

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

DEPT: Public Works *mbd*

BOARD AGENDA # \*C-1

Urgent  Routine

AGENDA DATE April 15, 2008

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval to Award the Transit Operations Contract for the County's Intercity Public Transit Service, Stanislaus Regional Transit (StaRT), to Storer Transit Systems

STAFF RECOMMENDATIONS:

1. Award the transit operations contract for the County's intercity public transit service, Stanislaus Regional Transit (StaRT), to Storer Transit Systems.
2. Authorize the Director of Public Works to sign and execute all necessary documents.

FISCAL IMPACT:

All funds necessary to cover transit operation contract costs will be provided through a combination of State and Federal funds, including State Transportation Development Act funds and Federal 5311, non-urbanized-area funds. Based on the proposed operating hours, the five-year cost of the contract is estimated to be \$15,314,489. The contract will be funded through Public Works Local Transit System budget, an Enterprise Fund, and will not impact the County General Fund.

BOARD ACTION AS FOLLOWS:

No. 2008-262

On motion of Supervisor Monteith, Seconded by Supervisor DeMartini

and approved by the following vote,

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

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:

*Christine Ferraro*

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Award the Transit Operations Contract for the County's Intercity Public Transit Service, Stanislaus Regional Transit (StaRT), to Storer Transit Systems

**DISCUSSION:**

The Department of Public Works Transit Division recommends the Stanislaus County Board of Supervisors award the five-year transit operations contract to Storer Transit Systems. Storer Transit System is providing service under the current five-year agreement that began in July 2003. Public Works Transit staff will oversee the administration of the contract.

The contract will include the operation of the County's intercity public transit service, Stanislaus Regional Transit (StaRT), and its services including, fixed route, runabout, shuttle, dial-a-ride and Bay Area Medivan transportation.

The procurement process for the transit operations contract began in September 2007 and was a joint procurement with the cities of Modesto and Ceres. A Request for Proposals (RFP) was distributed on October 12, 2007 and proposals were received on December 18, 2007. The proposal was mailed to twenty-one transit operation contractors. One firm, Storer Transit Systems, submitted a proposal and participated in interviews on January 17 and February 11, 2008.

Though only one proposal was received, the County's General Services Agency's Purchasing Division is satisfied that a competitive process was followed. The procurement process also satisfies Federal procurement guidelines regarding the receipt of only one proposal under Federal Transit Administration Circular 4220.1E.

The proposal includes operating costs, including labor, benefits, materials and supplies and insurance, as well as capital costs such as vehicles, facilities, computers and telephones.

First year proposal costs, including contractor operating and capital costs, are estimated to be \$2,884,554. For the current Fiscal Year 2007-2008, costs are estimated to be \$2,366,555. The proposed contract would be an estimated \$518,000 increase for the first year.

The increase in costs is partly attributable to an increase in operating service hours. Fixed routes using Compressed Natural Gas (CNG) buses have had a 13.0% increase in service hours and services using paratransit buses have had a 30.5% increase in service hours since Fiscal Year 2003-2004. The costs for fixed and paratransit vehicle services include some contractor-provided options. These include bike racks, flat floor seating configuration, drop-down seats, and electronic signs.

Since Fiscal Year 2003-2004, operating costs have increased 63.00% largely due to increases in salaries and benefits, fuel costs, material and supplies, and insurances.

Approval to Award the Transit Operations Contract for the County's Intercity Public Transit Service, Stanislaus Regional Transit (StaRT), to Storer Transit Systems

To ensure compliance with 2008 and 2010 California Air Resource Board requirements, it will be necessary to use gas-fueled paratransit-sized buses instead of diesel-fueled buses. This will add an estimated 30% to fuel costs due to the decreased fuel efficiency of gas versus diesel buses.

To take advantage of the economies of scale, the five-year contract will be for combined operations sharing facilities with the cities of Modesto and Ceres.

It is anticipated Modesto will go to their City Council in late April or early May for authority to enter into a five-year agreement with Storer Transit System. The City Council of Ceres approved their agreement on March 24, 2008.

A Notice of Intent to Award the Contract to Storer Transit Systems was mailed on February 29, 2008.

**POLICY ISSUES:**

The Board of Supervisors should determine if this item is consistent with its priority of striving for a well-planned infrastructure system, effective partnerships and a healthy community.

**STAFFING IMPACTS:**

There is no staffing impact associated with this item.

BC:jg  
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**AGREEMENT  
FOR  
TRANSIT CONTRACTOR SERVICES**

This Agreement for Transit Contractor Services ("Agreement") is made and entered into this 24 day of June 2008, by and between COUNTY OF STANISLAUS ("COUNTY"), and STORER TRANSIT SYSTEMS, a California corporation, ("CONTRACTOR").

**INTRODUCTION**

WHEREAS, the COUNTY has a need for services involving the continuation of public transportation for the services provided by Stanislaus Regional Transit; and

WHEREAS, the CONTRACTOR has agreed to provide those transportation services and is specially trained, experienced, and competent to perform such services;

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

**TERMS AND CONDITIONS**

**1. SCOPE OF WORK.**

1.1. CONTRACTOR agrees to provide transportation service in accordance with the following documents attached as exhibits hereto and, by this reference, made a part hereof:

Exhibit A, CONTRACTOR's Proposal to RFP 0708-09; Exhibit B, Request for Proposal ("RFP") 0708-9, Addendum #1 dated November 16, 2007, Addendum #2 dated November 21, 2007, the June 18, 2008 Storer Letter of Understanding, the June 18, 2008 County Response to the June 18, 2008 Storer Letter of Understanding ; and other referenced documents as necessary.

- (a) Executive and administrative management; Employment and supervision of all personnel, including managers, drivers, dispatchers, Trip Planner/Customer Service Representatives, information clerks, supervisors, service and maintenance personnel; Provision of qualified supervisory personnel during all hours of operation;
- (b) Day-to-day operation of bus services, including provision of scheduling and dispatching services and customer trip planning during all hours of operation and implementation of operation policies, as determined by COUNTY Transit manager;

- (c) Provision of adequate maintenance and storage facilities for diesel, gasoline and compressed natural gas (CNG) buses and all other equipment used to provide services per the requirements of this Agreement;
- (d) Operation of an ongoing training, retraining and safety program for drivers, dispatchers, mechanics, information and supervisory personnel, and all personnel employed for provision of services pursuant to this Agreement;
- (e) Implementation of all Federal, State, and local Drug and Alcohol testing and reporting requirements to ensure compliance with all Federal Transit Administration ("FTA") and State requirements.
- (f) Operating a satisfactory preventive maintenance, cleaning and major component rebuilding/replacement program and providing for the repair and maintenance of all COUNTY-owned or provided and CONTRACTOR-owned or provided equipment, including, but not limited to, buses, two-way radios, fare boxes, destination signs and security camera systems. This includes, but is not limited to, the repairing or replacing buses and equipment in an expeditious manner if such buses or equipment are damaged or destroyed during the term of this Agreement. CONTRACTOR shall install, maintain and clean, at its own cost, all COUNTY owned equipment used by CONTRACTOR, including, but not limited to, radios. The COUNTY will pay for CNG engine and engine related components, CNG components, fire systems, exhaust system and current (as of the start date of this Agreement) video system on the CNG buses. The CONTRACTOR will bill the COUNTY the exact cost plus applicable taxes and shipping for replacing these items. CONTRACTOR will provide alternators, air compressors and starters for the CNG buses. All other bus maintenance costs are to be provided by the CONTRACTOR. All CONTRACTOR labor for the above items is to be included in the cost per vehicle revenue hour. Outside labor costs for the above excluded items are to be the responsibility of the COUNTY. If such replacement or repair of County owned equipment is caused or necessitated by the fault of CONTRACTOR, then CONTRACTOR shall pay for the replacement or repair of COUNTY owned equipment;
- (g) Assisting in public relations and sales promotion regarding the service associated with this Agreement, including telephone information services, posting transit-related advertisements inside and outside of buses used for COUNTY services, distributing surveys, schedules and flyers to riders, notifying media as determined by COUNTY Transit Manager or his/her designee;
- (h) Establishing and maintaining a management information system on operations, labor, training, accidents, all buses and COUNTY-provided equipment, as specified under reporting requirements, Section D of RFP 0708-9.

