. Automobile Liability Insurance. The Automobile Liability Insurance shall include coverage for bodily injury and property damage arising from the operation of any owned, non-owned, or hired automobile, The Automobile Liability Insurance Policy shall provide not less than \$2,000,000 Combined Single Limits for each occurrence.
- D. Endorsements. The following endorsements are required to be made a part of the Comprehensive General Liability and Automobile Liability policies:
 - 1. "Yolo County Transportation District ("YCTD"), its employees, officers, agents and contractors are hereby added as additional insureds to the extent its interests may appear."
 - 2. "This policy shall be considered primary insurance as respects any other valid and collectible insurance YCTD may possess, including any self-

insured retention YCTD may have, and any other insurance YCTD does possess shall be considered excess insurance only."

3. "Thirty days' prior written notice of cancellation shall be given to YCTD in event of cancellation."

Such notice shall be sent to:

Yolo County Transportation District
Attention: Executive Director
350 Industrial Way
Woodland, CA 95776

- E. Proof of Coverage. Copies of all the required ENDORSEMENTS shall be provided to YCTD within ten days of their receipt from the CONTRACTOR's insurance company as evidence of the stipulated coverages. The endorsements shall then be e-mailed to: procurement@yctd.org, Attn: contracting officer.
- F. Special Provisions.
 1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by CONTRACTOR and any approval of said insurance by the YCTD Board, YCTD staff or their insurance consultant(s), are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONTRACTOR pursuant to this Contract, including, but not limited to, the provisions concerning indemnification.
 2. YCTD reserves the right to withhold payments to CONTRACTOR in the event of material noncompliance with the insurance requirements outlined above.

14.3 INDEMNIFICATION

- A. The CONTRACTOR shall, to the extent permitted by law (1) protect, indemnify and save YCTD and its officers, employees and agents, harmless from and against any and all liabilities, damages, claims, demands, judgments, awards, losses, costs, expenses, and suits or actions or proceedings, including, but not limited to, reasonable expenses, costs and attorneys' fees for any bodily injury, including death, loss or damage to property brought by third parties against YCTD and its officers, employees and agents, arising out of, or resulting from, the negligent acts, errors or omissions of the CONTRACTOR, in the performance of the Work under this Contract, and (2) upon receipt of notice and if given authority, shall settle at its own expense or undertake at its own expense the defense of any such suit, action or proceeding, including appeals, . Each party shall promptly notify the other in writing of the notice or assertion of any claim, demand, lien, encumbrance, judgment, award, suit, action or other proceeding hereunder.
- B. If CONTRACTOR has retained legal counsel reasonably acceptable to YCTD, CONTRACTOR shall have the sole charge and direction of the defense of the suit, action or proceeding while it is assigned to such counsel. YCTD shall at the

request of the CONTRACTOR furnish to the CONTRACTOR all reasonable assistance that may be necessary for the purpose of defending such suit, action or proceeding, and shall be repaid all reasonable costs incurred in doing so, YCTD shall have the right to be represented therein by advisory counsel of its own selection at its own expense.

- C. The obligations of the CONTRACTOR under the above paragraph shall not apply to the extent the injury, or death, or damages is caused by the negligent acts, errors or omissions of YCTD, its officers, employees, agents including negligence in (1) the preparation of the Contract Documents, or (2) the giving of directions or instructions with respect to the requirements of the Contract by written order. The obligations of the CONTRACTOR shall not extend to circumstances where the injury, or death, or damages is caused, in whole or in part, by the negligence of any third party operator, not including an assignee or subcontractor of the CONTRACTOR, subject to the right of contribution as provided in the next sentence below. In case of joint or concurrent negligence of the parties hereto giving rise to a claim or loss against either one or both, each shall have full rights of contribution from the other in accordance with the indemnity obligations set out above.

14.4. SURVIVABILITY

CONTRACTOR's obligations arising under this Contract pertaining to the obligations set out in provisions relating to warranties, insurance and indemnification shall survive the expiration, or termination of this Contract to the extent provided or required by their terms.

