

0220-00210-0281

T R A N S M I T T A L

TO
The Council

DATE
06/26/2023

COUNCIL FILE NO.

FROM
The Mayor

COUNCIL DISTRICT
Citywide

**Proposed First Amendment to Contract C-134342 with BYD Motors LLC
for the purchase of 130 Electric Buses**

Transmitted for your consideration. See the
City Administrative Officer report attached.



MAYOR
(Chris Thompson for)

MWS:DHH:06230140t

Report From
OFFICE OF THE CITY ADMINISTRATIVE OFFICER
Analysis of Proposed Contract
(\$25,000 or Greater and Longer than Three Months)

To: The Mayor	Date: 06-09-23	C.D. No. Citywide	CAO File No.: 0220-00210-0281
Contracting Department/Bureau: Department of Transportation		Contact: Emerson Belen	
Reference: Letter from the Department of Transportation, dated December 16, 2022; referred for report December 19, 2022			
Purpose of Contract: Purchase 130 Electric Buses			
Type of Contract: () New contract (X) Amendment, Contract No. C-134342		Contract Term Dates: October 24, 2019 to October 24, 2022 October 25, 2022 to October 1, 2023	
Contract/Amendment Amount: 0			
Proposed amount \$ 0 + Prior award(s) \$ 83,822,570= Total \$ 83,822,570			
Source of funds: [Click here and type source of funds]			
Name of Contractor: BYD Motors, LLC			
Address: 1800 South Figueroa Street, Los Angeles, CA 90015			
	Yes	No	N/A
1. Council has approved the purpose	X		
2. Appropriated funds are available	X		
3. Charter Section 1022 findings completed	X		
4. Proposals have been requested	X		
5. Risk Management review completed	X		
6. Standard Provisions for City Contracts included	X		
7. Workforce that resides in the City: %			
Contractor has complied with:	Yes	No	N/A
8. Business Inclusion Program	X		
9. Equal Benefits & First Source Hiring Ordinances	X		
10. Contractor Responsibility Ordinance	X		
11. Disclosure Ordinances	X		
12. Bidder Certification CEC Form 50	X		
13. Prohibited Contributors (Bidders) CEC Form 55	X		
14. California Iran Contracting Act of 2010	X		



RECOMMENDATION

That the Mayor and Council approve the proposed First Amendment to Contract C-134342 with BYD Motors LLC for the purchase of 130 electric buses, subject to the approval of the City Attorney as to form, and instruct the Department of Transportation to include the most current version of the City Standard Provisions in the final contract.

SUMMARY

The Department of Transportation requests approval of a First Amendment to Contract C-134342 with BYD Motors LLC for the purchase of 130 electric buses. The Amendment will extend the contract by a year and update standard contracting provisions.

The underlying contract was executed on October 24, 2019 and expired on October 24, 2022. The request for this amendment was submitted to the Mayor's Office consistent with Executive Directive 3 on December 16, 2022. The amendment contains a ratification clause that allows payment to the contractor prior to the execution of this amendment. This amendment extends the term of the contract beyond three years. Consistent with Los Angeles Administrative Code section 10.5, this amendment requires Council approval.

 DHH Analyst 06230140	 for City Administrative Officer
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DOT has encumbered sufficient funds within the City Proposition A Local Transit Assistance Fund to support the purchase. It is possible that the discussion for the 2023 Transit Service Analysis will impact the utilization of the 130 buses. DOT reports that they do not currently have sufficient electric charging stations to support all 130 buses but that they are working on developing temporary alternative charging solutions and are confident that they will comply with the terms of the grant.

DOT reports that each bus costs \$644,769 with 42 percent of the costs (\$270,803) covered by a State Transit and Intercity Rail Capital Program (TIRCP) grant. DOT is using the TIRCP grant instead of Federal Transit Administration (FTA) grants that have approximately an 80 percent reimbursement because they have fully utilized the available FTA grants.

The City obligation under the contract is limited to the extent appropriations are made by the Council and Mayor.

An older version of the City Standard Provisions is being used and it is recommended that DOT include the most updated version of the Standard Provisions with this contract.

FISCAL IMPACT STATEMENT

No General Fund impact. Execution of the contract amendment will commit the City to spend up to \$83.8 million from within the City Proposition A Local Transit Assistance Fund. Reimbursement of up to \$35.2 million from the State Transit and Intercity Rail Capital Program grant is expected.


FINANCIAL POLICIES STATEMENT

The contract amendment complies with the City Financial policies in that current funds are available to support the proposed expenditures.

