

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Public Works *AKM*

BOARD AGENDA # *C-2

Urgent

Routine

AGENDA DATE December 18, 2007

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Enter into an Agreement with DaimlerChrysler Commercial Buses North America, Inc., to Purchase Three Compressed Natural Gas (CNG) Orion VII Transit Buses

STAFF RECOMMENDATIONS:

1. Authorize the County's Transit Manager to enter into an agreement with DaimlerChrysler Commercial Buses North America, Inc., to purchase three compressed natural gas (CNG) Orion VII transit buses and to execute all documents necessary to complete the purchase.
2. Authorize the General Services Agency/-Purchasing Division to issue a purchase order for the purchase of the three buses.

FISCAL IMPACT:

Costs associated to assure delivery of this project in the amount of \$1,420,973.84 will be funded with a \$816,957 Federal Congestion Mitigation and Air Quality (CMAQ) grant, a \$200,000 Federal 5311(f) intercity discretionary grant and \$404,016.84 in local transportation funds and are programmed in the Fiscal Year 2007-2008 Public Works Transit Division budget. There will be no impact to the Stanislaus County General Fund.

BOARD ACTION AS FOLLOWS:

No. 2007-1006

On motion of Supervisor Mayfield, Seconded by Supervisor Grover
and approved by the following vote,

Ayes: Supervisors: Mayfield, Grover, Monteith, DeMartini, and Chairman O'Brien

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

ATTEST:

Christine Ferraro
CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Enter into an Agreement with DaimlerChrysler Commercial Buses North America, Inc., to Purchase Three Compressed Natural Gas (CNG) Orion VII Transit Buses

DISCUSSION:

The Stanislaus County Public Works Transit Division oversees the operation of Stanislaus County's intercity public transit system, Stanislaus Regional Transit (StaRT). The purpose of the purchase is to add additional buses for current and future services and to provide adequate back up buses for those services.

Under Federal transit administration (FTA) guidelines, local agencies have the opportunity to take advantage of the economy of scale and to maximize their buying power and minimize their costs through "assignability" provisions of another transit agency's procurement. With the Board's approval, the Transit Division will move forward with the purchase of three (3) 40' Orion VII low-floor CNG buses from the Merced County Transit procurement. By taking advantage of the assignment of the buses, the Transit Division will be able to purchase the buses at a cost of \$395,334 per bus. The assignment will also enable the Transit Division to have buses in services much earlier than if the Division did its own procurement.

The Division has secured \$816,957 of Federal competitive Congestion Mitigation and Air Quality (CMAQ) funds, \$200,000 of Federal Transit Administration 5311(f) Intercity competitive discretionary grant funds and \$404,016.84 in local transportation funds for the purchase of the CNG buses. Including sales tax, administrative overhead and contingency costs, the estimated total project cost is \$1,420,973.84.

In January 2001, the Transit Division and all operators of urban buses were required by the California Air Resources Board (CARB) to choose a fuel "path" as a method of eliminating older, more polluting urban transit buses. The choices were the "alternative fuel" or "diesel" paths. Recognizing the need to clean the valley's air due to the valley's air quality, the Transit Division, with Board approval, chose the alternative fuel path. With the Fiscal Year 2003/2004 purchase of seven (7) CNG Orion V buses, the Transit Division began its commitment to alternative fueled buses. The purchase of these three (3) buses continues this commitment. Through the use of CMAQ and 5311(f) funds, the Transit Division is able to lessen the impact on local transportation funds.

Pending approval, the tentative delivery date for the three buses is winter 2009.

Attached are the Merced County letter of assignability, DaimlerChrysler's cost proposal and the draft agreement between the County and DaimlerChrysler.

POLICY ISSUES:

The Board of Supervisors should determine if this item is consistent with its priority of an efficient delivery of public services and a healthy community.

STAFFING IMPACT:

There is no staffing impact associated with this item.

Request for Proposal

Proposal

BC:jg
H:\Brad Christian\BOS\0708\CNGBusPurchase12.07

**STANISLAUS COUNTY PUBLIC WORKS - TRANSIT
PURCHASE ORDER ATTACHMENT
HEAVY-DUTY LOW FLOOR CNG TRANSIT COACHES**

This agreement is made by and between THE COUNTY OF STANISLAUS, hereinafter referred to as "COUNTY", and DAIMLER BUSES NORTH AMERICA INC., hereinafter referred to as "CONTRACTOR". Witnesseth, that CONTRACTOR and COUNTY, for the consideration hereinafter named, agree as follows:

1. SCOPE OF WORK

CONTRACTOR shall perform all work and furnish all the labor, materials, tools, equipment, services and incidentals required under the Contract, in full accordance with the Merced County contract # 2004209 dated: July 27, 2007

2. TIME OF PERFORMANCE

CONTRACTOR shall complete all of the work called for under this agreement, as more particularly described in Paragraph 1 herein above, on or before December 31, 2008.