- (i) Preparation of analysis and reports of financial and other matters pertaining to the bus services;
  - (j) Maintaining required and appropriate insurance coverage, including documentation of coverage to COUNTY;
  - (k) Performing all other work as may be necessary to comply with the requirements of this Agreement;
  - (l) Meeting, conferring, and coordinating with COUNTY on a frequent basis, as determined solely by the Transit Manager.
- 1.2. Upon commencement of the Agreement on July 1, 2008, the CONTRACTOR shall provide the services under this Agreement and shall commence performance under this Agreement in a timely manner consistent with the requirements and standards established by applicable Federal, State, and County laws, ordinances, regulations, and resolutions.

## **2. CONSIDERATION.**

- 2.1. COUNTY shall pay CONTRACTOR as set forth in the CONTRACTOR'S proposal and taking into consideration the provisions of this Agreement, the Fuel Cost Formula, Section D, Agreement Exhibit A, the Performance Incentive Program, Section D, Agreement Exhibit B, Scope of Works, Section D, System description and FY 06/07 Operation Statistics, Section D SOW Exhibit A and Contractor's Monthly Report June 2007, Section D SOW Exhibit B, Addendum #1 dated November 16, 2007, Addendum #2 dated November 21, 2007, the June 18, 2008 Storer Letter of Understanding and the June 18, 2008 County Response to the June 18, 2008 Storer Letter of Understanding.

The initial costs will be based on the CONTRACTOR's "Revised Price Proposal Final Offer #2" dated March 13, 2008 and the attached Exhibit 1, "Optional Cost Items Per VSH". The first year cost for the Fixed Route 40' CNG buses will be \$60.57 per vehicle revenue hour (VRH) without options. The COUNTY will exercise the option for the three-bike rack for the 40' buses at \$0.113/VRH. The July 1, 2008 contract-start rate will be \$60.683/VRH for the 40' CNG buses.

The first year cost for the Paratransit-size buses will be \$68.38/VRH without options. The COUNTY will exercise the options for the Sign Illuminator at \$.991/VRH, the Flat Floor at \$0.361/VRH, the Bike Racks at \$0.084 and the Seating Configuration at \$0.361/VRH. The July 1, 2008 contract-start rate will be \$70.177/VRH for the Paratransit-size buses.

- 2.2. Except as expressly provided in Agreement and RFP 0708-09, CONTRACTOR shall not be entitled to nor receive from COUNTY any additional consideration, compensation, salary, wages, or other type of remuneration for services rendered under this

Agreement. Specifically, CONTRACTOR shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever.

- 2.3. COUNTY will not withhold any Federal or State income taxes or Social Security tax from any payments made by COUNTY to CONTRACTOR under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of CONTRACTOR. COUNTY has no responsibility or liability for payment of CONTRACTOR's taxes or assessments.

### **3. TERM OF AGREEMENT.**

- 3.1. The term of this Agreement shall be effective July 1, 2008 until June 30, 2013. This term will be in effect unless sooner terminated as provided below.
- 3.2. The COUNTY may terminate this contract for convenience, subject to all rights of appeal under Paragraph 10.1, in whole or in part, without cause upon giving written notice to the CONTRACTOR. The COUNTY shall pay all reasonable costs associated with this contract that the CONTRACTOR has incurred up to the date of termination and all reasonable costs associated with termination of the contract. However, the CONTRACTOR may not be reimbursed for any anticipatory profits which have not been earned up to the date of termination.
- 3.3. This Agreement may be terminated immediately by the COUNTY in the event of a material breach by the CONTRACTOR, subject to all rights of appeal under Paragraph 10.1. A "material breach" for this purpose shall include, but not be limited to, the following items:
  - (a) Failure by the CONTRACTOR to operate a safe service (e.g., having an accident record significantly higher than industry norms, evidence of continued disregard for proper bus operating procedures, etc.). The CONTRACTOR'S safety record shall be reviewed bi-annually.
  - (b) Failure of three (3) times within any twelve (12) month period by CONTRACTOR to make the corrections specified by the Transit Manager in Notices of Deficiency, within the times specified.

COUNTY'S Remedies on Breach: It is understood and agreed that in the event of failure by CONTRACTOR to perform services required by this Agreement, in addition to all other remedies, penalties and damages provided by this Agreement and Federal, State, and County laws, COUNTY may provide such services, and deduct the cost of doing so from the amounts due or to become due to the CONTRACTOR. The costs to be deducted shall be the actual costs to COUNTY to provide such services, or the costs shown on the Service and Payment Schedule, whichever is greater.

- 3.4 Should COUNTY fail to pay CONTRACTOR all or any part of the compensation set forth in this Agreement, on the date due, CONTRACTOR, at the CONTRACTOR's option, may terminate this Agreement if the failure is not remedied by the COUNTY within ninety (90) days from the date payment is due.
- 3.5 This Agreement shall automatically terminate on the occurrence of any of the following events:
- (a) Bankruptcy or insolvency of either party;
  - (b) Sale of CONTRACTOR's business; or
  - (c) If, for any reason, CONTRACTOR ceases to be licensed or otherwise authorized to do business within the State of California, or determined not to be a corporation in good standing by the California Secretary of State, and CONTRACTOR fails to remedy such defect or defects within thirty (30) days of receipt of notice of such defect or defects.
- 3.6 If the contract is terminated for any reason, the final payment due to the CONTRACTOR will be made after the determination of any incentives and/or penalties. Final payment will be made no later than ninety (90) days from the date of the final invoice from the CONTRACTOR.
- 3.7 COUNTY, at its sole discretion, may terminate this Agreement at any time, without prejudice, if State or Federal funding is eliminated or reduced and the COUNTY Board of Supervisors orders a substantial decrease in the level of service under Paragraph 9.4. Such termination shall be immediately effective on the date set forth in an order adopted by the Board of Supervisors substantially decreasing the level of services as set forth in Paragraph 9 herein.
- 3.8 This Agreement may be terminated at any time upon mutual agreement between both parties.