CITY OF LOS ANGELES
INTER-DEPARTMENTAL MEMORANDUM

Date: December 16, 2022

To: The Honorable Karen Bass, Mayor
Office of the Mayor
Attention: Heleen Ramirez, Legislative Coordinator

From: Connie Llanos, Interim General Manager 
Department of Transportation

Subject: **FIRST AMENDMENT TO AGREEMENT C-134342 BETWEEN THE LOS ANGELES DEPARTMENT OF TRANSPORTATION AND BYD MOTORS INC. FOR THE PROCUREMENT OF ONE HUNDRED AND THIRTY (130) K7M 30-FOOT ELECTRIC BUSES**

SUMMARY

The City of Los Angeles Department of Transportation (LADOT) requests authorization to execute a contract amendment with BYD Motors Inc. (C-134342) to extend the term of the contract by twelve (12) months, for the purchase of one hundred thirty (130) K7M 30-foot electric buses for the LADOT DASH program, due to delays caused by the closure of the BYD Motors Inc. manufacturing facility and the COVID-19 protocols in place at the reopening of the facility.

RECOMMENDATION

That the City Council, with the concurrence of the Mayor:

1. AUTHORIZE the LADOT General Manager to execute the First Amendment to Agreement C-134342 with BYD Motors Inc., subject to the approval of the City Attorney as to form and legality.:
 - APPROVE the extension of the term of the Agreement by twelve (12) months to October 1, 2023.
 - APPROVE the substitution of BYD Motors Inc. for BYD Motors LLC as the contracting entity.
 - APPROVE the amending of the business entity type and location of company registration.
 - APPROVE the modification of the vehicle delivery schedule.
 - APPROVE the update of the FTA Requirements and Clauses for FTA Funded Vehicles (Rev 9/22).
 - APPROVE the addition of contracting language as required by ordinance of all City contracts and incorporation of additional provisions and attachments to the Agreement.

BACKGROUND

On November 9, 2017, in support of the Mayor's commitment to electrify all City transit fleet vehicles, City Council directed LADOT to take numerous actions to ensure a transition to a 100-percent zero-emission bus fleet by 2030 or earlier (C.F. 17-0739). On June 19, 2018, City Council authorized the

Department to accept and obligate a State Transit and Intercity Rail Capital Program (TIRCP) grant to purchase battery-electric buses and chargers (C.F. 18-0487).

On December 20, 2016, the Georgia State Department of Administrative Services (DOAS) issued a Request for Proposals (RFP) to establish a comprehensive supply base capable of providing a wide variety and quantity of transit buses and other related vehicles that meet varying levels/types of requirements as set forth by local, state and/or federal transit organizations. On July 1, 2019, Georgia State DOAS executed an agreement with the Contractor to manufacture K7M 30-foot heavy-duty electric-powered transit buses (Contract Number 99999-001-SPD0000138-0008) (Master Contract).

On October 17, 2019, the Mayor authorized the Department's recommendation to purchase one hundred thirty (130) new K7M 30-foot heavy-duty electric-powered transit buses and the necessary charging equipment from the Contractor. On October 25, 2019, LADOT entered into an Agreement (C-134342) with BYD Motors Inc. for the purchase of one hundred thirty (130) K7M 30-foot electric buses for the LADOT DASH program, piggybacking off of the Master Contract between the Contractor and Georgia State DOAS.

DISCUSSION

On January 30, 2020, the World Health Organization (WHO) declared a Public Health Emergency of International Concern in response to the COVID-19 virus. During the following months, the COVID-19 virus spread worldwide, causing a pandemic.

To stop the spread of COVID-19, the Honorable Gavin Newsom, Governor of California, issued Executive Order N-25-20 on March 4, 2020, which instituted social distancing measures intended to reduce the spread of the COVID-19 virus. On March 19, 2020, the Governor issued Executive Order N-33-20, which instituted the stay-at-home restrictions to reduce the spread of the COVID-19 virus further, which caused the closure of all but essential businesses, including BYD Motors LLC's Lancaster, California manufacturing facility.

On May 13, 2020, the Los Angeles County Department of Public Health issued an order allowing the reopening of those manufacturing establishments which adopted COVID-19 protocols, including social distancing. BYD Motors LLC was among the manufacturers allowed to open under this order.

Due to the closure and implementation of COVID-19 protocols, the Contractor cannot meet the original vehicle delivery schedule. LADOT requests authorization to extend the end of the current contract term from October 1, 2022 to October 1, 2023, to ensure all vehicles are received and provide LADOT the time to complete the acceptance inspections and process all invoices.

The original Contractor under the Georgia Master Contract was BYD Motors Inc., a Wyoming Corporation. That corporation merged into BYD Motors LLC, a Delaware Limited Liability Company qualified to do business in California, with an office in Los Angeles and a manufacturing facility in Lancaster, which has assumed both the rights and the obligations of BYD Motors Inc. under the Master Contract (Georgia) and the Agreement (C-134342). The Master Contract recognizes this assignment of rights in a written amendment, and the City wishes to formalize the assignment of rights and obligations at this opportunity, in compliance with its own assignment clause, which requires assent to assignment to be in writing, and with federal law, which requires any assignment of rights to also include the assumption of obligations to be valid.