15. **FEDERAL REQUIREMENTS**

15.1 FTA POLICIES

CONTRACTOR agrees to comply with the following sections and to include these requirements in all subcontracts of every tier to the extent provided by law,

15.1 NO OBLIGATION BY THE FEDERAL GOVERNMENT

YCTD and the CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to YCTD, CONTRACTOR, or any other party (whether or not a party to that Contract) pertaining, to any matter resulting from the underlying Contract.

15.2 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATION ACTIONS

- A. The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§3801 et seq. and U.S. DOT

regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Accordingly, by signing the underlying Contract, the CONTRACTOR certifies or affirm the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the Federal Transit Administration (FTA) assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR also 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 on 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 awarded by FTA under the authority of 49 U.S.C. § 5301 et seq., the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5301 et seq. on the CONTRACTOR, to the extent the Federal Government deems appropriate.

15.3 INCORPORATION OF FTA TERMS

- A. All contractual provisions required by the U.S. Department of Transportation (DOT), as set forth in FTA Circular 4220.1F, as amended, are hereby incorporated by reference.
- B. 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 Contract. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any YCTD requests which could cause YCTD to be in violation of the FTA terms and conditions.

15.4 CHANGES IN FEDERAL LAWS AND REGULATIONS

CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the agreement between YCTD and FTA that funds any part of this Contract, as they may be amended or promulgated from time to time during the term of this Contract. CONTRACTOR's failure to so comply shall constitute a material breach of this Contract.

15.5 ENERGY CONSERVATION

The CONTRACTOR agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State of California Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.).

15.6 RECYCLED PRODUCTS

The CONTRACTOR agrees to comply with all the applicable 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.

15.7 CIVIL RIGHTS

15.7.1 NONDISCRIMINATION

In accordance with Title VI of the Civil Rights Act as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the CONTRACTOR agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

15.7.2 EQUAL EMPLOYMENT OPPORTUNITY

The following equal employment opportunity requirements apply:

- A. Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000; and Federal transit laws at 49 U.S.C. § 5332, the CONTRACTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, "41 C.F.R. 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. § 2000c note). 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 termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any applicable implementing requirements FTA may issue.
- B. Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the CONTRACTOR agrees to refrain from discrimination against present and prospective employees for reason of age.. In addition, the Contractor agrees to comply with any applicable implementing requirements FTA may issue.

- C. Disabilities. In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 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 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any applicable implementing requirements FTA, may issue.

15.8 DISADVANTAGED BUSINESS ENTERPRISE

15.8.1 POLICY

It is the policy of the Department of Transportation that Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of the Contracts financed in whole or in part with Federal funds under this Contract. Consequently the DBE requirements of 49 CFR Part 26 apply to this Contract.

15.8.2 DBE OBLIGATION

CONTRACTOR agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of Contracts and subcontracts financed in whole or in part with Federal funds provided under this Contract. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT assisted contracts.

15.8.3 PROMPT PAYMENT

When using subcontractors under this contract (if applicable), CONTRACTOR agrees to pay each subcontractor for satisfactory performance of its subcontract no later than ten days from the receipt of each payment the prime contractor receives from YCTD. CONTRACTOR agrees further to return retainage payments to each subcontractor within thirty days after the subcontractor's work is satisfactorily completed.

15.8.4 REMEDY

Failure of the CONTRACTOR to comply with this Section or to include it in any subcontract of any tier will constitute a breach of Contract and, after YCTD's compliance with the default provisions of this Contract and Contractor's failure to cure, may result in termination of the Contract by YCTD or such remedy as YCTD deems appropriate.

15.9 PROPRIETARY RIGHTS / RIGHTS IN DATA

15.9.1 Each party retains its proprietary rights in the subject data it supplies to the other party. Nothing in this Contract shall grant the receiving party any ownership of, or rights to reproduce, publish or otherwise use, the subject data in the absence of a separate license agreement except as specifically contemplated and/or provided by this Contract. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to Contract administration.