#### **4. STANDARDS OF PERFORMANCE.**

The CONTRACTOR shall furnish in a timely, professional and courteous manner the services under this Agreement according to the specifications and standards set forth in Section D of RFP 0708-9, including, but not limited to, the following performance standards:

- 4.1 CONTRACTOR shall operate and furnish transit services to the standards of the Stanislaus Council of Government's Regional Transportation Plan and shall complete trips under the published or agreed upon bus schedules.
- 4.2 CONTRACTOR shall provide a sufficient number of operable, clean and road-worthy buses to operate full service on all routes in effect. "Road-worthy" for this purpose means buses which conform to the requirements of this Agreement and



all safety requirements of the California Highway Patrol and other applicable regulatory and safety agencies, and which are fully operable, including all components.

- 4.3 CONTRACTOR shall provide a preventive maintenance, repair, and component rebuilding program, which in all respects conforms to the requirements of this Agreement, the California Highway Patrol and other applicable regulatory agencies. The CONTRACTOR's maintenance record may be reviewed bi-annually to evaluate compliance with this provision.
- 4.4 CONTRACTOR shall take all action necessary to maintain and keep all warranties on all COUNTY-provided equipment valid and effective. Copies of all written warranties shall be provided to the CONTRACTOR by the COUNTY.
- 4.5 CONTRACTOR shall provide qualified personnel, mandated training, facilities, parts, inventory, supplies or equipment required in this Agreement.
- 4.6 CONTRACTOR shall provide services to the public in a courteous manner.
- 4.7 CONTRACTOR shall submit all reports required under this Agreement on time and all such reports shall be accurate and truthful. The COUNTY may, at its option, withhold compensation to the CONTRACTOR under this Agreement until required reports are completed and submitted.
- 4.8 CONTRACTOR shall maintain any computer software and hardware equipment used in the operation of COUNTY services and shall input all required information and data in the databases.
- 4.9 CONTRACTOR shall provide and maintain facilities and equipment for providing interior and exterior advertising in vehicles provided for COUNTY services.
- 4.10 CONTRACTOR shall use the buses, equipment and inventory provided under this Agreement for only those purposes specified under this Agreement or otherwise authorized by the COUNTY.
- 4.11 CONTRACTOR shall take all reasonable and prudent steps to ensure that fare revenue is deposited with the COUNTY and shall account for such revenue per the requirements of this Agreement or upon demand by the COUNTY, including reconciliation of all fare revenues with the actual number of passengers. The COUNTY at its discretion may require an independent audit of CONTRACTOR's tickets sales and revenue collection processes.

## 5. CONSIDERATION; METHOD AND TIME PAID; ADJUSTMENTS.

5.1 Consideration. In and for complete consideration of all services to be provided by CONTRACTOR, COUNTY monthly, in arrears, shall pay those rates based on vehicle revenue hours as specified in the CONTRACTOR's proposal and in effect at the time that the services were provided for each month and each in-service vehicle service hour provided during the billing period. In the event that a modification to the Schedule is effective during a billing period, the consideration shall be prorated on a daily basis. Such consideration, along with the considerations of the Agreement, specifically, but not exclusively section 2.1, the Fuel Cost Formula, Section D, Agreement Exhibit A, the Performance Incentive Program, Section D, Agreement Exhibit B, Scope of Works, Section D, System description and FY 06/07 Operation Statistics, Section D SOW Exhibit A and Contractor's Monthly Report June 2007, Section D SOW Exhibit B, Addendum #1 dated November 16, 2007, Addendum #2 dated November 21, 2007, the June 18, 2008 Storer Letter of Understanding, the June 18, 2008 County Response to the June 18, 2008 Storer Letter of Understanding are the sole and exclusive considerations for all services to be provided by CONTRACTOR pursuant to this Agreement, including the CONTRACTOR's costs for repair and maintenance operations which conform to the California Highway Patrol's requirements or requirements necessary to provide services specified in Section D of RFP 0708-9;

5.1a. Vehicle Revenue Hours (VRH) will be defined for StaRT services as follows. For fixed stop services, revenue hours will begin from arrival at the first stop to departure from the last stop of the service. For deviated fixed stop service, revenue hours will begin from arrival at the first stop or first pick up to departure from the last stop on the service or the last drop off, whichever time is longer. For the shuttle services, or intercity demand response services, revenue hours will begin from first pick up to last drop off. For Dial-a-Ride, or intracity demand response services, revenue hours will begin when a vehicle enters the DAR service boundary for the purpose of providing passenger transportation pursuant to the Scope of Works requirements. Vehicle revenue hours for all StaRT services shall exclude out-of-service time for operator breaks, meals, fueling, time traveled between vehicle storage areas, deadhead time or other non-revenue generating vehicle time.

5.2 Adjustment to Basic Consideration: The basic consideration provided for in Section 2 shall be subject to adjustment August 1, 2009 and every year thereafter ("the adjustment date") as follows:

The base for computing the adjustment is the most current available Consumer Price Index for Pacific Cities and United States Average for All Urban Consumers (CPI-U) for All Items for twelve (12) months prior to the adjustment date, less the most current relative importance (weight) of Motor Fuel to All Items for the West Region for Size Class B/C. The formula shall be as follows:

Rate of Adjustment to  
Basic Consideration =  $A \times (100.00\% - B)$

A – is the most current available U.S. City Average from the Consumer Price Index for Pacific Cities and United States Average for All Urban Consumers (CPI-U) for All Items for twelve (12) months prior to the adjustment date. This information can be found at <http://www.bls.gov/ro9/may2007.pdf> under the CPI index for Pacific Cities and United States average for All Urban Consumers (CPI-U) for All Items. The effective year will be changed at the time of the annual adjustment.

B – is the most current available relative importance (weight) of Motor Fuel to All Items for the West Region for Size Class B/C. This information can be found at <http://www.bls.gov/cpi/cpiri2007.pdf> under the West area, CPI-U (Urban Area), size class B/C, (50,000-1,500,000), the relative weight for motor fuel. The effective year will be changed at the time of the annual adjustment.

- 5.3 Claims; Form; Time of Submission. No later than the 10th of the month following the month during which the services were provided, CONTRACTOR shall submit its claim for compensation to the Transit Manager. Such claims shall specify the dates of service, and designate by route and the type of day (i.e., weekday, Saturday, Sunday/Holiday) the number of vehicle service hours actually provided for which compensation is claimed. A summary of vehicle service hours and miles missed by route and date shall be submitted with CONTRACTOR's claim.

COUNTY may issue forms for such claims, and CONTRACTOR will utilize and include all information required by such forms in submitting its claims. In addition, COUNTY may request, and CONTRACTOR shall make available, such books and/or records required to enable verification of a claim.

- 5.4 Payment of Claims; Time; Dispute Resolution. Upon receipt of a claim, including Incentive and Penalty Assessment, the Transit Manager or his/her designee shall verify its accuracy and completeness. If the claim is accurate, and CONTRACTOR is entitled to payment thereon, the Transit Manager shall approve the claim and forward it for payment to the appropriate COUNTY offices.

Approved claims shall be due and payable on the 30th day after receipt and approval by the Transit Manager of the complete claim and all required verification and reports.

If the Transit Manager disputes all or part of a claim, the amounts and reasons for a disputed claim shall be documented to CONTRACTOR within fourteen (14) calendar days of receipt of invoice.

Upon submittal of a corrected claim, the corrected claims shall be due and payable on the 30th day after receipt of the corrected claim and all required verification and reports.

