

AGENDA ITEM 1 F
Consent Item

MEMORANDUM

DATE: November 2, 2017

TO: El Dorado County Transit Authority

FROM: Mindy Jackson, Executive Director

SUBJECT: City of Fairfield Joint Procurement
Memorandum of Understanding (MOU)

REQUESTED ACTION:
BY MOTION,

1. **Approve the City of Fairfield Agreement No. CITY 2017-100 for purchase of replacement commuter buses through a joint procurement**
2. **Authorize the Executive Director to execute all documents and tasks related to the City of Fairfield Agreement no. CITY 2017-100**

BACKGROUND

June 2, 2016 The El Dorado County Transit Authority (El Dorado Transit) Board of Directors adopted Fiscal Year Capital Improvement Plan Project #17-02 Vehicle Replacement 5 Year Plan – Commuter .

August 4, 2016 The El Dorado Transit Board authorized the execution of a joint procurement Memorandum of Understanding with the City of Fairfield and Yuba-Sutter Transit for the purchase of replacement commuter buses.

March 6, 2017 City of Fairfield published Request for Proposals (RFP) for Agreement No. 2017-100

DISSICUSSION

Replacement of El Dorado Transit’s five (5) oldest commuter-type buses (2006 models) is scheduled per useful life policy for Fiscal Year 2017/18. These 40’ 47-passenger Blue Bird buses have been out of production since 2007 and no longer supported by any manufacturer. This is problematic for their current operation due to the lack of parts and manufacturer repairs so continued operation beyond their useful life of twelve (12) years or 500,000 is not a reliable option.

The Fiscal Year 2016/17 adopted capital plan includes Project #17-02 that identified and programmed the necessary funding from a variety of federal and local sources to replace the five (5) 2006 buses with buses similar to the eleven (11) commuter coaches (model years 2010, 2012 and 2014) currently in use.

The City of Fairfield procurement process will result in a five (5) year contract for the purchase of a designated number of diesel commuter buses of a similar type and size to what El Dorado currently operates (40' – 45' in length with a seating capacity of up to 57 passengers). While El Dorado Transit has no plans to expand the commuter bus fleet beyond the current twenty-one (21) units, the purchase of five (5) larger replacement buses will provide additional seating when the fleet is rotated between active and backup. The 45-passenger Blue Bird buses are placed in service when the 57-passenger MCI coaches are taken off-line for regular maintenance.

City of Fairfield Agreement No. 2017-100 includes options for El Dorado Transit to purchase a total of five (5) commuter coaches during the five (5) year contract term.

Mike Tucker, El Dorado Transit legal counsel has reviewed and approved the attached agreement as to form.

Staff is requesting Board approval and authorization for the Executive Director to execute the attached three-party agreement to memorialize this process that complies with Federal joint procurement requirements. The City of Fairfield is the lead agency in a consortium that includes Yuba-Sutter Transit and El Dorado Transit.

The solicitation process is conducted by the City of Fairfield however; purchasing decisions regarding the placement of an order by El Dorado Transit, if any, remains with the El Dorado Transit Board of Directors.

FISCAL IMPACT

Planned funding for five (5) replacement commuter coaches as noted in adopted Capital Improvement Plan #17-02:

Federal Transit Administration (FTA) Funding		
FTA Section 5307	(Fiscal Years 2015/16 through 2019/20)	\$1,543,855
FTA Section 5339	(Fiscal Years 2015/16 through 2017/18)	\$ 800,000
State Transit Assistance	(Fiscal Years 2015/16 through 2019/20)	<u>\$ 656,145</u>
PROJECT TOTAL		\$3,000,000

AGREEMENT No. CITY 2017-100

(Acquisition for Purchase of 45-Foot Low Emission Diesel (LED) Commuter Coaches)

THIS AGREEMENT is made and entered into this _____ day of _____ 2017, by and between the CITY OF FAIRFIELD, a California municipal corporation, created pursuant to the laws of the State of California ("CITY" OR "Lead Procuring Agency"), Yuba-Sutter Transit, a Joint Powers Authority ("YST", a "Procuring Agency" herein), El Dorado County Transit Authority, a Joint Powers Authority of the City of Placerville and the County of El Dorado County ("EDT" or "El Dorado Transit", a "Procuring Agency" herein), and Motor Coach Industries, Inc, a Delaware corporation ("CONTRACTOR"). CITY, Yuba-Sutter Transit, and El Dorado County Transit Authority are collectively referred to herein as the Procuring Agencies.