Since the original Agreement was attested, additional requirements for contract content have been promulgated by the City and the Federal Transit Administration (FTA), including new contractual terms required by the City and new certifications and clauses required by the FTA. The City, therefore, shall take this opportunity to modify the Agreement accordingly to bring it current under these new requirements.

FISCAL IMPACT

There is no General Fund impact. No additional funds are requested for this amendment. There are sufficient funds included in the City's Adopted FY 2018 Proposition A Local Transit Assistance (PALTA) budget, Fund No. 385, Account No. 94PA00 – Community DASH Purchase Program Expansion, Account No. 94PA18 – LCTOP Electric DASH Buses, and in the City's Adopted FY 2019 Proposition A Local Transit Assistance (PALTA) budget, Account No. 94RA06 – Transit Operations Expansion.

FIRST AMENDMENT

TO

AGREEMENT C-134342

BETWEEN

THE CITY OF LOS ANGELES

AND

BYD MOTORS LLC

(SUCCESSOR TO BYD MOTORS INC.)

FOR THE

PROCUREMENT OF

130 K7M 30-FOOT ELECTRIC BUSES

FOR THE LADOT DASH PROGRAM

**FIRST AMENDMENT TO AGREEMENT C-134342
BETWEEN
THE CITY OF LOS ANGELES
AND
BYD MOTORS LLC,
(SUCCESSOR TO BYD MOTORS INC.)
FOR THE PROCUREMENT OF 130 K7M 30-FOOT ELECTRIC BUSES
FOR THE LADOT COMMUNITY DASH PROGRAM**

THIS FIRST AMENDMENT to Agreement C-134342 (the “Agreement”), between the City of Los Angeles (herein referred to as “CITY”), a municipal corporation, acting by and through the Department of Transportation (hereinafter referred to as “LADOT”), and BYD Motors LLC, a Delaware Limited Liability Company qualified to do business in California (“New Contractor”), successor to BYD Motors Inc., a Wyoming Corporation (“Original Contractor”) which was party to the Agreement (referred to in the Agreement as “CONTRACTOR”), referred to collectively as “Parties” and individually as “Party,” is entered into with reference to the following:

WITNESSETH

WHEREAS, LADOT desires to continue contracting the purchase of 130 new K7M 30-foot heavy-duty electric-powered transit buses and the necessary charging equipment for the operation of the Community DASH service; and

WHEREAS, on November 9, 2017, the City Council directed LADOT to take numerous actions to ensure a transition to a 100-percent zero-emission bus fleet by 2030 or earlier (C.F. 17-0739); and

WHEREAS, on December 20, 2016, Georgia State Department of Administrative Services (DOAS) issued a Request for Proposals (RFP) to establish a comprehensive supply base capable of providing an extensive variety and quantity of transit buses and other related vehicles that meet varying levels/types of requirements as set forth by local, state and/or federal transit organizations; and

WHEREAS, on October 26, 2018, the City Council authorized the Department to enter into contracts with select bus manufacturers to purchase up to 130 battery-electric buses as part of the Transit Intercity Rail Capital Program grant award (C.F. 18-0244); and

WHEREAS, Original Contractor, a Wyoming corporation, submitted proposals in response to the Georgia State DOAS RFP; and on July 1, 2019, the Georgia State DOAS executed an agreement with Original Contractor for the manufacturing of 30-foot heavy-duty electric-powered transit buses, Contract Number 99999-001-SPD0000138-0008 (the “Master Contract”); and

WHEREAS, the Georgia State DOAS RFP allows for the assignment of vehicles to other agencies upon authorization by the State Purchasing Division; and

WHEREAS, the Los Angeles City Charter Section 371 allows for contracts for cooperative arrangement with other governmental agencies for the utilization of purchasing and services contracts of those agencies and any implementing agreements; and

WHEREAS, on August 22, 2019, the Georgia State Purchasing Division provided the CITY written authorization to purchase buses through their master contract; and

WHEREAS, on October 17, 2019, the Mayor authorized the Department's recommendation to purchase 130 new K7M 30-foot heavy-duty electric-powered transit buses and the necessary charging equipment from the Original Contractor; and

WHEREAS, on February 12, 2020, the CITY and Original Contractor entered into the Agreement, wherein Original Contractor agreed to manufacture and deliver 130 new 30-foot heavy-duty electric-powered transit buses and the necessary charging equipment; and

WHEREAS, on January 30, 2020, the World Health Organization (WHO) declared a Public Health Emergency of International Concern in response to the COVID-19 virus. During the following months, the COVID-19 virus spread worldwide, causing a pandemic; and

WHEREAS, on March 4, 2020, the Governor of California issued Executive Order N-25-20, which included instituted social distancing measures intended to reduce the spread of the COVID-19 virus; and