The dispute resolution procedure detailed in Section 10 of this Agreement shall be used to resolve any disputes arising under or relating to the terms of this Agreement.

- 5.5 Performance Incentives Program. CONTRACTOR's performance, at the discretion of the Transit Manager, may be reviewed and, where appropriate, incentives and penalties may be assessed with each claim, based on the Performance Incentives Program, Section D, and Exhibit B of RFP 0708-9.

The self-certification shall be subject to audit by COUNTY. If data for an incentive or penalty provision is not available, incomplete or not acceptable, no incentive or penalty may be invoked for that provision. However, it is noted that a penalty may be invoked for failure by the CONTRACTOR to collect data necessary for providing all services, and assessment of penalties and incentives, as required in Section D of RFP 0708-9.

Such incentives or penalties apply only to those periods of time when assessments are being made. Afterward, the rate paid to CONTRACTOR shall revert back to the original rates described in the CONTRACTOR's proposal until another assessment is made.

Both parties agree the assessment of incentives or penalties relative to the Performance Incentives Program shall not lessen the COUNTY'S right to declare a material breach of CONTRACT, particularly if the CONTRACTOR is assessed penalties for repeated failure to comply with the operating requirements and standards of this Agreement. The decision of the Transit Manager, and/or his/her designee, is final with respect to any assessment of performance incentives or penalties. The CONTRACTOR may appeal the decision of the Transit Manager as a claim for compensation under Paragraph 10 herein.

Annually, the Transit Manager may modify the performance incentives program, including penalties, bonuses, and areas covered, subject to CONTRACTOR written approval regarding the changes made.

## **6. NOTICE OF DEFICIENCY.**

The Transit Manager, or his/her designee, may issue a Notice of Deficiency to CONTRACTOR, specifying areas of unsatisfactory performance and specifying what improvements are necessary to correct the deficiency. Such notice shall specify the provision(s) of this Agreement which address the issue.

CONTRACTOR shall correct the deficiency(ies) within a one month period or as otherwise agreed or extended by the COUNTY.

**7. HOLIDAYS.**

- 7.1 CONTRACTOR agrees to furnish services in accordance with schedules established by COUNTY. Non-operating days and/or holiday schedules shall coincide with those outlined in the System Description and FY 06/07 Operation Statistics, Section D, SOW, Exhibit A.
- 7.2 The Transit Manager shall designate the day(s) of observance of all holidays. The Transit Manager shall provide no less than ten (10) days notice to CONTRACTOR of the day(s) designated for the holiday schedule.
- 7.3 CONTRACTOR shall post notices of holiday schedule in all buses used in COUNTY service at least seven service days in advance of each upcoming holiday.

**8. FORCE MAJEURE.**

- 8.1 CONTRACTOR shall not be charged, nor shall COUNTY demand from CONTRACTOR, damages because of failure in providing the services indicated in this Agreement due to unforeseeable causes beyond the control and without the fault or negligence of CONTRACTOR. Such causes of excusable delay may include fires, floods, epidemic, quarantine, public road closures, but in every case the delay is excusable only for so long as, and to the extent, that the excusable delay continues, provided, however, that disruption caused by or related to labor strikes, picketing, boycotting, or any other labor strife of any form or manner which directly or indirectly is aimed, directed or focused at the CONTRACTOR shall not be an excusable delay under any circumstance.
- 8.2 CONTRACTOR shall be entitled to no compensation for any service, the performance of which is excused pursuant to this Section or Section 8.1
- 8.3 In the event that CONTRACTOR is unable to provide the services indicated due to any cause, he shall make reasonable attempt to so notify the public including notification to local radio stations, and if appropriate, local newspapers and television stations.
- 8.4 Whenever CONTRACTOR has knowledge that any actual or potential force majeure may delay or prevent performance of this Agreement, CONTRACTOR on a timely basis, shall notify COUNTY of the fact, and thereafter shall report to COUNTY all relevant information then known to CONTRACTOR, and shall continue to so report. The report shall detail the cause of the force majeure, the impact on scheduled service, and the action taken by CONTRACTOR in response to the force majeure. The report will be provided in a time line format.

## 9. CHANGES IN LEVEL OF SERVICE.

The level of service required of CONTRACTOR shall be as specified in Section D of RFP 0708-9. Changes in the level of service shall not be authorized until mutually agreed upon by the COUNTY and the CONTRACTOR, except emergency adjustments as specified in Subparagraph 9.1, below. Amendments to service and the payment schedule may be made as set forth below in Subparagraphs 9.2 through 9.5, inclusive.

9.1 Emergency Adjustments by CONTRACTOR. Notwithstanding the requirements of Section D of RFP 0708-9 then in effect, CONTRACTOR may modify the level of service provided only in the event of an emergency which requires a detour or an adjustment in routing or scheduling under circumstances where there is no opportunity for the parties to confer; provided, however, that such changes do not "substantially change" the level of service, as defined in Subparagraph 9.2, provided pursuant to the Service and Payment Schedule then in effect. The CONTRACTOR shall notify Transit Manager immediately when such adjustments occur. The Transit Manager shall specify steps to be taken by CONTRACTOR to notify patrons of the change to routing and/or scheduling necessitated by such emergency adjustments, and/or modifications to the emergency adjustments made by CONTRACTOR. Increases or decreases in compensation arising from such adjustments shall equal actual increases or decreases in the number of vehicle service hours expended by CONTRACTOR, and shall be made in the next monthly billing.

9.2 Substantial Change in Service Level Defined. Any proposed change in the service level shall be deemed a "substantial change" if such results in:

- (a) an increase or decrease of 20% or more in the total number of vehicle service hours per week provided for combined fixed route services or fixed route deviated services or an increase or decrease of more than 20 vehicle service hours per week provided for a particular runabout or dial-a-ride service, as set forth in Section D of RFP 0708-9 in effect at the time of such increase or decrease; or
- (b) a change in the number of buses CONTRACTOR is required to maintain or provide as a result of service changes; or
- (c) the addition or deletion of an entire route.

All other changes in the level of service shall be deemed non-substantial changes.

9.3 Non-Substantial Changes in Service Level by Transit Manager. The COUNTY, through the Transit Manager, may order a non-substantial change in the level of service, either by way of an increase or a decrease, by providing a written order to CONTRACTOR specifying the change and the effective date. Such written change order shall include an amendment to the services and the payment schedule. CONTRACTOR agrees to comply with such written orders, provided, however, the

CONTRACTOR reserves the right to assert impossibility of performance as a defense to performance. The Transit Manager may elect to treat any such change as a substantial change, and use the process set forth in Subparagraph 9.4 below.