3. CONTRACT PRICE

CONTRACTOR shall faithfully perform each and every type of work required under this Agreement as stated in the Pricing document attached hereto as Exhibit A and incorporated by reference. The amount to be paid per bus shall not exceed \$395,334. Any additions or subtractions from this Contract sum shall be made only on written authority of authorized representatives of CONTRACTOR and COUNTY.

4. CONTRACT DOCUMENTS

This agreement shall consist of the following documents, each of which is on file in the office of County of Stanislaus Public Works Transit Division, and all of which are incorporated herein and made a part hereof by reference hereto including all additions and deletions agreed to by both parties:

- Daimler Buses Pricing Letter to County of Stanislaus Public Works Transit Dated December 4, 2007 letter Re: Option- 40' Low Floor CNG Next Generation Buses referenced in Paragraph 3.
- Merced County Letter to County Assigning Options as falls within the limits established by the Federal Transit Administration under "piggybacking guidance."
- Merced County Contract No. 2004209 dated July 27,2007.
- County of Merced RFP 5890, Bus Replacement Project, Dated January 8, 2004.

5. SERVICE OF NOTICE

Any notice required or permitted to be given under this Agreement shall be deemed given when personally delivered to recipient thereof or mailed by registered or certified mail, return receipt requested, postage prepaid, to the appropriate recipient thereof, addressed as follows:

CONTRACTOR:

Patrick Scully
Daimler Buses North America Inc.
350 Hazlehurst Road
Mississauga, Ontario
L5J 4T8
Canada

COUNTY:

Brad Christian
Transit Manager
Stanislaus County Public Works – Transit Division
1010 10th St., Ste 3500
Modesto, Ca., 95354

Or at any other address which either party may subsequently designate in writing to the other party.

6. GOVERNING LAW

Notwithstanding anything to the contrary that may be in Merced County Contract, this Agreement shall be governed and construed in accordance with the laws of the State of California. The parties agree that venue for any court proceeding relating in any way to this contract shall lie in Modesto, California.

7. NON-DISCRIMINATION

CONTRACTOR shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to non-discrimination in employment because of race creed, color, sex, age, marital status, physical or mental disability or national origin.

8. CHANGES & MODIFICATIONS

This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of

the terms of the Agreement, pursuant to CCP 1856. No modification of this agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties. The total funding level may not exceed \$1,186,002 unless the COUNTY and CONTRACTOR agree, in writing, to changes in or additions to the work plan.

**CONTRACTOR
DAIMLER BUSES NORTH AMERICA INC.**

Dated: 2/8/08

By 
HARRY RENDEL,
CHIEF FINANCIAL OFFICER & TREASURER

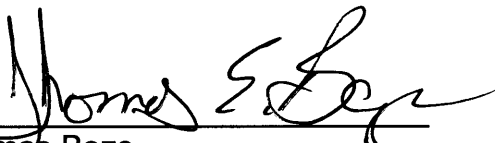
**COUNTY
COUNTY OF STANISLAUS**

Dated: Feb. 15, 2008

By 
TRANSIT MANAGER – STANISLAUS COUNTY
PUBLIC WORKS – TRANSIT DIVISION

APPROVED AS TO FORM:

MICHAEL H. KRAUSNICK
COUNTY COUNSEL

By 
Thomas Boze
Deputy County Counsel



4 December - 2007

Mr. Brad Christian
 Transit Manager
 Stanislaus County Public Works Transit Division
 1010 10th St., Suite 3500
 Modesto, CA
 95354

Re: Option - 40' Low Floor CNG Next Generation Buses

Dear Mr. Christian,

DaimlerChrysler Commercial Buses North America (DCCBNA) is pleased to extend the option to purchase an additional quantity of 3 (Three) 40' Low Floor, CNG Next Generation (NG) buses based on the Merced Contract # 1264A and corresponding vehicle specification.