WHEREAS, on March 19, 2020, the Governor of California issued Executive Order N-33-20, which instituted the stay-at-home restrictions intended to reduce the spread of the COVID-19 virus further, caused the closure of all but essential businesses, including the closure of the CONTRACTOR'S Lancaster, California manufacturing facility; and

WHEREAS, on May 13, 2020, the Los Angeles County Department of Public Health issued an order allowing the reopening of those manufacturing establishments which adopted COVID-19 protocols, including social distancing, which included the reopening of the CONTRACTOR'S manufacturing facility; and

WHEREAS, due to the closure and implementation of COVID-19 protocols, the original vehicle delivery schedule is no longer practical and applicable to this procurement; and

WHEREAS, the CITY and CONTRACTOR desire to amend the company's entity type and registration location, which was written in the original contract as Wyoming Corporation instead of Delaware Limited Liability Company; and

WHEREAS, LADOT desires in this First Amendment to Agreement C-134342 to: 1) extend the term of the Agreement by one (1) year to 10/1/2023; 2) substitute BYD Motors LLC as the contracting entity; 3) correct the business entity type and location of company registration; 4) modify the vehicle delivery schedule; 5) add the FTA Requirements and Clauses for Vehicle Purchase (Rev. 9/22), and 6) add contracting language as required by ordinance of all City contracts, and incorporation of additional provisions and attachments to the Agreement.

NOW, THEREFORE, in consideration of the above premises, and the mutual covenants and agreements herein contained, the Parties agree to amend the existing Agreement as follows:

- 1. Section 1, PARTIES TO THE AGREEMENT, REPRESENTATIVES, AND NOTICES**, Subsection 1.1.2, is hereby amended in its entirety to read as follows:

1.1.2 CONTRACTOR - BYD Motors LLC, a Delaware limited liability company, having its principal office at 1800 South Figueroa Street, Los Angeles CA 90015.

2. **Section 1, PARTIES TO THE AGREEMENT, REPRESENTATIVES, AND NOTICES**, Subsection 1.2.1, is hereby amended in its entirety to read as follows:

1.2.1 The City's representative is unless otherwise stated in the Agreement:

Connie Llanos, Interim General Manager
Los Angeles Department of Transportation
100 South Main Street, 10th Floor
Los Angeles, California 90012

With copies to:

Mariana Valdivia, Chief of Transit
Los Angeles Department of Transportation
100 South Main Street, 10th Floor
Los Angeles, California 90012

3. **Section 1, PARTIES TO THE AGREEMENT, REPRESENTATIVES, AND NOTICES**, Subsection 1.2.2, is hereby amended in its entirety to read as follows:

1.2.2 The CONTRACTOR'S representative is unless otherwise stated in the Agreement:

Patrick Duan, Vice President
BYD Motors LLC
1800 South Figueroa Street
Los Angeles, California 90015

With Copies to:

James Holtz, Regional Sales Manager
BYD Motors LLC
1800 South Figueroa Street
Los Angeles, California 90015

and

John Zhuang, Legal Counsel
BYD Motors LLC
1800 South Figueroa Street
Los Angeles, California 90015

4. **Section 2, CONDITIONS PRECEDENT TO EXECUTION OF THIS AGREEMENT**, is hereby amended by adding new subsections 2.4.1 through 2.4.7, immediately following Subsection 2.4, Contract Assignment:

- 2.4.1 Representation and Warranties. BYD Motors LLC ("New Contractor") represents and warrants that it qualifies to assume each and every asset and obligation of BYD Motors Inc. ("Original Contractor"), under the Master Contract and the Agreement. New Contractor represents and warrants that in May, 2018, New Contractor merged with Original Contractor, and New Contractor is the surviving entity. New Contractor represents and warrants that all rights and obligations under the Master Contract and the Agreement were transferred from Original Contractor to New Contractor.
- 2.4.2 Assignment under Georgia Contract. Original Contractor and New Contractor shall effect assignment of all rights and obligations of Original Contractor, under the Master Contract, to New Contractor, as soon as possible but in any event prior to, and as condition precedent to, the signing of this amendment.
- 2.4.3 Assignment. Original Contractor assigns, transfers, and conveys to New Contractor all of their rights and obligations under the Agreement and all its amendments. Original Contractor and New Contractor warrant that the Master Contract and the Agreement are in full force and effect and that there has been no breach by any of the Contractors, to the Master Contract or the Agreement. Original Contractor and New Contractor further warrant (i) that Original Contractor and Original Contractor are in full compliance with all the terms and conditions of the Agreement; (ii) that Original Contractor has the right to assign its rights and obligations under the Agreement, with the consent and endorsement of the CITY; and (iii) that Original Contractor and Original Contractor have not previously assigned nor encumbered all or any part of their rights or obligations under the Agreement.
- 2.4.4 Assumption. New Contractor hereby agrees to, accepts, and assumes all of the rights and obligations of the Original Contractor under the Agreement to the same extent as if New Contractor had executed the Agreement itself. New Contractor hereby acknowledges that commencing on the Effective Date, New Contractor shall be obligated to perform in accordance with the terms and conditions of the Agreement.
- 2.4.5 Consent and Endorsement. LADOT hereby consents to and endorses: (i) Original Contractors' assignment of their rights and obligations under the Agreement to New Contractor, and (ii) New Contractor's assumption of Original Contractor's and Original Contractors' rights and obligations under the Agreement.
- 2.4.6 Acknowledgment of Assignment. The CITY acknowledges the assignment of all rights and obligations formerly held by Original Contractor under the Agreement, to New Contractor.
- 2.4.7 Substitution of New Contractor as Contractor. With respect to any and all obligations of BYD Motors Inc. and BYD Motors LLC towards, and rights held by, the CITY, under Georgia RFP and Contract Number 99999-001-SPD0000138-0008, and the Agreement, except where otherwise specified, where the name BYD Motors Inc., or any shortened version of the same name or any defined term meant to refer to it (including but not limited to "BYD" and "Contractor") appear throughout the Master Contract and the Agreement, and throughout any exhibits or attachments to the Master Contract and the