RECITALS

WHEREAS, CITY, as Lead Procuring Agency, circulated and distributed a request for proposals ("RFP") for purchase in various quantities of 45-foot Low Emission Diesel type Commuter Coaches, a copy which is attached herein as Exhibit 1; and

WHEREAS, CONTRACTOR submitted a proposal to supply 45-foot Low Emission Diesel Commuter Coaches, a copy which is attached herein as Exhibit 3; and

WHEREAS, CONTRACTOR has represented and warrants to the Procuring Agencies that it has the necessary training, experience, expertise, physical manufacturing capacity and staff competency to provide the services, goods and materials that are described in this Contract, at a cost to the Procuring Agencies as herein specified and that it will be able to perform the herein described services to the Procuring Agencies by virtue of its current resources and specialized knowledge of relevant data, issues, and conditions; and

WHEREAS, CONTRACTOR represents and warrants that neither CONTRACTOR, nor any of its officers, agents, employees, contractors, subcontractors, volunteers, or five percent (5%) owners, is excluded or debarred from participating in or being paid for participation in any federal or state program; and

WHEREAS, CONTRACTOR further represents and warrants that no conditions or events now exist which give rise to CONTRACTOR, or any of its officers, agents, employees, contractors, subcontractors, volunteers or five percent owners being excluded or debarred from any federal or state program; and

WHEREAS, CONTRACTOR understands that the Procuring Agencies are relying upon these representations in entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and conditions herein contained, the Procuring Agencies and CONTRACTOR hereby agree as follows:

ARTICLE 1. SCOPE OF WORK

This Contract is entered into for purposes of a joint procurement, as more particularly described in Section 2.2.4.3 of the RFP (Exhibit 1) hereof. As described in that Section, CITY will serve as the Lead Procuring Agency for the procurement of Low Emission Diesel Commuter Coaches by the three (3) Procuring Agencies: CITY, Yuba-Sutter Transit, and El Dorado County Transit Authority.

Subject to the terms and conditions set forth herein, CONTRACTOR shall supply the Procuring Agencies with the Commuter Coach vehicles pursuant to Section 5, Technical Performance Specifications, as well as all relevant manuals, and operator and maintainer training and all other services, materials and equipment as set forth in the Contract Documents in a manner satisfactory to CITY's City Manager or designee (collectively "CITY's City Manager"). CONTRACTOR shall not commence work under this Contract until a written Notice to Proceed is issued by CITY.

ARTICLE 2. CONTRACT DOCUMENTS

The complete Contract between the parties shall consist of the following component parts:

1. This Agreement;
2. Exhibit 1 – RFP NUMBER 2017-100, RFP TITLE: JOINT AGENCY PROCUREMENT FOR OVER THE ROAD COMMUTER COACHES;
3. Exhibit 2 - CERTIFICATION NO. 14; Section 1.1.5.24 – Addenda(s) No. 1, 2, and 3 to CITY's Request for Proposals for various quantities of Low Emission Diesel Commuter Coaches;
4. Exhibit 3 - Section 1.1.5.27 CONTRACTOR's Offer; dated June 20, 2017;
5. Exhibit 4 - Insurance Certificate;
6. Exhibit 5 - Section 1.1.5.29, and Exhibit 6 - Section 1.1.5.30 – CONTRACTOR's Price Proposal Sheets dated June 20, 2017; and
7. Exhibit 7 - CONTRACTOR's Clarification to Proposal Letter dated July 28, 2017.

All of the Exhibits mentioned in this Article 2 are attached and are herein incorporated. This Agreement and the other Exhibits mentioned in this Article 2 constitute the entire Contractual Agreement between the parties. In the event of any conflict between any of the provisions of this Agreement and Exhibits, the provision that requires the highest level of performance from CONTRACTOR for the Procuring Agencies' benefit shall prevail.

ARTICLE 3. TERM OF CONTRACT

CONTRACTOR shall perform the services under this Contract for a term of one (1) year beginning January 3, 2018 and ending January 2, 2019, with four (4) one (1) year options to extend the period of performance through January 2, 2023, unless sooner terminated as hereinafter provided. The option periods, if exercised, shall be exercised by written notice from the Lead Procuring Agency.

