

AGENDA ITEM 1 H
Consent Item

MEMORANDUM

DATE: May 4, 2017

TO: El Dorado County Transit Authority

FROM: Mindy Jackson, Executive Director

SUBJECT: Award Construction Contract for Capital Improvement Plan (CIP)
#17-01 Bus Parking Lot Improvements to Joe Vicini, Inc.

REQUESTED ACTION:
BY MOTION,

- 1. Award Construction Contract for Capital Improvement Project 17-01 Bus Parking Lot Improvements to the lowest responsive, responsible bidder, consistent with the bid documents and basis of award and waive all bid irregularities or informalities in the bid pursuant to Section 3.1.01, Award of Contract, in the Contract Documents.**
- 2. Authorize Executive Director to execute the Construction Contract and related documents including change order authority, necessary to complete the Capital Improvement Project #17-01 provided that the contract costs do not exceed the approved Capital Improvement Plan Project Budget.**

BACKGROUND

6/2/16 Board approved Capital Improvement Plan Project #17-01

3/3/17 Publication of Notice to Bidders (3/3, 3/6 & 3/8/17)

4/10/17 Bid Opening

5/4/17 May 4, 2017 Board agenda includes Consent Calendar Item #1G to consider revising the budget for project #17-01. The revision will increase #17-01 budget by \$75,000 and is required prior to Contract Award.

CONTRACT AGREEMENT

THIS AGREEMENT, dated the ____ day of _____ 2017, in the County of El Dorado, State of California, is made by and between the El Dorado County Transit Authority (“EDCTA” or “Owner”), and Joe Vicini, Inc., (“CONTRACTOR”).

1. Contract Documents: The complete contract (“CONTRACT”) includes all of the CONTRACT DOCUMENTS, including this Agreement, Invitation to Bid, Non-collusion Declaration, Non-discrimination Clause, Non-segregation Certification, Designation of Subcontractors, Experience Qualifications, Bid Bond, Bid, Instructions to Bidders, Cost Schedule, Contractor’s Certificate of Workers’ Compensation, Performance Bond, Payment Bond, Insurance Certificates, Abbreviations and Definitions, General Conditions, Specification Sections, Plans, Drawings, Specifications, Scope of Work, Addenda and Change Orders and all other documents contained in the Project Manual and all modifications and amendments to the above. The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all.

2. The Work: Contractor shall perform everything required to be performed within the time set forth in Paragraph 5 of this Agreement, and shall provide and furnish all the labor, materials, necessary tools, expendable equipment, and all utility and transportation services as described in the Contract and required for construction of:

PROJECT LOCATION: El Dorado County, California;

PROJECT NAME: BUS PARKING LOT IMPROVEMENTS PROJECT #17-01, (“PROJECT” or “WORK”), as set forth more fully in the Construction Documents, Scope of Work, Plans, Drawings, Specifications and Project Manual.

All of the Work to be performed and materials to be furnished shall be completed in a good workmanlike manner in strict accordance with the Drawings, Specifications, Scope of Work, and all other provisions of the Contract Documents. Contractor shall not be excused with respect to any failure to so comply with the Contract by any act or omission of EDCTA, EDCTA’s consultant, agent, inspector, or representative of any of them.

The Project shall be furnished, performed and completed as required in the Drawings, Specifications, Scope of Work, and all other Contract Documents under the direction and supervision of and subject to the approval of EDCTA. EDCTA shall have the right to accept or reject materials or workmanship and to determine when Contractor has complied with the conditions of the Contract. The Building Inspector employed by EDCTA shall represent EDCTA.

3. Contract Amount: EDCTA shall pay to Contractor, as full consideration for the faithful performance of the contract, subject to any additions or deductions as provided in the Contract Documents, the sum of **\$170,943 (One-hundred seventy-thousand nine-hundred forty-three dollars)**.

4. Payments: The price to be paid to Contractor under this Agreement shall be paid in legally executed and regularly issued warrants of EDCTA drawn on the appropriate fund or funds as required by law. Payments shall be made pursuant to the Schedule attached hereto as Exhibit “A.” Payments shall be made for the portions of the Project as construction of the Project is completed, but the payment of progress

payments by EDCTA shall not be construed as acceptance of the work done up to the time of such payments. All payments shall be subject to the final bid price set forth in the Cost Schedule.

5. Time for Completion: The Project shall be commenced within five (5) days of issuance by EDCTA of the Notice to Proceed and shall be completed within **Sixty (60) working days** from the date of the Notice to Proceed.

6. Liquidated Damages: If the Work is not completed in accordance with Paragraph 5 above, the parties agree that EDCTA will suffer damage. It being impractical and infeasible to determine the amount of actual damage, Contractor (or Surety) shall pay to EDCTA as fixed and liquidated damages, and not as a penalty, the sum of **\$1,000.00** for each calendar day of delay until the Project is completed and accepted. This amount may be deducted from any payments due to or to become due to Contractor.

7. Interpretation of Contract Documents: Should any question arise concerning the intent or meaning of drawings or specifications, such question shall be submitted to EDCTA and its interpretation shall be final.