We propose a revised per bus price of \$395,334 as per Michael Coote's email of yesterday. The revised price is a result of the requested changes by Stanislaus County. They are comprised of the following:

Previous Price	\$406,349
Deletion of the GFI Odyssey Fare-box	\$(11,184)
Additional cost for a 40' bus	\$ 4,000
Delete Camera system and wiring	\$(3,832)
REVISED PRICE WITH CHANGES	\$395,334

The prices as described above include delivery to Stanislaus County and exclude all applicable taxes. The prices quoted shall remain in effect until December 30, 2007.

Delivery is forecasted for completion by October 31st, 2008 based on execution of the contract documents by December 15, 2007 and specification freeze by March 3rd, 2008. We would appreciate your confirmation of the above pricing as soon as possible and ideally by December 15th, 2007.

DCCBNA is please to provide the total of the ADA items totaling \$13,025 which are included in the bus price above.

DCCBNA advises that the recent announcement regarding the sale of the Chrysler Group will have no impact on our operations and we will continue to be part of the worldwide bus group headquartered in Germany. DCCBNA will continue to be an integral part of the Daimler organization. We look forward to working with you to continue the positive working relationship we have enjoyed with Stanislaus County.

DaimlerChrysler Commercial Buses North America Ltd.
 350 Hazelhurst Road
 Mississauga, Ontario L5J 4T8
 Phone: 905.403.1111
 Fax: 905.403.8808
 www.dccbna.com

Please forward all correspondence regarding this quotation to DCCBNA at the following address:

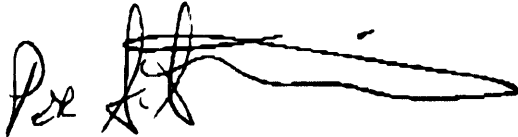
DaimlerChrysler Commercial Buses North America
350 Hazlehurst Road
Mississauga, Ontario
L5J 4T8

Attention: Olga Kupycz, Executive Assistant
Phone: (905) 403-7286
Fax: (905) 403-8600
Email: okupycz@dcbusna.com

Thank you for providing DaimlerChrysler Commercial Buses the opportunity to submit our revised quotation. We look forward to working with Merced County to finalize this option.

Yours truly,

DaimlerChrysler Commercial Buses North America



Lisa Young
Manager, Bids

Cc Michael Coote, Regional Sales Manager



DEPARTMENT OF PUBLIC WORKS
Transportation Division

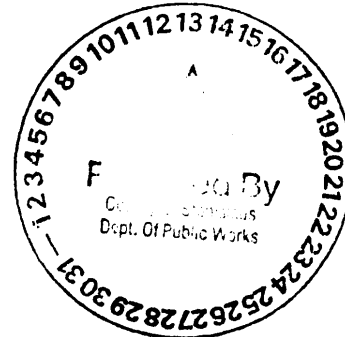
Paul A. Fillebrown
Director

880 Thornton Road
Merced, CA 95340
(209) 385-7600
(209) 725-3655 Fax
www.co.merced.ca.us

Equal Opportunity Employer

April 10, 2007

Mr. Brad Christian, Transit Manager
County of Stanislaus
1010 10th Street, Suite 3500
Modesto, CA 95354



SUBJECT: APPROVAL TO PARTICIPATE IN MERCED COUNTY CONTRACT NO.
2004209 FOR THREE (3) ORION VII TRANSIT COACHES

Dear Mr. Christian:

Please accept this letter as the approval to participate in Merced County Contract No. 2004209 for the acquisition of three (3) Orion VII transit coaches pursuant to the Public Agency Participation clause # 3.11 of Merced County RFP No. 5890 (p. 13).

Stanislaus County will be totally responsible for all costs and any agency requirements associated with acquisition of the 3 buses.

Enclosed please find the following:

1. A copy of Merced County Contract No. 2004209.
2. RFP No. 5890 which led to Orion being awarded the contract.
3. Orion's response to RFP No. 5890.

Please note that Merced County Contract No. 2004209 consists of the contract; Merced County RFP No. 5890 and Orion's response to RFP No. 5890.

Good luck with your bus acquisition.

Sincerely,

Larry Shankland
Transportation Manager

LS:dk
Enclosures

ORION

MERCED COUNTY
CONTRACT NO. 2004 209

CONTRACT FOR SPECIAL SERVICES
BETWEEN
MERCED COUNTY
AND
ORION BUS INDUSTRIES, INC.

THIS AGREEMENT, is made and entered into this 27th day of July, 2004, by and between the County of Merced, a political subdivision of the State of California, (hereinafter referred to as "County"), and Orion Bus Industries, INC. (hereinafter referred to as "Contractor").