ARTICLE 4. TOTAL CONSIDERATION

- A. The total consideration payable to CONTRACTOR under this Contract by the Procuring Agencies for the Base Order of:
1. Seventeen (17) Diesel Commuter Coaches (5 for CITY, 7 for Yuba-Sutter Transit (YST), 5 for El Dorado County Transit Authority (EDT);
 2. Vehicle deliveries shall be to the respective Procuring Agencies; and
 3. Provision of all requisite manuals and all operator/maintainer training for each vehicle ordered placed by CITY and participating procuring agencies;

shall not exceed the sum of \$8,374,880 (\$492,640 per coach) plus any option items selected, and the applicable California state and local sales taxes. The sum of \$8,374,880 represents \$2,463,200 payable by CITY, \$3,448,480 payable by YST, and \$2,463,200 payable by EDT.

OPTION ORDERS:

- B. The total consideration payable to CONTRACTOR under this Contract by CITY for the potential CITY Option Order of four (4) Low Emission Diesel Commuter Coaches, delivery, manuals and training shall not exceed the sum of \$1,970,560 (\$492,640 per coach), plus any option items selected, plus any escalation (not to exceed 5%) which will be calculated based on the U.S. Department of Labor/Bureau of Labor Statistics Producer Price Index ("PPI") Category WPU 1413 "Transportation Equipment, Truck and Bus Bodies", and applicable California state and local sales taxes.
- C. The total consideration payable to CONTRACTOR under this Contract by "YST" for the potential YST Option Order of three (3) Low Emission Diesel Commuter Coaches, delivery manuals and all training shall not exceed the sum of \$1,477,920 (\$492,640 per coach), plus any option items selected, plus any escalation (not to exceed 5%) which will be calculated based on the U.S. Department of Labor/Bureau of Labor Statistics Producer Price Index ("PPI") Category WPU 1413 "Transportation Equipment, Truck and Bus Bodies", and applicable California state and local sales taxes.
- D. The total consideration payable to CONTRACTOR under this Contract by "EDT", for the potential EDT Option Order of two (2) Low Emission Diesel Commuter Coaches, delivery, manuals and all training shall not exceed the sum of \$985,280 (\$492,640 per coach), plus any option items selected, plus any escalation (not to exceed 5%) which will be calculated based on the U.S. Department of Labor/Bureau of Labor Statistics Producer Price Index ("PPI") Category WPU 1413 "Transportation Equipment, Truck and Bus Bodies", and applicable California state and local sales taxes.
- E. Subject to available funding, the total consideration CITY and the other Procuring Agencies shall pay to CONTRACTOR for delivery of the total Option Order Commuter Coaches under this Contract, delivery of manuals and operator and maintainer training sessions shall not exceed the sum of \$4,433,760 (\$492,640 per coach), plus any option items selected, plus any escalation (not to exceed 5%) which will be calculated based on the U.S. Department of Labor/Bureau of Labor

Statistics Producer Price Index ("PPI") Category WPU 1413 "Transportation Equipment, Truck and Bus Bodies", and applicable California state and local sales taxes.

The total Contract Consideration for all Coaches, delivery, manuals and operator and maintainer training sessions payable to CONTRACTOR under this Contract shall not exceed \$12,808,640 (\$492,640 per coach), plus any option items selected, plus any escalation (not to exceed 5%) which will be calculated based on the U.S. Department of Labor/Bureau of Labor Statistics Producer Price Index ("PPI") Category WPU 1413 "Transportation Equipment, Truck and Bus Bodies", and applicable California state and local sales taxes.