Agreement, said name is now defined as, replaced with, and shall mean and refer to, BYD Motors LLC.

5. **Section 2, CONDITIONS PRECEDENT TO EXECUTION OF THIS AGREEMENT**, Subsection 2.5, Federally Required and Other Contract Clauses, is hereby amended in its entirety to read as follows:

2.5 Federally Required and Other Contract Clauses

By entering into this Agreement with the CITY, the CONTRACTOR agrees to abide with all Federal Transit Administration (FTA) requirements and other clauses for FTA funded programs as specified in Appendix D - FTA Requirements and Clauses for Vehicle Purchase (Rev. 9/22) attached hereto and incorporated herein.

The CITY acknowledges that this bus procurement is funded with FTA assistance. The CONTRACTOR acknowledges compliance with and submittal of the following certification and forms before the Agreement is executed:

Certification and Forms:

- Certification of Compliance with Federally Required Contract Clauses
- Lobbying Requirements
- Buy America
- Prompt Payment

Where a conflict exists between Federal, State, local, or the manufacturer's recommended or specified guidelines, Contractors shall apply the more stringent requirement.

Certification of Compliance with Federally Required Contract Clauses

This Agreement is subject to a financial assistance agreement between the City of Los Angeles Department of Transportation (LADOT) and the Federal Transit Administration (FTA) of the U.S. Department of Transportation. All laws, regulations, guidelines, and provisions of the financial agreement shall apply to this Agreement.

Lobbying Requirements

The CONTRACTOR agrees to comply with 49 CFR part 20, "New Restrictions on Lobbying." Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Buy America Requirements

The CONTRACTOR agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661 and any later amendments thereto. For procurement of rolling stock, the vehicle manufacturer is required to certify the Buy America Certification for Procurement of Rolling Stock. A bidder must submit to the FTA recipient ONLY ONE Buy America Certification for Procurement of Rolling Stock with all bids on FTA-funded contracts. Bids or offers that are not accompanied by a completed Buy America certification shall be rejected as non-responsive. Bids or offers that are accompanied by both certifications for compliance and non-compliance signed shall also be rejected as non-responsive.

Prompt Payment

The CONTRACTOR is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than thirty (30) days after the CONTRACTOR'S receipt of payment for that work. In addition, the CONTRACTOR is required to return any retainage payments to those subcontractors within thirty (30) days after the subcontractor's work related to this Agreement is satisfactorily completed. The CONTRACTOR shall promptly notify LADOT Transit Services Project Manager via email whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The CONTRACTOR shall not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of LADOT.

6. **Section 3, TERMS OF AGREEMENT**, Subsection 3.1, Term, is hereby amended in its entirety to read as follows:

3.1 Term

This Agreement shall commence on October 24, 2019, and shall terminate on October 1, 2023, thereafter, unless otherwise terminated in accordance with the termination provisions herein.

7. **Section 3, TERMS OF AGREEMENT**, is hereby amended by adding a new subsection 3.1.1, immediately following Subsection 3.1, Term:

3.1.1 Limits on Ratification, Extension, or Renewal. The CONTRACTOR may have provided prior services to the City of Los Angeles under the terms of an executed Agreement which included a requirement to adhere to the City's Standard Provisions for City Contracts. To the extent that the CONTRACTOR provided services to the CITY prior to the execution of this extension, and the CONTRACTOR'S services were performed in accordance with the terms and conditions of this extension and the original Agreement, including the City's Standard Provisions for City Contracts, those services are hereby ratified.