WHEREAS, the County desires to contract for manufacture and delivery of Transit Buses, pursuant to Government Code Section 31000, which may consist of services, advice, education or training for public entities or the employees thereof; and

WHEREAS, the Contractor is specially trained, experienced, expert and competent to perform such manufacture and delivery of Transit Buses; and,

WHEREAS, the parties desire to set forth herein the terms and conditions under which said Transit Buses shall be furnished.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereby agree as follows:

1. GENERAL

Consultant shall provide such Transit Buses in a good and professional manner in accordance with the terms and conditions stated herein, and any specifically referenced attachments hereto. The following exhibits are specifically incorporated by reference, attached hereto, and made a part hereof, except when in conflict with this Contract or modified herein:

- Exhibit A - County's Request for Proposal No. 5890
- Exhibit B - Consultant's Responding Proposal Including Exceptions
- Exhibit C - Other Related Documentation

2. SCOPE OF SERVICES

Manufacture and delivery of Transit Bus(s) shall include all activities of Contractor necessary to perform such manufacture and delivery of Transit Buses as set forth in Exhibit A (2.1) and Exhibit B.

3. TERM

The term of this Contract shall commence on the 27th day of July, 2004, and continue until the 26th day of July, 2009, unless sooner terminated in accordance with Sections,

“TERMINATION FOR CAUSE” and/or “TERMINATION FOR CONVENIENCE” as specified elsewhere in this Agreement. Notwithstanding the foregoing, the obligations of Contractor to County under Section “INDEMNIFICATION”, shall continue for a period of four years in full force and effect after said expiration or earlier termination as to the liability for acts and omissions occurring during the term of this Agreement.

4. COMPENSATION

County agrees to pay Contractor in accordance with Exhibit A (2.7) and Exhibit B (Signature Page) of Contractor’s submitted proposal.

5. CONDITION SUBSEQUENT/NON-APPROPRIATION OF FUNDING

The compensation paid to Contractor pursuant to this Agreement is based on County’s continued receipt of local, state and/or federal funding for this purpose and in the event that funding is terminated, in whole or in part, for any reason, this Agreement and all obligations of the County arising from this Agreement shall be immediately discharged upon the occurrence of that event. County agrees to inform Contractor no later than three (3) days after receiving notification that the local/state and/or federal funding will be terminated and County will inform Contractor of the final date for which funding will be available. Under these circumstances, all billing or other claims for compensation or reimbursement by Contractor arising out of performance of this Agreement must be submitted to County prior to the final date for which funding is available.

6. TERMS OF PAYMENT

Payments for full and complete Transit Bus shall be made upon delivery, acceptance and invoicing of each unit. Reference Exhibit A (2.4)

Upon completion of the required work, Contractor shall submit an itemized invoice detailing the manufacture and delivery of Transit Bus(s). The invoice shall be forwarded to the County at the address indicated in this Agreement. Upon approval by the County, the invoiced amount due hereunder shall be paid to the Contractor within thirty (30) days following delivery and acceptance of each vehicle, and receipt of a proper invoice. In the event of termination, Contractor shall be paid in accordance for reasonable services rendered as set forth under Sections “TERMINATION FOR CAUSE” and/or “TERMINATION FOR CONVENIENCE”.

7. TERMINATION FOR CAUSE

If Contractor shall fail to comply with any of the Contractor's obligations under this Agreement or otherwise breach this Agreement, and in either of these circumstances does not cure such failure or breach within a period of ten (10) days after receipt of notice from the County, County may, in addition to any other remedies it may have, terminate for cause, this

Agreement by giving thirty (30) calendar days written notice to Contractor in the manner set forth under Section, "NOTICES". In the event of any proceedings by or against the Consultant, i.e., bankruptcy, insolvency, appointment of a receiver or trustee, or an assignment for the benefit of creditors, the County shall exercise its right of cancellation under this section.

8. TERMINATION FOR CONVENIENCE

This Agreement, notwithstanding anything to the contrary hereinabove or hereinafter set forth, may be terminated by either party at any time without cause or legal excuse by providing the other party with thirty (30) calendar days written notice of such termination.

The obligation of the Contractor or the County arising under Section, "INDEMNIFICATION", shall continue in full force and effect upon termination of the

Agreement for convenience hereunder for a period of four years after said termination as to the limited issue of liability for indemnification for acts or omissions of either party arising during the term of this Agreement.