- 9.4 Substantial Change in Service Level by COUNTY. A substantial increase or decrease in the level of service, as defined in Subparagraph 9.2, may be ordered by COUNTY Board of Supervisors, and CONTRACTOR agrees to provide such services, provided that the parties shall agree as to cost adjustments pursuant to Subparagraph 9.5 below, or as otherwise provided. CONTRACTOR shall be given no less than seven (7) days written notice of the intent to order such substantial increase or decrease, and shall have an opportunity to be heard at the Board of Supervisors hearing on the proposed order. Such order shall be effective immediately upon adoption by the Board of Supervisors, provided, however, the CONTRACTOR reserves the right to assert impossibility of performance as a defense to performance.
- 9.5 Determining Costs After a Substantial Change in Service. After a Substantial Change in the level of service, as defined in Subparagraph 9.2, the services and the payment schedule shall be adjusted to reflect the actual changes ordered in the vehicle service hours, using the unit costs for each then in effect. If such results in a need for a decrease or addition of equipment and/or facilities, the CONTRACTOR shall notify COUNTY and within fourteen (14) days after receipt of such order shall submit a proposal for a change in compensation detailing such needs and their savings or costs. The parties shall, in good faith, negotiate an equitable adjustment of the CONTRACTOR'S compensation. If the parties are unable to reach an equitable adjustment, the CONTRACTOR shall submit a claim for additional compensation pursuant to Paragraph 10 below, provided, however, the CONTRACTOR reserves the right to assert impossibility of performance as a defense to performance.
- 9.6 Changes in Subsidiary Duties. The Transit Manager may request changes in CONTRACTOR's reporting requirements, training/safety programs, preventive maintenance and repair programs, inventory requirements, public information and dispatching services, testing procedures, personnel practices and/or other operating details not resulting in changes in level of service. If said changes differ from contractual requirements and if CONTRACTOR declines such requests, or such requests (if beyond contractual requirements) would result in a material increase in CONTRACTOR's costs or in the time required for performance, CONTRACTOR shall notify COUNTY and within fourteen (14) days after receipt of such order shall submit in writing, a claim detailing such objections and/or increases. The parties shall, in good faith, negotiate an equitable settlement of CONTRACTOR's claim based upon actual increases or decreases in CONTRACTOR's total costs to perform this Agreement caused by the change in question. If the parties are unable to reach an equitable adjustment, the CONTRACTOR shall submit a claim for additional compensation pursuant to Paragraph 10 below, provided, however, the CONTRACTOR reserves the right to assert impossibility of performance as a defense to performance.

**10. DISPUTES AND CLAIMS FOR ADDITIONAL COMPENSATION.**

10.1. Except for claims related to compensation, which are resolved as set forth below, and except as otherwise provided in this Agreement, any other dispute arising under or relating to the terms of this Agreement, or related to performance hereunder, including, but not limited to, issues of whether a default occurred, the extent of any default, or whether any default which occurred justifies termination of this Agreement, which is not disposed of by agreement shall be decided by the Transit Manager who shall reduce such decision to writing and mail or otherwise furnish a copy thereof to the CONTRACTOR. The decision of the Transit Manager shall be final and conclusive unless, within fourteen (14) calendar days from the date of receipt of such copy, the CONTRACTOR mails or otherwise delivers a written appeal to the COUNTY Director of Public Works (the "Director") who shall issue a written decision and mail or otherwise furnish a copy thereof to the CONTRACTOR. The decision of the Director shall be final and conclusive in all matters except where the decision results in actual or constructive termination of this Agreement, and in such cases, the decision of the Director shall be final and conclusive unless, within fourteen (14) calendar days from the date of receipt of a copy of such decision, the CONTRACTOR mails or otherwise delivers a written appeal to the COUNTY Board of Supervisors. In connection with any appeal under this clause, the CONTRACTOR shall be afforded an opportunity to be heard and to offer evidence and argument in support of the appeal. Pending final decision on any dispute hereunder, the CONTRACTOR shall proceed diligently with the performance of work under this Agreement as directed by the Transit Manager unless the CONTRACTOR has received notice of immediate termination. The decision of the Director or, in the case of termination of this Agreement, the Board of Supervisors on such appeal shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. Decisions on any disputes hereunder may include decisions of both fact and law; provided, however, that nothing herein shall be construed as making final any decision on a question of law in the event of any subsequent legal proceeding before a court of competent jurisdiction.

10.2. The CONTRACTOR shall not be entitled to the payment of any additional compensation for any act, or failure to act, by the CONTRACTOR or the COUNTY, including failure or refusal to modify this Agreement, or for the happening of any event, thing, occurrence, or other cause, unless the CONTRACTOR has given to the COUNTY due written notice of claim as herein specified. It is the intention of this provision that differences between the parties arising under and by virtue of this Agreement be brought to the attention of the COUNTY at the earliest possible time in order that such matters be settled, if possible, or other appropriate action promptly taken. The CONTRACTOR hereby agrees that it shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing or occurrence for which no written notice of potential claim was filed.



10.3. The written notice of claim shall be submitted to the Transit Manager within fourteen (14) calendar days after the happening of the event, thing, occurrence, or other cause, giving rise to the potential claim. The notice shall set forth the reasons for which the CONTRACTOR believes additional compensation will or may be due and the nature of the costs involved. Claims filed by the CONTRACTOR shall be in sufficient detail to enable the COUNTY to ascertain the basis and amount of said claims. If additional information or details are required by the COUNTY to determine the basis and amount of said claims, the CONTRACTOR shall furnish such further information or details so that the information or details are received by the COUNTY no later than fourteen (14) calendar days after receipt of the written request from the Transit Manager. If the fourteenth day falls on a Saturday, Sunday or legal holiday, then receipt of such information or details by the COUNTY shall not be later than close of business of the next business day. Failure to submit such information and details to the COUNTY within the time specified will be sufficient cause for denying the claim.

The CONTRACTOR shall keep full and complete records of the costs and additional time incurred for any work for which a claim for additional compensation is made. The COUNTY or any designated claim investigator or auditor shall have access to those records and any other records as may be required by the COUNTY to determine the facts or contentions involved in the claims. Failure to permit access to such records shall be sufficient cause for denying the claims.

10.4. The written notice of claim, and all records and information submitted in support of such claim, shall be submitted with and accompanied by a notarized certificate under the California False Claims Act (Gov. Code, §§ 12650 - 12655) containing the following language:

"Under penalty of law for perjury or falsification and with specific reference to the California False Claims Act (Gov. Code, § 12650 et seq.) the undersigned hereby certifies that the claim for the additional compensation and time, if any, made herein for the work under the Agreement is a true statement of the actual costs incurred and time sought, and is fully documented and supported or capable of being fully documented and supported under the Agreement between the parties."

"Dated:

" \_\_\_\_\_

"(name)"

of

"(title)"

\_\_\_\_\_  
"(company)"

Failure to submit the notarized certificate will be sufficient cause for denying the claim.

- 10.5. The COUNTY'S written response to the CONTRACTOR'S claim, as further documented, shall be submitted to the CONTRACTOR within thirty (30) days after receipt of the further documentation, if any, or within a period of time not greater than that taken by the CONTRACTOR in producing the additional information or requested documentation, whichever is greater. If the CONTRACTOR disputes the COUNTY'S written response, or the COUNTY fails to respond within the time prescribed, the CONTRACTOR may so notify the COUNTY, in writing, either within fourteen (14) calendar days of receipt of the COUNTY'S response or within fourteen (14) calendar days of the COUNTY'S failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon demand, the COUNTY shall schedule a meet and confer conference for settlement of the dispute to occur within thirty (30) days from the date of receipt of the demand.
- 10.6. Following the meet and confer conference, if the claim or any portion remains in dispute, the CONTRACTOR may file a claim as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the CONTRACTOR submits its written claim pursuant to Paragraph 10.2 herein until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

## **11. SELECTION OF ON-SITE MANAGEMENT.**

The person serving as the CONTRACTOR'S site supervisor shall be approved by COUNTY. Approval shall not be unreasonably withheld by COUNTY. The site supervisor is hereby authorized to bind the CONTRACTOR in all aspects of CONTRACTOR'S performance of this Agreement. A site supervisor or another authorized individual shall be available at all times during periods of operation, either by phone or in person, to make decisions or provide coordination as necessary.