ARTICLE 5. METHOD OF PAYMENT

- A. In accordance with the terms and conditions of this Contract, each Procuring Agency shall pay CONTRACTOR for the Commuter Coaches purchased by that Procuring Agency, upon delivery and acceptance by the Procuring Agency in accordance with the unit prices set out in the Pricing Schedule (Exhibits 5) and subject to the limitation of the total Contract Consideration payable to CONTRACTOR as set out in Article 4. Such payment shall be the full compensation for all costs and expenses of completing the Work in accordance with the Contract Documents, including but not limited to, manuals, training and all labor and materials required, overhead, expenses, storage and shipping, risks and obligations, fees and profit, and any unforeseen costs.
- B. All payments will be made as provided herein, less withholding of two percent (2%) plus any additional monies withheld as provided below, and less any amounts for liquidated damages in accordance with Section 2.3.4 of the RFP (Exhibit 1). Each Procuring Agency will make payments for its respective Base Order and Option Order Commuter Coaches, at the unit prices itemized in CONTRACTOR's Pricing Schedule (Exhibit 5) within thirty (30) calendar days after the delivery and acceptance of each Coach and receipt of a proper invoice, whichever date is later. If the Procuring Agency determines that CONTRACTOR has improperly invoiced an item, including, without limitation, invoicing an item that has not been accepted or with an incorrect amount, the Procuring Agency may deduct that disputed item from the payment, but shall not delay payment for the undisputed portions. The amounts and reasons for such deductions shall be documented and sent to CONTRACTOR within thirty (30) days after receipt of an invoice by the Procuring Agency and a sequential reference number shall be assigned to each deduction. In addition, the Procuring Agency may withhold payment, in whole or in part, to such extent as may be reasonably necessary in the Procuring Agency's opinion to protect against losses because the Procuring Agency determines that one or more of the following conditions exist:
1. Defective Work is not remedied;
 2. Third party claims are filed against the Procuring Agency, or there is reasonable evidence indicating the probability of filing such claims;
 3. Failure of CONTRACTOR to make payments properly to Subcontractors or Suppliers;
 4. CONTRACTOR has caused damage to the Procuring Agency, or to another contractor's person or property;

5. Liquidated damages are assessed by the Procuring Agency; or
 6. Persistent failure by CONTRACTOR to carry out the Work In accordance with the Contract Documents.
- C. If a Coach does not meet all of the requirements under this Contract for acceptance, the Procuring Agency, at its sole discretion, may “conditionally accept” the Coach and place it into revenue service pending receipt of CONTRACTOR furnished materials and/or labor necessary to correct the problem to permit acceptance of the Coach. For any conditionally accepted Coach, the payment owed will be reduced by an amount to be withheld equal to twice the estimated cost for parts and labor for corrective action as determined by the Procuring Agency. The amount withheld will be paid within thirty (30) days after completion of the corrective action by CONTRACTOR and receipt of a proper invoice, whichever date is later.
- D. The Procuring Agency will make final payment for the amount of withholding for all Coaches and/or spare parts within thirty (30) calendar days after acceptance of all Coaches and spare parts due to that Procuring Agency, and receipt of a final proper invoice, subject to the following conditions:
1. Delivery and acceptance of all Contract deliverables, including manuals and other documentation required by this Contract and completion of all required training has occurred; and
 2. Withholding due to any of the reasons set out in paragraphs C and/or D, above, have been remedied to the Procuring Agency’s satisfaction.
- E. Unless otherwise agreed, payment against invoice shall be delivered by first class mail through the facilities of the U.S. Postal Service, postage prepaid, addressed to the applicable party in the manner set forth in Article 7. Payment against invoice shall be deemed to be made in California, in the County in which the headquarters of the applicable Procuring Party is located, whether or not payment is addressed to a different location or delivered in another manner.
- F. No Procuring Agency shall be responsible for the payment obligations of any other Procuring Agency.

ARTICLE 6. CONTRACTOR'S RESPONSIBILITY

- A. CONTRACTOR shall be responsible for the Work performed under the terms of this Contract to the extent provided by law. CONTRACTOR agrees not to disclose information identified by a Procuring Agency as proprietary to third parties, unless approved in advance by the Procuring Agency or required by law.
- B. No Procuring Agency shall be held liable or responsible for the maintenance and/or safety of CONTRACTOR's equipment or supplies placed upon the Procuring Agency's property in accordance with this Contract. CONTRACTOR acknowledges that it assumes full responsibility for any loss or damage to its equipment and supplies.

- C. CONTRACTOR shall pay all taxes, except for sales, use, transaction and excise taxes that were legally enacted at the time CONTRACTOR's offer submitted. CONTRACTOR shall secure and pay for all permits and governmental fees, licenses and inspections necessary for the proper execution and completion of this Contract.

ARTICLE 7. COMMUNICATIONS

All notices and other communications under this Contract shall be in writing and shall be deemed to have been duly given: (i) on the date of delivery, if delivered personally to the party to whom notice is given, or (ii) at the earlier of actual receipt or the second BUSINESS day following deposit in the United States mail, postage prepaid. Notices and other communications shall be directed to the parties at the addresses shown below. A party may change its person designated to receive notice, or its address from time to time by giving written notice to the other party of such change at least fifteen (15) calendar days prior to the effective date of the change.