15.9.2 CONTRACTOR grants YCTD a royalty-free, non-exclusive and irrevocable license to reproduce, publish for its own use but not for resale, or otherwise use, and to authorize its employees to use, the following subject data for YCTD's internal purposes:

- A. Any operator's, service or maintenance manuals supplied with the Buses; and
- B. Any rights of copyright to which the CONTRACTOR purchases ownership at the specific written direction of YCTD for the purpose of performance of the Contract and for which YCTD has specifically and separately paid for as such under the Contract.

15.10 INTEREST OF MEMBERS OF, OR DELEGATES TO, CONGRESS

No member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising therefrom (41 U.S.C. § 22.).

15.11 PROHIBITED INTEREST

No member, officer, or employee of YCTD or of a local public body during his/her tenure or one year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

15.12 ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES

The CONTRACTOR agrees to comply with the following requirements if applicable to the provision of Buses under this Contract:

- A. The American with Disabilities Act of 1990 (ADA), 42 U.S.C. §12101 et seq.;
- B. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794;
- C. Section 16 of the Federal Transit Act, as amended, 49 U.S.C. §5301(d);

- D. U.S. DOT regulations, "American with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 38;
- E. U.S Equal Employment Opportunity Commission (EEOC), "Regulations to Implement the Equal Employment Provisions of the American with Disabilities Act," 29 C.F.R. Part 1630.

15.13 FLY AMERICA

CONTRACTOR shall certify its compliance with 49 U.S.C. 40118, the "Fly America Act," which provide that/those recipient(s) and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The CONTRACTOR shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The CONTRACTOR agrees to include the requirements of this Section in all subcontracts that may involve international air transportation.

15.14 FTA POLICIES FOR SELECTED CONTRACTS

CONTRACTOR shall comply with the statutes and regulations listed below in the subsections of this Section and to the extent required by law include these requirements, except the "Contract Work Hours and Safety Standards Act", in all subcontracts exceeding \$100,000 in value of every tier. CONTRACTOR will include "Contract Work Hours and Safety Standards Act" in all subcontracts exceeding \$2,500 in value not including subcontracts for the purchase of supplies or materials or articles ordinarily available on the open market.

15.14.1 Sections 103 and 107 of CONTRACT WORK HOURS AND SAFETY STANDARDS ACT, as amended, 40 U.S.C. §§3701 et seq.

15.14.2 CLEAN AIR Act, as amended, 42 U.S.C. §§7401 et seq.

15.14.3 The CLEAN WATER Act, as amended, 33 U.S.C. § 1251 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251 et seq. and all applicable standards, orders or regulations issued pursuant thereto.

15.14.4 COMPLIANCE WITH ENVIRONMENTAL STANDARDS

- A. The Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901 et seq.;
- B. The Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601 et seq.; and,
- C. All applicable regulations, standards, orders or requirements issued pursuant to these Federal statutes.

- D. The CONTRACTOR agrees to give YCTD notice of each report of a violation of the foregoing statutes it may be required to file with the EPA arising out of the Work and acknowledges that YCTD may, in turn, be required to report each such notice to the FTA and the appropriate EPA Regional Office.

15.14.5 LOBBYING CERTIFICATION AND DISCLOSURE STATEMENTS

In accordance with 31 U.S.C. § 1352 and U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, the CONTRACTOR certifies to YCTD 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 department or agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.

- .15.14.6 BUY AMERICA REQUIREMENTS 49 U.S.C. § 5323(j) and 49 CFR Part 661, as amended: this provision is suspended for contracts issued between May 14, 2022 and November 10, 2022, per provisions of a waiver issued by the Department of Transportation on May 25, 2022.