Upon effective date of termination, County shall have no further liability to Contractor except for payment for actual labor and materials incurred during the performance hereunder to the time specified in said notice, not previously reimbursed by County to the extent such costs are actual, necessary, reasonable, and verifiable costs and have been incurred by Contractor prior to, and in connection with, discontinuing the work hereunder.

9. DISPOSITION OF WORK UPON TERMINATION

In the event of termination, all finished or unfinished documents and other materials, if any, at the option of County, shall become its property and Contractor shall be entitled to receive compensation for any work completed prior to receipt of the notice of termination. Neither party, however, shall be relieved of liability to the other for damages sustained by either party by virtue of any breach of this Agreement, regardless of whether this Contract was terminated for convenience or cause. County may withhold any payments not yet made to Contractor for purpose of setoff until such time as the exact amount of damages due to County from Contractor is determined.

10. MODIFICATION OF AGREEMENT

Notwithstanding any of the provisions of this Agreement, the parties hereafter, by mutual consent, may agree to modifications hereto, in writing, which are not forbidden by law.

11. INSURANCE

A. Contractor shall purchase and maintain the following type of insurance for minimum

limits indicated during the term of this Agreement and provide Certificates of Insurance evidencing such coverage to the County, Attn: Risk Management, 2222 "M" Street, Merced, California 95340.

1. Comprehensive General Broad Form or Commercial General Liability: \$1,000,000 combined single limits per occurrence and \$1,000,000 annual aggregate covering bodily injury, personal injury and property damage.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage, or split limits of \$500,000 per person/\$1,000,000 per accident for bodily injury and \$250,000 per accident for property damage.

The County and its officers, employees and agents shall be endorsed to above policies as Additional Insured for such liability as may be incurred in the performance of this Agreement.

3. Workers Compensation: Statutory coverage, if and as required according to the California Labor Code, including Employers' Liability limits of \$1,000,000 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the County.

B. Insurance Conditions

1. Insurance is to be placed with admitted insurers rated by A.M. Best Co. as A:VII or higher. Lower rated, or approved but not admitted insurers, may be accepted if prior approval is given by the County Risk Manager.
2. Each of the above required policies shall be endorsed to provide the County with 30 days prior written notice of cancellation. The County is not liable for the payment of premiums or assessments on the policy. No cancellation provisions in the insurance policy shall be construed in derogation of the continuing duty of Consultant to furnish insurance during the term of this Agreement.

12. INDEMNIFICATION

CONTRACTOR shall indemnify, defend and hold harmless, COUNTY, its officers, employees, agents and assigns from and against any and all claims, demands liability, judgments, awards, interest, attorney's fees, costs and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the performance of this Agreement. CONTRACTOR's liability for indemnity under this Agreement shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of the CONTRACTOR, unless the claim, demand liability, judgment, award, interest, attorney's fee, cost or expense is caused solely by the negligent or willful

misconduct of the COUNTY, its officers, employees, agents or assigns. CONTRACTOR will on request and at its expense defend any action suit or proceeding arising hereunder and shall reimburse and pay the COUNTY for any loss, cost, damage or expense (including the cost of its attorneys) suffered by it hereunder.

13. INDEPENDENT CONTRACTOR

It is mutually understood and agreed that Contractor is an independent contractor in the performance of the work duties and obligations devolving upon him under this Agreement. County shall neither have, nor exercise any control or direction over the methods by which Contractor shall perform his professional work and functions. The sole interest and responsibility of the County is to assure that the services covered by this Agreement shall be performed and rendered in a competent, efficient and satisfactory manner.

It is mutually understood and agreed that no employer-employee relationship is created and Contractor shall hold County harmless and be solely responsible for withholding, reporting and payment of any federal, state or local taxes, contributions or premiums imposed or required by workers' compensation, unemployment insurance, social security, income tax, other statutes or codes applying to Consultant, or its sub-contractors and employees, if any.

It is mutually agreed and understood that Contractor, its sub-contractors and employees, if any, shall have no claim under this Agreement or otherwise against the County for vacation pay, sick leave, retirement or social security benefits, occupational or non-occupational injury, disability or illness, or loss of life or income, by whatever cause.

14. RECORDS AND INSPECTIONS

Contractor shall maintain full and accurate records with respect to all matters covered under this Agreement. The County shall have free access at all proper times or until the expiration of four (4) years after the furnishing of services to such records, and the right to examine and audit the same and to make transcripts therefrom, and to inspect all data, documents, proceedings, and activities pertaining to this Agreement.