The above individuals shall be responsible for monitoring all aspects of the system operation and maintenance, including, but not limited to: ridership, quality of service, fare collection and reconciliation with ticket sales, reports and data collection for reports, customer data entry, maintenance and repair work, attitudes, motivations, and performance of all personnel and their duties, as required by Section D of RFP 0708-9.

## **12. EMPLOYEE QUALIFICATIONS/TRAINING/WORK RULES.**

- 12.1 CONTRACTOR shall comply with the employee qualification, training, and work rule requirements specified in Section D of RFP 0708-9 for all employees, whether full-time or part-time.

12.2 CONTRACTOR shall notify the COUNTY in writing within thirty (30) calendar days of any changes in CONTRACTOR-provided personnel used for COUNTY operations.

12.3 CONTRACTOR shall provide adequate personnel as is necessary to provide the services identified in Section D of RFP 0708-9. COUNTY is not obligated to reimburse or pay CONTRACTOR for any expense or cost incurred by CONTRACTOR for additional personnel, unless a substantial change in service occurs, as defined in Subparagraph 9.2.

**13. BUSES, EQUIPMENT & RADIOS.**

13.1 CONTRACTOR shall provide COUNTY with the buses as per the Scope of Works, Section D. CONTRACTOR shall supply all other equipment necessary to operate the transit system as specified in this Agreement.

13.2 CONTRACTOR acknowledges that CONTRACTOR'S use of radio frequency is contingent upon the proper conduct being exercised by CONTRACTOR's employees in transmitting and receiving. In the event that CONTRACTOR should lose the right to use said frequency as a result of misconduct by CONTRACTOR's employees, CONTRACTOR shall pay all such costs required to either re-establish the same frequency or to re-configure or replace radio equipment to assure that equivalent communications are provided.

13.3 CONTRACTOR, at its sole cost and expense, shall provide and install a voice base station(s) and an antenna.

**14. OFFICE SPACE, SUPPLIES, EQUIPMENT, ETC.**

Unless otherwise provided in Section D of RFP 0708-9, CONTRACTOR shall provide such office space, supplies (including all paper supplies, computer disks, and backup tapes), equipment, vehicles, reference materials, and telephone services as is necessary for CONTRACTOR to provide the services identified in Section D of RFP 0708-9.

COUNTY is not obligated to reimburse or pay CONTRACTOR for any expense or cost incurred by CONTRACTOR in procuring or maintaining such items. Responsibility for the costs and expenses incurred by CONTRACTOR in providing and maintaining such items is the sole responsibility and obligation of CONTRACTOR.

**15. TELEPHONE SERVICE.**

CONTRACTOR shall comply with the telephone requirements in Section D of RFP 0708-9. Upon termination or expiration of this Agreement, CONTRACTOR shall release all telephone numbers associated with COUNTY services for COUNTY's or its future bus CONTRACTOR's use.

**16. COUNTY PROPERTY.**

Any and all compositions, publications, field notes, plans, designs, specifications, blueprints, maps, formulas, processes, photographs, slides, video tapes, computer programs, computer disks, computer tapes, memory chips, soundtracks, audio recordings, films, audio-visual presentations, exhibits, reports, tests, studies, inventions, patents, trademarks, copyrights, or intellectual properties of any kind which are created, produced, assembled, compiled by, or are the result, product, or manifestation of, CONTRACTOR's services or work under this Agreement are when created, produced or published, and at the termination of this Agreement remain, the sole and exclusive property of the COUNTY. CONTRACTOR will promptly convey possession and title to all such properties to COUNTY upon the COUNTY'S request to do so.

**17. MAINTENANCE RECORDS AND INSPECTIONS.**

17.1 Records of all maintenance and inspections shall be kept and made available to COUNTY, the California Highway Patrol (CHP) and/or other regulating agencies with jurisdiction when requested. COUNTY maintains the right to inspect, examine and test, at any reasonable time, any equipment used in the performance of the work in order to ensure compliance with this Agreement. Such COUNTY inspection shall not relieve the CONTRACTOR of the obligation to continually monitor the condition of such buses and to identify and correct all substandard or unsafe conditions immediately upon discovery. CONTRACTOR shall transport all such vehicles at CONTRACTOR's expense, to COUNTY'S designated inspection facilities when requested by COUNTY. In the event that CONTRACTOR is instructed by COUNTY, the CHP, or any other regulatory agency to remove any equipment from service due to mechanical and/or safety reasons, CONTRACTOR shall make any and all specified corrections and repairs to the equipment and resubmit the equipment for inspection and testing before it is placed in service.

**18. REPORTS**

18.1 Reports shall be submitted as per the requirements in Section D of RFP 0708-9. Reports shall be submitted with payment claims no later than the 10th of the month.

18.2 The CONTRACTOR shall collect and compile summaries of data to complete reports regardless of data collecting capabilities of any computer-aided dispatch/scheduling system used for the provision of COUNTY services.

**19. FARES.**

19.1 All fares shall be collected and reconciled as detailed in Section D of RFP 0708-9.

19.2 COUNTY reserves the right to set fare rates for passengers. Such rates may be revised from time to time by COUNTY and set at such levels as may be determined

to be in the best interest of COUNTY. Prior to revising such fares, COUNTY shall consider CONTRACTOR's advice regarding the appropriate fares.

19.3 COUNTY shall provide CONTRACTOR with written instructions on fare changes at least ten (10) days before such fares become effective, and CONTRACTOR shall collect such fares as are currently in effect. CONTRACTOR shall not be required to make change for fares, but shall prepare and post notices on all buses that the correct change for fares or applicable passes is required to board the bus.

19.4 The COUNTY reserves the right to require an independent audit of CONTRACTOR's fare revenue handling processes and procedures.

## **20. FEDERAL, STATE AND LOCAL LAWS.**

20.1 CONTRACTOR warrants and covenants that it shall fully and completely comply with all applicable Federal, State and local laws and ordinances, and all lawful orders, rules and regulations issued by any authority with jurisdiction in all aspects of its performance of this Agreement.

20.2 CONTRACTOR shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and United States Environmental Protection Agency ("EPA") 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 EPA Assistant Administrator for Enforcement (EN-329).

20.3 CONTRACTOR specifically agrees to obtain all zoning approvals required from COUNTY or other affected jurisdiction for CONTRACTOR's maintenance yard, office, and/or other facilities, and to perform all conditions specified on such zoning approvals, at the time specified.

### **20.4 DISADVANTAGED BUSINESS ENTERPRISE.**

(a) This Agreement adopts and incorporates the policy of the Department of Transportation ("DOT") that disadvantaged business enterprises ("DBE") 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 and the requirements of 49 CFR Part 23 apply to this Agreement.

(b) The CONTRACTOR agrees not to discriminate on the basis of race, creed, color, national origin, age, or sex in the award and performance of DOT-assisted contracts and to take all necessary and reasonable steps in

accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to participate in this Agreement.