8. **Section 3, TERMS OF AGREEMENT**, Subsection 3.4, Order of Precedence, is hereby amended in its entirety to read as follows:

3.4 Order of Precedence

This Agreement and any exhibits and appendices or documents incorporated herein by inclusion or by reference constitute the complete and entire Agreement between the CITY and the CONTRACTOR. In the event of any inconsistencies between the body of this Agreement, exhibits, or appendices, the order of precedence shall be as listed in the order below, and in the order as listed furthermore within each line item:

1. This Agreement between the City of Los Angeles and BYD Motors LLC, and its amendments
2. Appendix A -Standard Provisions for City Contracts (Rev. 10/17) [v.3]
3. Appendix D - FTA Requirements and Clauses for Vehicle Purchase (Rev. 9/22)
4. Exhibit 1 - Cost Sheet, Exhibit 3 -Vehicle Specification, Exhibit 4 - LADOT Warranty Exhibit 4 - Supplier Warranty Labor Rates & BYD Warranty Provisions
5. Appendix C - Georgia State and BYD Motors Inc. Contract and BYD Motors Inc. Required FTA Certification
6. Appendix B - Georgia State Department of Administrative Services eRFP

9. **Section 5, INDEPENDENT CONTRACTOR**, Subsection 5.4 Real Property Ownership, is hereby amended in its entirety to read as follows:

5.4 Property Ownership

All property purchased directly by the CITY or through the CONTRACTOR for this Agreement shall become the property of the CITY and shall be returned to the CITY upon the termination of this Agreement, except as provided otherwise.

10. **Section 6, COMPENSATION AND METHOD OF PAYMENT**, Subsection 6.2 Method of Payment, is hereby removed in its entirety and replaced as follows:

6.2 Method of Payment

The CONTRACTOR must submit requisitions for payment to LADOT. These reimbursements must represent actual costs. The format and the degree of detail to be included in the requisition shall be subject to the approval of LADOT and must not be changed except upon written approval of LADOT. The CONTRACTOR must include the following information on the requisition:

Name and Address of Company or Firm
Date of Invoice
Invoice Number
Agreement Number
Total Amount Payable

The CONTRACTOR shall submit a requisition to:

Janna Smith, Supervising Transportation Planner II
Los Angeles Department of Transportation
100 South Main Street, 10th Floor
Los Angeles, California, 90012

The CITY shall pay CONTRACTOR the amount of the requisition within thirty (30) days upon satisfactory inspection of the buses as specified under Section 7.6 below and the complete and satisfactory performance of all of the provisions in the Agreement.

11. **Section 9, STANDARD PROVISIONS FOR CITY CONTRACTS**, is hereby amended by adding a new Subsection 9.1, COVID-19 Vaccination Requirement Provision, to read as follows:

9.1 COVID-19 Vaccination Requirement Provision

Employees of CONTRACTOR and/or persons working on its behalf, including, but not limited to, subcontractors (collectively, "Contractor Personnel"), while performing services under this Agreement and prior to interacting in person with City employees, contractors, volunteers, or members of the public (collectively, "In-Person Services") must be fully vaccinated against the novel coronavirus 2019 ("COVID-19"). "Fully vaccinated" means that 14 or more days have passed since Contractor Personnel have received the final dose of a two-dose COVID-19 vaccine series (Moderna or Pfizer-BioNTech) or a single dose of a one-dose COVID-19 vaccine (Johnson & Johnson/Janssen) and all booster doses recommended by the Centers for Disease Control and Prevention.

Prior to assigning Contractor Personnel to perform In-Person Services, CONTRACTOR shall obtain proof that such Contractor Personnel have been fully vaccinated. CONTRACTOR shall retain such proof for the document retention period set forth in this Agreement. CONTRACTOR shall grant medical or religious exemptions ("Exemptions") to Contractor Personnel as required by law. If CONTRACTOR wishes to assign Contractor Personnel with Exemptions to perform In-Person Services, CONTRACTOR shall require such Contractor Personnel to undergo weekly COVID-19 testing, with the full cost of testing to be borne by CONTRACTOR. If Contractor Personnel test positive, they shall not be assigned to perform In-Person Services or, to the extent they have already been performing In-Person Services, shall be immediately removed from those assignments.

Furthermore, CONTRACTOR shall immediately notify CITY if Contractor Personnel performing In Person Services (1) have tested positive for or have been diagnosed with COVID-19, (2) have been informed by a medical professional that they are likely to have COVID-19, or (3) meet the criteria for isolation under applicable government orders.

12. **Exhibit 2 - Delivery Schedule**, is hereby replaced in its entirety by the updated Exhibit 2 - Delivery Schedule, attached hereto and incorporated herein.
13. **Appendix D - FTA Requirements and Clauses for FTA Funded Vehicles (Rev. 9/22)**, is attached hereto and incorporated herein as part of the Agreement.
14. Effective the date of attestation by the City Clerk of this First Amendment, all references to Angela De La Rosa throughout the Agreement are hereby deleted and replaced with the following: "Robin Quintanilla and Emerson Belen".
15. Except as herein amended, all other terms and conditions of the Agreement shall remain in full force and effect.

**THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

THE CITY OF LOS ANGELES

By: _____

Connie Llanos
Interim General Manager
Department of Transportation

Date: _____

APPROVED AS TO FORM:

HYDEE FELDSTEIN SOTO, City Attorney

By: _____

Michael Nagle
Deputy City Attorney

Date: _____

ATTEST:

HOLLY L. WOLCOTT, City Clerk

Date: _____

BYD MOTORS LLC

By: _____

Title: _____

Date: _____

BYD MOTORS LLC

By: _____

Title: _____

Date: _____

NOTE: If Contractor is a Corporation or LLC, two signatures are required.

If Contractor is a Corporation:

* The signature of President, Chairman of the Board, or Vice President is required here; and

** an additional signature of Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer is also required for the Corporation.

If Contractor is a Limited Liability Company:

Unless otherwise provided, the signature of two authorized managers is required.

Cal. Corp. Code Sections 313 & 17703.01

City Agreement Number: C-134342

Council File: 18-0244

EXHIBIT 2
DELIVERY SCHEDULE



Build Your Dreams

BYD-LADOT K7M 2022 - 2023 Production Schedule

K7M - AC Charging Mode (30)

Bus #	BYD In-Stock
#1 (Pilot unit)	Delivered on 6/15/2021
#2 - #8 (7 units)	Inspection completed
#9 - #18 (10 Units)	In stock, pending on inspection
#19 - #30 (12 units)	In stock, pending on inspection

K7M - DC Charging Mode (100)

Bus #	BYD In-Stock
#31 - #65 (35 units)	In stock, pending on inspection
#66 - #73 (8 units)	10/31/2022
#74 - #85 (12 units)	11/30/2022
#86 - #98 (13 units)	12/30/2022
#99 - #103 (5 units)	1/31/2023
#104 - #123 (20 units)	5/30/2023
#124 - #130 (7 units)	6/30/2023

*"BYD In-stock" reflects that vehicle(s) is ready for LADOT final inspection

**Schedule does not reflect unspecified delays related to:

1. Power Manufacturing driver barrier material
2. Stop request addition for DC Charging fleet
3. CHP instruction on Syncromatics tablet relocation

APPENDIX D

FTA REQUIREMENTS AND CLAUSES FOR

VEHICLE PURCHASE (Rev. 9/22)

The City of Los Angeles, referred to as "CITY" in the Agreement and herein, shall be referred to herein additionally as "Participant" or "Recipient."

1. No Federal Government Obligations to Third Parties.
 - a. Participant and 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 the Participant, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract.
 - b. Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.
2. False Statements or Claims, Civil and Criminal Fraud.
 - a. 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. Upon execution of the underlying contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, 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 on Contractor to the extent the Federal Government deems appropriate.
 - b. 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 FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on Contractor, to the extent the Federal Government deems appropriate.
 - c. Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.
3. Access to Third Party Contract Records.
 - a. Where the Participant is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Participant, the FTA Administrator, the Comptroller General of the

United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

- b. Where the Participant is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Participant, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
 - c. Where the Participant enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Participant, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
 - d. Where any Participant which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Participant, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
 - e. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 - f. Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Participant, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
 - g. FTA does not require the inclusion of these requirements in subcontracts.
4. Changes to Federal Requirements. 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 Master Agreement between Participant and FTA, 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.

5. Civil Rights.

- a. 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 (ADA) of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, 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, Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." The following equal employment opportunity requirements apply to the underlying contract:
 - i. Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, 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. § 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. 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, Contractor agrees to comply with any implementing requirements FTA may issue.
 - ii. 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, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

- iii. Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, 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, Contractor agrees to comply with any implementing requirements FTA may issue.
 - iv. Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.
- 6. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, Contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each Contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- 7. Disadvantaged Business Enterprises. The Disadvantaged Business Enterprise (DBE) requirements of 49 CFR Part 26 and USDOT's official interpretations (i.e., Questions & Answers) apply to this Contract. As such, the requirements of this Contract are to make affirmative efforts to solicit DBEs, provide information on who submitted a Bid or quote and to report DBE participation. No preference will be included in the evaluation of Bids/Proposals, no minimum level of DBE participation shall be required as a Condition of Award and Bids/Proposals may not be rejected or considered non-responsive on that basis.
 - a. Transit Vehicle Manufacturer Compliance with DBE Requirements. Before a transit vehicle manufacturer (TVM) may submit a bid or proposal to provide vehicles to be financed with FTA assistance, 49 C.F.R. § 26.49 requires the TVM to submit a certification that it has complied with FTA's DBE requirements.