CITY: City of Fairfield
2000 Cadenasso Drive
Fairfield, California, 94533
Attention: Nigel Browne
Telephone: (707) 434-3806

YST: Yuba-Sutter Transit
2100 B Street
Marysville, CA 95901
Attention: Keith Martin
Telephone: (530) 634-6880

EDT: El Dorado County Transit Authority
6565 Commerce Way
Diamond Springs, CA 95619
Attention: Mindy Jackson
Telephone: (530) 642-5383

CONTRACTOR: Motor Coach Industries, Inc.
200 East Oakton Street
Des Plaines, Illinois, 60018
Attention: Bruce Wiebe
Telephone: (847) 285-2354

ARTICLE 8. WAIVER

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

ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING

The provisions of Sections 2.2.4.3 and 2.2.4.4 of the RFP (Exhibit 1) shall apply.

ARTICLE 10. SUCCESSORS AND ASSIGNS

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

ARTICLE 11. STATUS OF CONTRACTOR

- A. It is understood and agreed by all the parties hereto that CONTRACTOR is an independent contractor and that no relationship of employer-employee exists between any Procuring Agency and CONTRACTOR. Neither CONTRACTOR nor CONTRACTOR'S assigned personnel shall be entitled to any benefits payable to employees of any of the Procuring Agencies. CONTRACTOR hereby indemnifies and holds each Procuring Agency harmless from any and all claims that may be made against that Procuring Agency, based upon any contention by any third party that an employer-employee relationship exists by reason of this Contract or any services provided pursuant to this Contract.
- B. It is further understood and agreed by all the parties hereto that neither CONTRACTOR nor CONTRACTOR'S assigned personnel shall have any right to act on behalf of any Procuring Agency in any capacity whatsoever as an agent or to bind a Procuring Agency to any obligation whatsoever.
- C. It is further understood and agreed by all the parties hereto that CONTRACTOR must issue any and all forms required by federal and state laws for income and employment tax purposes, including, but not limited to W-2 and 941 forms, for all of CONTRACTOR'S assigned personnel.

ARTICLE 12. GOVERNING LAW

This Contract shall be deemed to be executed within the State of California and construed in accordance with and governed by the laws of the State of California. Any action or proceeding arising out of this Contract shall be filed and resolved in the Superior Court of the County of Solano.

ARTICLE 13. TIME OF THE ESSENCE

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

ARTICLE 14. PUBLIC RECORDS ACT

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

ARTICLE 15. TERMINATION OF CONTRACT, DISPUTES, AND LITIGATION

The provisions of Section 2.2.6, 2.2.7, and 2.2.8 of the RFP (Exhibit 1) shall apply to this Contract.

Paragraphs D, E, F, and G of Section 2.2.7 are hereby revised to read as follows:

“D. Mediation/Arbitration

1. If the parties mutually agree to arbitration, any dispute or claim in law or equity between a Procuring Agency and CONTRACTOR arising out of this Contract, if not resolved by informal negotiation between the parties, shall be mediated by referring it to the Judicial Arbitration and Mediation Services, Inc. (JAMS) office nearest Fairfield, California for mediation. Each party shall provide the other with a list of four (4) mediators. The parties shall confer on the list and select a mutually agreeable mediator. Mediation shall consist of an informal, non-binding conference or conferences between the parties and the judge-mediator jointly, then in separate caucuses wherein the judge will seek to guide the parties to a resolution of the case. All conferences shall take place within fifty (50) miles of Fairfield, California. If the parties cannot agree to a mutually acceptable member from the JAMS panel of retired judges, a list and resumes of available mediators with substantial experience in mediating claims of the type at issue between the parties, numbering one more than there are parties, will be sent to the parties, each of whom will strike one name leaving the remaining name as the mediator. If more than one name remains, the JAMS arbitration administrator will choose a mediator from the remaining names. All mediation proceedings shall be without prejudice and the cost of the proceedings shall be shared equally by the parties. The mediation process shall continue until the case is resolved or until such time as the mediator makes a finding that there is no possibility of resolution, then the mediation will be terminated and each party may pursue all remedies available to it at law or in equity except as specifically limited elsewhere in this Contract.