## 20.5 EQUAL EMPLOYMENT OPPORTUNITY/BASIC REQUIREMENTS.

In connection with the execution of this contract, the CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin. The CONTRACTOR shall take affirmative action including, but not be limited to, the following; employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship, 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. CONTRACTOR agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

## 20.6 TITLE VI CIVIL RIGHTS ACT OF 1964.

During the performance of this contract, the CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

- (a) Compliance with Regulations: The CONTRACTOR shall comply with the Department of Transportation ("DOT") regulations (49 CFR Part 21) regarding nondiscrimination in federally-assisted programs of the DOT ("the Regulations") which by this reference are made a part of this Agreement.
- (b) Nondiscrimination: During the performance of this Agreement, CONTRACTOR, its agents, officers, and employees shall not discriminate in violation of any federal, state, or local law, rule, or regulation against any employee, applicant for employment, or passenger, patron or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental handicap, medical condition, marital status, age, political affiliation, or sex. CONTRACTOR and its agents, officers, and employees shall comply with the provisions of the California Fair Employment and Housing Act (Government Code section 12900, et seq.) and the applicable regulations promulgated there under in the California Code of Regulations. CONTRACTORS shall also abide by the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto and all administrative rules and regulations issued pursuant to said act. CONTRACTOR further agrees to abide by the COUNTY's nondiscrimination policy.
- (c) Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the 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 the CONTRACTOR of the CONTRACTOR's obligations under this contract and the Regulations.

- (d) Information and Reports: The 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, employees, other sources of information, and its facilities as may be determined by COUNTY or the FTA, as appropriate, and shall set forth what efforts it has made to obtain the information. CONTRACTOR must submit a properly executed Employer Information Report (EEO-1) upon request by COUNTY. CONTRACTOR shall notify COUNTY of any discrimination complaints.
  
- (e) Sanctions for Noncompliance: In the event of the CONTRACTOR's noncompliance with the nondiscrimination provisions of this Agreement, COUNTY shall impose sanctions as it or the Federal Transportation Administration may determine to be appropriate, including, but not limited to:
  - (1) Withholding of payments to the CONTRACTOR under this Agreement until the CONTRACTOR complies; and
  - (2) Cancellation, termination or suspension of this Agreement, in whole or in part.
  
- (f) Incorporation of Provisions: The CONTRACTOR shall include the provisions of Subparagraphs 20.6 (a) through (e) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The CONTRACTOR shall take such action with respect to any subcontract or procurement as COUNTY or the Federal Transportation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONTRACTOR may request the services of the United States Attorney General in such litigation to protect the interests of the United States.
  
- (g) Orders or Judgements: CONTRACTOR shall, at its sole cost and expense, conform to any final orders issued by any State or Federal agency with jurisdiction to correct CONTRACTOR's discrimination in employment and/or ridership and shall fully save harmless and indemnify COUNTY in this regard.

## 20.7 CONSERVATION.

CONTRACTOR shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the California energy conservation plan issued pursuant to the Energy Policy and Conservation Act (42 U.S.C. section 6321, et seq.).

## 20.8 LABOR PROVISIONS.

- (a) Overtime Requirements. No CONTRACTOR or subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of eight hours in any calendar day, in excess of forty hours in such work week or in excess of any other applicable overtime schedule authorized by law unless such laborer or mechanic receives compensation at rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day, in excess of forty hours in such work week or in excess of any other applicable overtime schedule authorized by law, whichever is greater.
- (b) Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in subparagraph (b) (1) of 29 CFR Section 5.5, the CONTRACTOR and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such district or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (b) (1) of 29 CFR Section 5.5 in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard of work week of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (b) (1) of 29 CFR Section 5.5.
- (c) Withholding for Unpaid Wages and Liquidated Damages. DOT or COUNTY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the CONTRACTOR or subcontractor under this Agreement or any other Federal contract with the same prime CONTRACTOR, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of such CONTRACTOR or subcontractor for unpaid wages and liquidated damages



as provided in the clause set forth in subparagraph (b) (2) of 29 CFR Section 5.5.

- (d) Payroll Records. The CONTRACTOR or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of four years from the completion or termination of this Agreement for all laborers and mechanics, including guards and watchmen, working on this Agreement. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this Subparagraph 20.8(d) shall be made available by the CONTRACTOR or subcontractor for inspection, copying, or transcription by authorized representatives of DOT and the Department of Labor, and the CONTRACTOR or subcontractor will permit representatives to interview employees during working hours on the job.
  
- (e) Subcontracts. The CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in Subparagraphs 20.8 (a) through (e) and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in Subparagraphs 20.8 (a) through (e).

#### 20.9 CONFLICT OF INTEREST.

No employee, officer, or agent of COUNTY shall participate in selection, or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer or agent, any member of his/her immediate family, an organization that employs, or is about to employ, has a financial or other interest in the firm selected for award.

#### 20.10 INTEREST OF MEMBERS OF, OR DELEGATES TO, CONGRESS.

In accordance with FTA Grant Agreement, Part II, Section 118 (h) and 118 (i), no member of, or delegates to, the Congress of the United States shall be admitted to a share or part of this Agreement or to any benefit arising therefrom.

#### 20.11 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 State Government. Should CONTRACTOR be included on such a list during the performance of this project, it promptly shall so inform COUNTY.

20.12 CARGO PREFERENCE.

CONTRACTOR shall abide by 46 U.S.C. 1241(B)(1) and 46 CFR Part 381 which impose cargo preference requirements on shipment of foreign made goods.

20.13 It shall be a condition of this Agreement, and shall be made a condition of each subcontract entered into pursuant to this Agreement, that the CONTRACTOR and any subcontractor shall not require any laborer or mechanic employed in connection with the performance of the CONTRACT to work under working conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under the California Occupational Safety and Health Act of 1973 (Labor Code, section 6300 et seq.).

20.14 CONTRACTOR shall hold COUNTY harmless from any claims or charges by reason of CONTRACTOR's or any subcontractor's failure to comply with the above Acts or any regulations adopted pursuant thereto and shall reimburse COUNTY for any fines, damages or expenses of any kind incurred by it by reason of said failure.

**21. INSURANCE.**

21.1 Contractor shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

21.2 General Liability. Comprehensive general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than Five Million Dollars (\$5,000,000) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission to act by CONTRACTOR under this Agreement or the general aggregate limit shall be shall be twice the required occurrence limit.

21.3 Business Liability Insurance. Owned/non-owned automobile liability insurance providing combined single limits covering bodily injury and property damage with limits of no less that Five Million Dollars (\$5,000,000) per incident or occurrence.

21.4 Automobile Liability Insurance. If the CONTRACTOR or the CONTRACTOR's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury and

property damage with limits of no less than Five Million Dollars (\$5,000,000) per incident or occurrence.