8. ADA Access. Contractor shall comply with the requirements of 49 CFR FTA C 4710.1 as applicable to this Contract. Equal access and the opportunity should be given to individuals with disabilities to fully participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations.
 - a. Contractor must comply with the accessibility requirements of DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37, and Joint Access Board/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38.
9. Incorporation of Federal Transit Administration (FTA) Terms. The preceding provisions of this Agreement and the clauses herein include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth. 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. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause Participant to be in violation of the FTA terms and conditions.
10. Debarment and Suspension (Executive Orders 12549 and 12689). A covered transaction (see 2 C.F.R. §§ 180.220 and 1200.220) must not be entered into with any party listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (31 U.S.C. § 6101 note, 51 Fed. Reg. 6370,) and 12689 (31 U.S.C. § 6101 note, 54 Fed. Reg. 34131), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Recipient agrees to include, and require each Third Party Participant to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant:
 - a. Complies with federal debarment and suspension requirements; and
 - b. Reviews the SAM at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200.
11. Restrictions on Lobbying (31 U.S.C. § 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the certification required by 49 CFR Part 20. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.
12. Solid Wastes. A Recipient that is a state agency or agency of a political subdivision of a state and its Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at

40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

13. Buy America. Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11. Rolling stock must be assembled in the United States and have at least 70 percent domestic content for rolling stock procurements with the first vehicle scheduled for delivery in 2020 or thereafter.
 - a. Contractor must submit to Participants the appropriate Buy America Certification with all offers on FTA-funded contracts, except those subject to a general waiver. Proposals that are not accompanied by a properly completed Buy America certification are subject to the provisions of 49 CFR 661.13 and will be rejected as nonresponsive.
 - b. Pursuant to Appendix A to §661.7(b), a general public interest waiver from the Buy America requirements applies to microprocessors, computers, microcomputers, or software, or other such devices, which are used solely for the purpose of processing or storing data. This general waiver does not extend to a product or device which merely contains a microprocessor or microcomputer and is not used solely for the purpose of processing or storing data.
14. Byrd Anti-Lobbying Amendment, (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
15. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
16. Cargo Preference - Use of United States-Flag Vessels. Contractor agrees to:

- a. Use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
 - b. Furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA Recipient (through the Contractor in the case of a subcontractor's bill-of-lading.)
 - c. Include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.
17. Energy Conservation. Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
18. Bus Testing. Contractor agrees to comply with the Bus Testing requirements under 49 U.S.C. A 5318(e) and FTA's implementing regulation at 49 CFR Part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, Contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report publicly available prior to final acceptance of the first vehicle by the Recipient.
19. Pre-Award and Post-Delivery Audit Requirements. Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance. Contractor shall submit manufacturer's FMVSS self-certification, Federal Motor Bus Safety Standards, that the bus complies with relevant FMVSS or manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.
20. Fly America. Contractor agrees to comply with 49 USC 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub recipients 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. 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. Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

21. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each Contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
 - a. In the event of any violation of the clause set forth herein, Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Liquidated damages will be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.
 - b. The Participant will upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.
 - c. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.
22. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the Recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or

research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

23. 2 CFR §200.322 Procurement of recovered materials—A non-Federal entity that is a state agency or agency of a political subdivision of a state and its Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- a. Environmentally Preferable Products Purchasing Program: In accordance with City of Los Angeles Administrative Code Section 10.32 et seq., it is the policy of the City to specify and purchase Environmentally Preferable Products and services where criteria have been established by governmental or other widely recognized and respected third-party authorities.
 - b. Suppliers and Contractors are encouraged to offer environmentally preferable products and services at competitive prices, and to consider environmental impacts of service delivery by using environmentally preferable products and delivery methods whenever possible.
 - c. Suppliers shall certify in writing the minimum, if not the exact percentage of Recycled Material, both Post- Consumer Recycled Content and Secondary Waste, and other environmental attributes in products to be provided in the performance of any awarded contract. The supplier shall provide such certification even in instances in which the product contains no Recycled Material or other environmental attributes. Failure to provide such certification shall result in the product being deemed to contain no Recycled Material or Environmentally Preferable attributes.
24. Simplified Acquisition Threshold. Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where Contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America’s eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).)

25. Termination. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-federal entity including the manner by which it will be effected and the basis for settlement. Please see Attachment A, Standard Provisions for City Contracts, (Rev. 9/22) [v.1].pdf, PSC-8, PSC-9 for termination and suspension for more detailed procedures.
26. Privacy Act - 5 U.S.C. 552. Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:
- a. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
 - b. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.
27. 2 CFR 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.
- a. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
 - i. Procure or obtain;
 - ii. Extend or renew a contract to procure or obtain; or
 - iii. 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:
 1. telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 2. 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).
 3. Telecommunications or video surveillance services provided by such entities or using such equipment.
 4. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in

consultation with the Director of 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.

- iv. 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.

28. Notification to FTA; Flow Down Requirement. If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant 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.

- a. 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 as a party to litigation or a legal disagreement in any forum for any reason.
- b. Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
- c. Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient 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, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. 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 Recipient, including divisions tasked with law enforcement or investigatory functions.