8. Extra or Additional Work and Changes: Should EDCTA at any time during the progress of the work request any alterations, deviations, additions, or omissions from the Contract specification or plans, it shall be at liberty to do so and the same shall in no way affect or make void the Contract, but the fair and reasonable value of such alterations, deviations, additions, or omissions will be added to or deducted from the amount of said Contract price as the case may be.

All change orders shall be signed by EDCTA. The value of any such extra work or changes shall be determined in one or more of the following ways:

- a) By estimate and acceptance in a lump sum.
- b) By unit prices named in the contract or subsequently agreed upon.
- c) By cost and percentage or by cost and fixed fee.

9. Prosecution of Work: If in the opinion of EDCTA, Contractor neglects to prosecute the work properly or fails to perform any provisions of the Contract, after ten (10) days written notice to Contractor EDCTA may, without prejudice to any other remedy it may have, remedy any such deficiencies and may deduct the cost therefor from any payment then or thereafter due Contractor, provided that the parties have used proper documentation and negotiations for a fair and equitable resolution.

10. Assignment of the Contract: Assignment of the Contract or any part thereof shall be prohibited without the prior written consent of EDCTA.

11. Indemnification: With the exception that this section shall in no event be construed to require indemnification by Contractor to a greater extent than permitted by law, and in conjunction with section 5.53 of the General Conditions, Contractor shall defend, indemnify and save harmless EDCTA, including its officers, directors, agents, and employees, and each of them ("Indemnitees"), from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or in equity, of every kind and nature whatsoever for claims arising out of or in connection with Contractor's performance of this contract.

- A. Bodily injury including, but not limited to, bodily injury, sickness or disease, emotional injury or death to persons, including, but not limited to, the public, any employees or agents of Contractor, EDCTA, or any other Contractor and;

B. Damage to property of anyone including loss of use thereof; caused or alleged to be caused in whole or in part by any negligent or otherwise legally actionable act or omission of Contractor or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable.

Except as otherwise provided by law, the indemnification provisions above shall apply regardless of the existence of fault or degree of fault of Indemnitees. Contractor, however, shall not be obligated to indemnify Indemnitees for Claims arising from conduct delineated in Civil Code § 2782.

Contractor's obligation to defend and indemnify shall not be excused because of Contractor's inability to evaluate liability or because Contractor evaluates liability and determines that Contractor is not liable to the claimant. Contractor shall respond within 30 days to the tender of any claim for defense and indemnity by the State, unless this time has been extended by the State. If Contractor fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due Contractor under and by virtue of the contract as shall reasonably be considered necessary by EDCTA, may be retained by EDCTA until disposition has been made of the claim or suit for damages, or until Contractor accepts or rejects the tender of defense, whichever occurs first.

With respect to third party claims against Contractor, Contractor waives any and all rights of any type to express or implied indemnity against EDCTA, its officers, employees, or agents (excluding agents who are design professionals).

12. Insurance: Prior to commencing the Work, Contractor shall obtain and maintain during the life of this contract, and shall require all Subcontractors, if any, whether primary or secondary, to take out and maintain insurance coverage as required by Section 1.52 of the General Conditions.

13. Bonds: Three (3) executed copies of this Agreement, Insurance Certificates, the Performance Bond, and the Payment Bond shall be provided by Contractor. Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure § 995.120 shall be accepted. Surety must be a California-admitted surety and listed by the U.S. Treasury with a bonding capacity in excess of the Project cost.

14. Clauses Included: Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included.

15. Eligible Contractors: Contractor acknowledges that, pursuant to Public Contract Code § 6101, no public works or purchase contract shall be awarded to a Contractor, nor shall a Contractor be eligible to receive a public works or purchase contract, who has, in the preceding five years, been convicted of violating a state or federal law respecting the employment of undocumented aliens. Contractor acknowledges that pursuant to Public Contract Code § 6101 no public works or purchase contract shall be awarded to a Contractor, nor shall a Contractor be eligible to receive a public works or purchase contract who has been found to have violated with intent to defraud a public agency while performing a public works project.

Contractor further acknowledges that, pursuant to Labor Code § 6109, Contractor is prohibited from performing work on a public works project with a subcontractor who is ineligible to perform work on the public works project pursuant to Labor Code § 1777.1 or § 1777.7. The Labor Commissioner publishes a list of ineligible contractors and subcontractors and distributes the list to awarding bodies under Labor Code § 1777.1.

16. Family Support Enforcement: Contractor acknowledges that pursuant to Public Contract Code § 7110 it shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to disclosure of information and compliance with earnings assignment orders, as provided in Family Code Division 9, Part 5, Chapter 8 (commencing with § 5200). Contracts in excess of one hundred thousand dollars (\$100,000.00) require an acknowledgment by Contractor of the policy set forth in Public Contract Code § 7110 and Contractor further acknowledges that it is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department.

17. Performance During Working Hours: Work shall be performed during regular working hours except that in the event of an emergency or when required to complete the Work in accordance with job progress, work may be performed outside of regular working hours with the advance written consent of EDCTA.