15. REPORTS AND INFORMATION

Contractor shall furnish County such periodic reports as County may request pertaining to the work or services undertaken pursuant to this Contract, and any other matters covered by this Agreement.

16. STANDARDS OF PRACTICE

Standards of practice of Contractor shall be determined by the professional standards of Consultant's trade or field of expertise and all applicable provisions of law and other rules and regulations of any and all governmental authorities relating to provision of services as defined in this Agreement.

17. COMPLIANCE WITH STATE LAWS AND REGULATIONS

The Contractor and the County agree to comply with all State laws and regulations that pertain to construction, health and safety, labor, fair employment practice, equal opportunity, and all other matters applicable to the Contractor and County, their subgrantees, contractors, or subcontractor, and their work.

18. COUNTY'S RIGHTS NOT WAIVED BY PAYMENTS

In no event shall the making, by the County, of any payment to Contractor constitute, or be construed as, a waiver by the County of any breach of covenant, or any default which may then exist, on the part of Contractor, and the making of any such payment by the County while any such breach or default shall exist be construed as acceptance of substandard or careless work or as relieving Contractor from its full responsibility under this Agreement.

19. PERSONNEL

Contractor represents that it has, or will secure at its own expense, all personnel required in the manufacture and delivery of Transit Bus(s) under this Agreement. All of the manufacture and delivery of Transit Bus(s) required hereunder will be performed by Contractor or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Contractor's personnel expressly agreed to be the employees of the Contractor and not the employees of the County.

20. NOTICES

Any notices herein provided to be given by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid or by giving such notice by personal service addressed as follows:

County of Merced c/o
Department of General Services
2222 "M" Street, Room 1
Merced, CA 95340

Contractor
Orion Bus Industries, INC.
350 Hazelhurst Rd.
Mississauga, Ontario L5J4T8

21. APPLICABLE LAW

All parties agree that this Agreement and all documents issued or executed pursuant hereto and the rights and obligations of the parties thereunder and hereunder is subject to and governed by the laws of the State of California in all respects as to interpretation, construction, operation, effect and performance.

Notwithstanding any other provisions of this Agreement, any dispute concerning any question of fact or law arising under this Agreement, which is not disposed of by agreement between the parties shall be decided by a Court of competent jurisdiction of the State of California.

22. WAIVER OF TERMS

No waiver of any term, condition, or covenant of this Agreement, by either party shall be deemed as a waiver of any other term, condition, or covenant herein contained, nor of the strict and prompt performance thereof.

23. BREACH OF CONTRACT

Upon breach of the Agreement by Contractor, the County shall have all remedies, both in equity and/or at law, necessary to recover and satisfy Contractor's obligation which it failed to provide as prescribed under the Agreement.

24. SUCCESSORS IN INTEREST

All the terms, covenant, and conditions of this Agreement shall be binding and in full force and effect and inure to the benefit of the successors in interest and assigns of the parties hereto. This paragraph shall not be deemed as a waiver of any of the conditions against assignment set forth herein.

25. CONFLICT OF INTEREST

Consultant warrants and covenants that no official or employee of the County, nor any business entity in which an official of the County has an interest has been employed or retained to solicit or aid in the procuring of this Contract, nor that any such person will be employed in the performance of this Contract without immediate divulgence or such fact to the County.

26. EQUAL EMPLOYMENT OPPORTUNITY

Contractor shall comply with U.S. Executive Order 11246 entitled, "Equal Employment Opportunity", as amended by U.S. Executive Order 11375, and as supplemented in U.S. Department of Labor Regulations (41 CAR Part 60).

27. CAPTIONS

The captions of each paragraph in this Agreement are inserted as a matter of convenience and reference only, and in no way define, limit, or describe the scope or intent of this Agreement or in any way affect it.

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE).

a. **Policy.** It is the policy of the Department of Transportation that Disadvantaged Business Enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with Federal funds under this Agreement. Consequently the DBE requirements of 49 CFR Part 23 applies to this Agreement.

b. **DBE Obligation.** CONTRACTOR agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts finance in whole or in part with Federal funds provided under this Agreement. In this regard all contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. CONTRACTOR shall not discriminate on the basis of race, color, national origin, age or sex in the award and performance of DOT-assisted contracts.

CONTRACTOR agrees to apply COUNTY'S DBE goal of 8.8% for all of
CONTRACTOR'S

sub contracting opportunities for the term of this Agreement.