16. **STATE REQUIREMENTS**

16.1 FAIR EMPLOYMENT PRACTICES (NONDISCRIMINATION)

- A. CONTRACTOR and all subcontractors in the performance of work under this Contract agree that it will not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment in California because of race, color, ancestry, national origin, religious creed, marital status, sex, age, medical condition, physical disability or mental disability, or family care leave. To the extent CONTRACTOR has any employees in the state of California, it and all subcontractors with such employees shall comply with the provisions of the Fair Employment and Housing Act (California Government Code §§ 12940 et seq.) and the applicable regulations (California Code of Regulations Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12900 (a-f) set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into the Contract by reference and made a part hereof as if set forth in full but shall not be applicable unless Contractor shall have employees residing in California, CONTRACTOR and all of its subcontractors shall give written notice of their obligations under this Article to labor organizations with which they have a collective bargaining agreement covering employees in California.
- B. CONTRACTOR and all subcontractors will permit access to their records of employment, employment advertisements, application forms, and other pertinent

data and records by the Fair Employment Practices and Housing Commission, or any other agency of the State of California for the purpose of investigation to ascertain compliance with this Fair Employment Practices Article.

16.2 **DISADVANTAGED BUSINESS ENTERPRISE RECORDS**

CONTRACTOR and Contractor's subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of contracts with minority and/or women business enterprises including, but not limited to, the costs of administering the various contracts. CONTRACTOR and CONTRACTOR's subcontractors shall make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under such contract. YCTD, the State, the State Auditor General, the Federal Highway Administration, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents that are pertinent to this Contract for audits, examination, excerpts, and transactions, and copies thereof shall be furnished.

17. **SEVERABILITY**

If any provision of this Contract is adjudicated by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Contract shall continue in full force and effect.

18. **MODIFICATIONS TO CONTRACT**

18.1 This Contract may only be amended in writing signed by both YCTD and CONTRACTOR, and any other purported amendment shall be of no force or effect.

18.2 **CHANGE ORDER PROCEDURE**

Only written requests for change orders shall be considered. As soon as reasonably possible but no later than thirty (30) calendar days after receipt of the written change order request by YCTD to modify the Contract, CONTRACTOR shall submit to the Contracting Officer a reasonably detailed price quote that takes into account the conditions of the relevant labor and product market and that is consistent with Federal Transit Administration (FTA) requirements, and a proposal for the work to be performed and/or deleted. This proposal may be modified by the negotiations between the CONTRACTOR and the Contracting Officer. The modification shall take effect, however, until it has been signed by both parties as provided in Section 18.1 above.

18.3 **PRICE ADJUSTMENT FOR REGULATORY CHANGES**

Any supplies, equipment or materials costs incurred by CONTRACTOR for compliance with federal and state hazardous, tonics, safety and environmental laws and regulations applicable at the time the Offer is submitted as of the Due Date shall be deemed part of the unit price, even though such equipment and/or materials may not be listed in the Technical Specifications. Any price adjustment, either upward or downward, for changes that are mandatory as a result of legislation or regulations that are promulgated and

become effective after the Due Date and before Contract award shall be negotiated between the Contracting Officer and the CONTRACTOR and subject to audit. Any additional costs for changes that are mandatory as a result of legislation or regulations that are promulgated and become effective after the date of Contract award shall be negotiated in good faith by the parties and allocated by mutual agreement of the parties.

19. WARRANTY OF AUTHORITY

The person executing this Contract on behalf of each party affirmatively represents that she/he has the requisite legal authority to enter into this Contract on behalf of such party and to bind that party to the terms, covenants and conditions of this Contract. Both the person executing this Contract on behalf of CONTRACTOR and YCTD understand that the other party is relying on this representation in entering into this Contract.

20. ENTIRE AGREEMENT

This Contract, including any and all Exhibits, constitutes the entire agreement between YCTD and CONTRACTOR and supersedes all prior negotiations, representations, or agreements, whether written or oral. In the event of a dispute between the parties as to the language of this Contract or the construction or meaning of any term hereof, this Contract shall be deemed to have been drafted by the parties in equal parts so that no presumptions of inferences concerning its terms or interpretation