18. Labor Code Application: As provided in Labor Code Division 2, Part 7, Chapter 1, Article 3 (commencing at § 1810), eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by Contractor or by any Subcontractor on any subcontract under this Contract, upon the work or upon any part of the work contemplated by this Contract, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provision hereinabove set forth, work performed by employees of Contractors in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon this public work provided that compensation for all hours worked in excess of eight (8) hours per day shall be compensated at not less than one and one-half (1½) times the basic rate of pay.

Contractor shall pay to EDCTA a penalty of Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by Contractor, or by any Subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one (1) calendar week, in violation of the provisions of Labor Code Division 2, Part 7, Chapter 1, Article 3 (commencing at § 1810), unless compensation for the workers so employed by Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

19. Prevailing Wage Rates: Pursuant to the provisions of Labor Code Division 2, Part 7, Chapter 1, Article 3 (commencing at § 1810), Contractor shall pay the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed for this Project. The prevailing wage rates are available from the Director of the Department of Industrial Relations ("Director"). Contractor shall post a copy of such wage rates at the Site. Holiday and overtime work, when permitted by law, shall be paid for at the rate of at least one and one-half (1½) times the above specified rate of *per diem* wages, unless otherwise specified.

20. Forfeiture and Payments for Breach of Prevailing Wage Rates: Pursuant to Labor Code § 1775, Contractor shall as a penalty to EDCTA, forfeit Fifty Dollars (\$50.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rate of *per diem* wages, determined by the Director, for such craft or classification in which such worker is employed for any public work done under the Agreement by Contractor or by any Subcontractor under it. The amount of the penalty shall be determined by the Labor Commission and shall be based on consideration of Contractor's mistake, inadvertence, or neglect in failing to pay the correct prevailing rate of *per diem* wage, the previous record

of Contractor in meeting its prevailing rate of *per diem* wage obligations, or Contractor's willful failure to pay the correct prevailing rate of *per diem* wages. A mistake, inadvertence, or neglect in failing to pay the correct prevailing rate of *per diem* wage is not excusable if Contractor had knowledge of it or the obligations under this part. The difference between such prevailing rate of *per diem* wage and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing rate of *per diem* wage shall be paid to each worker by Contractor. *Per diem* wages are deemed to include those benefits set forth in Labor Code § 1773.1.

21. Contractor to Comply with Labor Code § 1777.5 et seq.: It shall be Contractor's responsibility to know and abide by the requirements of Labor Code §§ 1777.5 et seq. which include, but are not limited to, the requirement to hire apprentices on a public works project.

22. Contractor to Comply with Labor Code § 1776: It shall be Contractor's responsibility to know and abide by the requirements of Labor Code § 1776, which include, but are not limited to, the requirement to keep accurate payroll records that shall be available for inspection. In order to comply with Labor Code § 1776, the records must include: names, addresses, Social Security numbers, work classifications, straight time, overtime, and any per diem. In addition, the records must be verified by a declaration under penalty of perjury that the records are true and correct, and that the employer has complied with Labor Code §§ 1771, 1811 AND 1815.

23. Non-discrimination. During the performance of this contract, Contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or gender.

Contractor and subcontractors hereby agree to ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors agree to comply with the provisions of the Fair Employment and Housing Act (Government Code § 12900 et seq.) and the applicable regulations promulgated under California Administrative Code, Title 2, § 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code § 12900, set forth in California Administrative Code, Title 2, Division 4, Chapter 5 are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors agree to give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

24. Contractor shall include the nondiscrimination and compliance provisions of this section in all subcontracts to perform work under the contract.

25. **THE COMPLETE CONTRACT AS SET FORTH IN PARAGRAPH 1 OF THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT OF THE PARTIES. NO OTHER AGREEMENTS, ORAL OR WRITTEN, PERTAINING TO THE WORK TO BE PERFORMED UNDER THIS CONTRACT, EXISTS BETWEEN THE PARTIES. THIS CONTRACT CAN BE MODIFIED ONLY BY AN EXECUTED WRITTEN AGREEMENT APPROVED BY THE GOVERNING BOARD.**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

**EL DORADO COUNTY
TRANSIT AUTHORITY**

**CONTRACTOR
Joe Vicini, Inc.**

By: Mindy Jackson, Executive Director

By: Gordon Vicini, President

CONTRACTOR's License No. 213766

(CORPORATE SEAL of CONTRACTOR)

CONTRACT AGREEMENT

EXHIBIT "A"

SCHEDULE OF PAYMENTS

EDCTA shall make Payments for the Project Work in conformance with and subject to the terms and conditions for payments as set forth below and in the Construction Agreement, if applicable.

| | | |
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| 30% | due | June 15, 2017 |
| 30% | due | July 15, 2017 |
| 35% | due | August 15, 2017 |
| 5 % | due | 60 days after EDCTA's acceptance and approval of final Project. |

Note: EDCTA shall withhold at least 5% of total labor and materials until final completion and acceptance of the Project. On the expiration of sixty (60) days after the recordation of the Notice of Completion all monies due and payable to Contractor shall be paid, subject to the provisions of Section 5 herein.