29. EQUAL EMPLOYMENT OPPORTUNITES/GENERAL REQUIREMENTS

a. In connection with the execution of this contract, CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, color, sex age or national origin. CONTRACTOR shall take affirmative

action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to, 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. CONTRACTOR further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

b. CONTRACTOR is required to submit and obtain Federal Government approval of its EEO program, that EEO program approved by the Federal Government is incorporated by reference and made part of the Agreement. Failure by CONTRACTOR to carry out the terms of that EEO program shall be treated as a violation of the Agreement. Upon notification to CONTRACTOR of its failure to carry out the approved EEO program, COUNTY may impose such remedies, as it considers appropriate, including termination of this Agreement.

30. ENVIRONMENT. CONTRACTOR shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857 (h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15), which prohibits the use under non-exempt federal contracts, grants, or loans, of facilities included on the EPA List of Violating Facilities. CONTRACTOR shall report violations to FTA and to the USEPA Assistant Administrator for Enforcement (EN-329).

31. TITLE VI CIVIL RIGHTS ACT OF 1964. During the performance of this Agreement, CONTRACTOR for itself, its assignees and successors in interest, agrees as follows:

- a. **Compliance with Regulations:** CONTRACTOR shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (49 CFR), as they may be amended from time to time (“the Regulations”), which are herein now incorporated by reference and made a part of this Agreement.

- b. **Nondiscrimination:** CONTRACTOR, with regards to the work performed by it during the agreement, shall not discriminate on the grounds of race, religion, color, sex, age, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in discrimination on the grounds of race, religion, color, sex, age, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

- c. **Solicitations for Subcontracts, Including Procurement of Materials and Equipment:**

In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR’S obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race,

religion, color, sex, age, or national origin.

- d. **Information and Reports:** CONTRACTOR shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by COUNTY or Federal Transit Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. **Sanctions for Noncompliance:** In the event of CONTRACTOR'S noncompliance with the nondiscrimination provisions of this contract, COUNTY shall impose such contract sanctions as it or the Federal Transit Administration may determine to be appropriate, including, but not limited to:
 - 1. Withholding of payments to CONTRACTOR under the contract until CONTRACTOR complies, and/or,
 - 2. Cancellation, termination or suspension of the contract, in whole or in part.
- f. **Incorporation of Provisions:** CONTRACTOR shall include the provisions of paragraph a through f inclusive, of this paragraph in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as COUNTY or the Federal Transit Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request COUNTY, and, in

addition, CONTRACTOR may request the services of the Attorney General, in such litigation to protect the interests of the United States.

32. LABOR PROVISIONS. In accordance with Section 10 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 327 through 33, CONTRACTOR agrees and assures that, for the project, the wages of every mechanic and laborer will be computed on the basis of a standard work week of 40 hours, and that each worker will be compensated for work exceeding the standard work week at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. CONTRACTOR agrees that determination pertaining to these requirements will be made in accordance with applicable U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally.
33. PROHIBITED INTEREST. No official, officer, or employee or COUNTY during his or her tenure or one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
34. INTEREST OF MEMBERS OF, OR DELEGATES TO, CONGRESS. In accordance with U.S.C. Section 431, no member of, or delegate to, the Congress of the United States shall be admitted to a share or part of this Agreement or to any benefit arising therefrom.
35. DEBARRED BIDDERS. CONTRACTOR, including any of its officers or holders of a controlling interest, is obligated to inform COUNTY whether or not it is or has been on any debarred bidders' list maintained by the United States Government. Should CONTRACTOR be included on such a list during the performance of this project, it shall promptly so inform COUNTY. CONTRACTOR shall not award a contract of any amount to any party included in said debarred bidders list.

36. CARGO PREFERENCE. CONTRACTOR shall abide by 46 USC Section 1241 (B)(1) and 46 CFR Part 381 which imposes cargo preference requirements on shipment of foreign made goods.
37. FEDERAL GRANT CONDITIONS. This Agreement is subject to a financial assistance contract between COUNTY and the United States Department of Transportation, Federal Administration (FTA). COUNTY and DOT agree to comply with all terms and conditions respectively required of them by reason of that contract. If FTA requires any change to this Agreement to comply with its requirements, both parties agree to amend this Contract as required by FTA. If such changes cause an increase or decrease in the work to be performed by CONTRACTOR or in the time for such performance, then the compensation to be paid to the CONTRACTOR and time of performance shall be equitably adjusted.
38. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES. CONTRACTOR agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to CONTRACTOR in connection with the performance of the requirements of this Agreement.
39. FALSE OR FRAUDULENT STATEMENTS OR CLAIMS. CONTRACTOR recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, apply to its actions pertaining to this Agreement. Accordingly, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the actions covered by this Agreement. In addition to other penalties that may be applicable, consultant also acknowledges that if it makes 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, as amended, on

CONTRACTOR to the extent the Federal Government deems appropriate.