2. If the parties mutually agree, any dispute or claim in law or equity between a Procuring Agency and CONTRACTOR arising out of this Contract which is not settled through mediation shall be decided by neutral binding arbitration and not by court action, except as provided by California law for judicial review of arbitration proceedings. All arbitration sessions shall take place within fifty (50) miles of Fairfield, California. The arbitration shall be conducted in accordance with the rules of Judicial Arbitration Mediation Services, Inc. (JAMS). The parties to arbitration may agree in writing to use different rules and/or arbitrators.

E. The duties and obligations imposed by this Contract and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by a Procuring Agency or CONTRACTOR shall constitute a waiver of any right or duty afforded any of them under this Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be mutually agreed in writing.

F. The rights afforded to a Procuring Agency in Sections 2.2.6 and 2.2.7 shall be in addition to any other rights provided by law or set forth in this Contract. A Procuring Agency may exercise any or all of such rights which individually or conjunctively will totally compensate a Procuring Agency for the damages suffered by a Procuring Agency resulting from the default of CONTRACTOR.

G. If a Procuring Agency elects to waive its remedies for any breach by CONTRACTOR of any covenant, term or condition of this Contract, such waiver by a Procuring Agency shall not limit the Procuring Agency's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.”

ARTICLE 16. GRATUITIES, CONTINGENT FEES AND CONFLICTS OF INTERESTS

The provisions of Section 2.2.11 of the RFP (Exhibit 1) shall apply to this Contract.

ARTICLE 17. DELIVERY AND TITLE

The provisions of Section 2.3 of the RFP (Exhibit 1) shall apply to this Contract.

ARTICLE 18. LIQUIDATED DAMAGES

The provisions of Section 2.3.4 of the RFP (Exhibit 1) shall apply to this Contract.

ARTICLE 19. SERVICE, TRAINING, AND PARTS

The provisions of Section 2.5 of the RFP (Exhibit 1) shall apply to this Contract.

ARTICLE 20. AUDIT AND INSPECTION OF RECORDS

The provisions of Section 2.6 of the RFP (Exhibit 1) shall apply to this Contract.

ARTICLE 21. RISK

The provisions of Section 2.7 of the RFP (Exhibit 1), including but not limited to, the insurance, indemnification, and survivability provisions, shall apply to this Contract.

ARTICLE 22. FEDERAL REQUIREMENTS

The provisions of Section 2.8, 2.9, 2.10, and 2.12 of the RFP (Exhibit 1) shall apply to this Contract.

ARTICLE 23. STATE REQUIREMENTS

The provisions of Section 2.11 of the RFP (Exhibit 1) shall apply to this Contract.

ARTICLE 24. SEVERABILITY

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

ARTICLE 25. AMENDMENT

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

ARTICLE 26. WARRANTY OF AUTHORITY

The person executing this Contract on behalf of CONTRACTOR affirmatively represents that she/he has the requisite legal authority to enter into this Contract on behalf of CONTRACTOR and to bind CONTRACTOR to the terms, covenants and conditions of this Contract. Both the person executing this

Contract on behalf of CONTRACTOR and CONTRACTOR understand that the Procuring Agencies are relying on this representation in entering into this Contract.

ARTICLE 27. ENTIRE AGREEMENT

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

This Contract may be executed in counterparts, each of which shall constitute an original.

IN WITNESS WHEREOF, the parties have executed this Contract on the day and year set forth above.

LEAD PROCURING AGENCY

CITY OF FAIRFIELD

By: _____
David A. White, City Manager

APPROVED AS TO FORM:

By: _____
City Legal Counsel

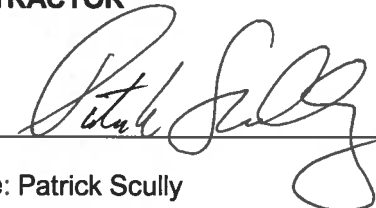
YST

YUBA-SUTTER TRANSIT

By: _____
Keith Martin, Transit Manager

By: _____
Brant Bordsen, YST Legal Counsel

CONTRACTOR

By:  _____
Name: Patrick Scully

Title: Executive Vice-President, Sales and Marketing

EDT

EL DORADO COUNTY TRANSIT AUTHORITY

By: _____
Mindy Jackson, Executive Director

By: _____
Michael Tucker, EDT Legal Counsel