40. REPORTING, RECORD RETENTION AND ACCESS.

- a. At a minimum, CONTRACTOR agrees to provide to FTA those reports required by U.S. DOT's grant management rules and any other reports the Federal Government may require.
- b. CONTRACTOR agrees that, during the course of the project and for three years thereafter, it will maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to the project as the Federal Government may require for the project.
- c. Upon request, CONTRACTOR agrees to permit the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all project work materials, payrolls, and other data, and to audit to books, records, and accounts of CONTRACTOR and its subcontractors pertaining to the project. In accordance with 49 U.S.C. § 5325(a), CONTRACTOR agrees to require each subcontractor whose contract award is not based on competitive bidding procedures as defined by the Secretary of Transportation to permit the Secretary of Transportation and Comptroller General of the United States, or their duty authorized representatives, to inspect all work, materials, payrolls and other data and records involving that contract and to audit the books, records, and accounts involving that contract as it affects the project.

41. AIR QUALITY.

- a. CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. CONTRACTOR agrees to comply with applicable requirements of U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs

and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act, "40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93. To support the requisite air quality conformity finding for this project, CONTRACTOR agrees to implement each air quality mitigation and control measure incorporated in the project. CONTRACTOR agrees that any project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure, will be wholly consistent with the description of the design concept and scope of the scope of the project described in the SIP.

- b. CONTRACTOR agrees to report and require each subcontractor at any tier to report any violation of these requirements resulting from any project implementation activity of subcontractor or itself to FTA and the appropriate U.S. EPA Regional Office.

42. CLEAN WATER.

- a. CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq.
- b. CONTRACTOR agrees to report and require each subcontractor at any tier to report any violation of these requirements resulting from any implementation activity of a subcontractor or itself to FTA and the appropriate U.S. EPA Regional Office.

43. DRUG ABUSE. To the extent CONTRACTOR or any subcontractor at any tier, or their employees, perform a safety sensitive function under this Agreement, CONTRACTOR to comply with, and assures the compliance of each affected subcontractor at any tier, and their employees, with 49 U.S.C. § 5331, and FTA regulations, "Prevention of Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 653.

44. ALCOHOL ABUSE: To the extent CONTRACTOR or any subcontractor at any tier, or their employees perform a safety sensitive function under this Agreement, CONTRACTOR agrees to comply with, and assures the compliance of each affected subcontractor at any tier, and their employees with 49 U.S.C. § 5331, and FTA regulations, "Prevention of Alcohol Misuse in Transit Operations," 49 C.F.R. Part 654.
45. ACCESS REQUIREMENT FOR PERSONS WITH DISABILITIES. CONTRACTOR agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101 et seq. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; 49 U.S.C. § 5301(d); and all regulations promulgated to implement the ADA and Section 504 of the Rehabilitation Act of 1973, as amended, as may be applicable to CONTRACTOR.
46. BUY AMERICA. CONTRACTOR agrees to comply with Section 165 of the Surface Transportation Assistance Act of 1982, as amended, "Buy America Requirements – Surface Transportation Assistance Act of 1982," C.F.R. Part 661, and 49 C.F.R., Part 663, and any amendments thereto and any implementing guidance issued by FTA.
47. ASSIGNMENT. CONTRACTOR shall not subcontract or consign this Agreement, or any part thereof, or interest therein, directly or indirectly, voluntarily or involuntarily, to any person without obtaining the prior written consent of County.
48. COPIES OF AGREEMENT. This Agreement is executed in counterparts, each of which shall be deemed a duplicate original.

COUNTY OF MERCED

CONTRACTOR
ORION BUS INDUSTRIES, INC.

By *Deidre F. Kelsey*

DEIDRE F. KELSEY

Chairperson

JUL 27 2004

By *Mark Brager*

MARK BRAGER

Print Name

VICE PRESIDENT - SALES & MARKETING

Title

REVIEWED AS TO FORM
RUBEN E. CASTILLO, MERCED COUNTY COUNSEL

BY *Mark*
DERUTY

DATE: JUL 27 2004

dkk