- 21.5 Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the CONTRACTOR certifies under section 1861 of the Labor Code that the Contractor is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that the CONTRACTOR will comply with such provisions before commencing the performance of the work of this Agreement.
- 21.6 Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by COUNTY. At the option of the COUNTY, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the CONTRACTOR shall provide a bond, cash or letter of credit guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses.
- 21.7 The CONTRACTOR shall provide a specific endorsement to all required insurance policies, except Workers' Compensation insurance, naming the COUNTY and its officers, officials, employees and volunteers as additional named insureds regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the CONTRACTOR, including the insured's general supervision of the CONTRACTOR; (b) services, products and completed operations of the CONTRACTOR; (c) premises owned, occupied or used by the CONTRACTOR; and (d) automobiles owned, leased, hired or borrowed by the CONTRACTOR. A Blanket (Broad) Additional Insured Form which makes all Certificate Holders additional insureds automatically shall suffice to satisfy this requirement, so long as the Additional Insured Form names the County and its officers, officials, employees and volunteers.
- 21.8 The CONTRACTOR's insurance coverage shall be primary insurance regarding the COUNTY and COUNTY's officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY or COUNTY's officers, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with CONTRACTOR's insurance.
- 21.9 The CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- 21.10 Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party or reduced in coverage or in limits except after thirty (30) days' prior written notice by First Class U.S. Mail, has been given to COUNTY.
- 21.13 Insurance is to be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide of no less than A-VI.
- 21.14 CONTRACTOR shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional named insureds under its insurance policies.
- 21.15 At least ten (10) days prior to the date the CONTRACTOR begins performance of its obligations under this Agreement, Contractor shall furnish COUNTY with certificates of insurance and with original endorsements effecting coverage required by this Agreement, including, without limitation, those effecting coverage for subcontractors of the CONTRACTOR. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in COUNTY's sole and absolute discretion, approved by COUNTY. COUNTY reserves the right to require complete copies of all required insurance policies and endorsements, at any time.
- 21.16 The limits of insurance described herein shall not limit the liability of the CONTRACTOR and CONTRACTOR's officers, employees, agents, representatives or subcontractors.

## **22. STATUS OF CONTRACTOR.**

- 22.1 All acts of CONTRACTOR, its agents, officers, employees, and all others action on behalf of CONTRACTOR relating to the performance of this Agreement, shall be performed as independent and not as agents, officers, or employees of COUNTY. CONTRACTOR, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of COUNTY. CONTRACTOR has no authority or responsibility to exercise any rights or power vested in the COUNTY. No agent, officer, or employee of the COUNTY is to be considered an employee of CONTRACTOR. It is understood by both CONTRACTOR and COUNTY that this Agreement shall not under any circumstances be construed or considered to create an employer-employee relationship or a joint venture.
- 22.2 At all times during the term of this Agreement, CONTRACTOR, its agents, officers, employees, representatives or subcontractors are, and shall represent and conduct themselves as independent and not as, employees of COUNTY.

- 22.3 CONTRACTOR shall determine the method, details, and means of performing the work and services to be provided by CONTRACTOR under this Agreement. CONTRACTOR shall be responsible to COUNTY only for the requirements and results specified in this Agreement, and, except as expressly provided in this Agreement, shall not be subjected to COUNTY's control with respect to the physical action or activities of CONTRACTOR in fulfillment of this Agreement. CONTRACTOR has control over the manner and means of performing the services under this Agreement. CONTRACTOR is permitted to provide services to others during the same period service is provided to COUNTY under this Agreement as long as the provision of services to others has no adverse consequences to COUNTY. If necessary, CONTRACTOR has the responsibility for employing other persons or firms to assist CONTRACTOR in fulfilling the terms and obligations under this Agreement.
- 22.4 If in the performance of this Agreement any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. All terms of employment including hours, wages, working conditions, discipline, hiring, and discharging or any other term of employment or requirements of law shall be determined by the CONTRACTOR.
- 22.5 It is understood and agreed that as an independent and not an employee of COUNTY neither the CONTRACTOR and the CONTRACTOR'S officers, employees, agents, representatives or subcontractors do not have any entitlement as a COUNTY employee, and do not have the right to act on behalf of the COUNTY in any capacity whatsoever as an agent, or to bind the COUNTY to any obligation whatsoever.
- 22.6 It is further understood and agreed that CONTRACTOR must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of CONTRACTOR's assigned personnel under the terms and conditions of this Agreement.
- 22.7 As an independent, CONTRACTOR hereby indemnifies and holds COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

## **23. DEFENSE AND INDEMNIFICATION.**

- 23.1 CONTRACTOR, its agents, officers and employees shall defend, indemnify, and hold harmless COUNTY, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs including litigation costs and attorney's fees arising out of or resulting

from the performance of this Agreement by CONTRACTOR or CONTRACTOR's agents, officers, employees, representatives or subcontractors. CONTRACTOR's obligation to defend, indemnify, and hold the COUNTY, its agents, officers, and employees harmless applies to any actual or alleged personal injury, death, or damage or destruction to tangible or intangible property including the loss of use. CONTRACTOR's obligation under this Subparagraph extends to any claim, damage, loss, liability, expense, or other costs which is caused in whole or in part by any negligent or wrongful act or omission of the CONTRACTOR, its agents, employees, supplier, or any one directly or indirectly employed by any of them or anyone for whose acts or omissions any of them may be liable.

23.2 CONTRACTOR's obligation to defend, indemnify, and hold the COUNTY, its agents, officers, and employees harmless under the provisions of this Subparagraph is not limited to or restricted by any requirement in this Agreement for CONTRACTOR to procure and maintain a policy of insurance.

23.3 To the extent permitted by law, COUNTY shall defend, indemnify, and hold harmless CONTRACTOR, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs including litigation costs and attorney's fees arising out of or resulting from any negligent or wrongful act or omission of COUNTY, its officers, or employees.

## **24. RECORDS AND AUDIT.**

24.1 CONTRACTOR shall prepare and maintain all writings, documents, and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photostatic, photographing, and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds, or symbols or any combination thereof.

24.2 Any authorized representative of COUNTY shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts, and transcripts during the period such records are to be maintained by CONTRACTOR. Further, COUNTY has the right at all reasonable times to audit, inspect, or otherwise evaluate the work performed or being performed under this Agreement.

## **25. REQUIRED LICENSES, CERTIFICATES, AND PERMITS.**

Any licenses, certificates, or permits required by the Federal, State, COUNTY, or municipal governments for CONTRACTOR to provide the services and work described in

Section D of RFP 0708-9 must be procured by CONTRACTOR and be valid at the time CONTRACTOR enters into this Agreement. Further, during the term of this Agreement, CONTRACTOR must maintain such licenses, certificates, and permits in full force and effect. Licenses, certificates, and permits may include but are not limited to driver's licenses, professional licenses or certificates, and business licenses. Such licenses, certificates, and permits will be procured and maintained in force by CONTRACTOR at no expense to the COUNTY.

**26. NO CONFLICTING USES.**

CONTRACTOR shall not operate, lease or charter buses provided to COUNTY and equipment used for this Agreement for any purpose other than this Agreement, unless specifically authorized by the Transit Manager.

**27. BONDS.**

27.1 Performance Bond

CONTRACTOR shall perform no services pursuant to this Agreement, nor be entitled to compensation therefore, unless and until CONTRACTOR submits a bond or other acceptable security to COUNTY for use of COUNTY, such bond executed by CONTRACTOR and a surety company licensed to do business as such in the State of California, such bond in the amount of two hundred and fifty thousand dollars (\$250,000) and which shall at all times be kept in full force and effect. The condition of such bond shall be that CONTRACTOR shall fully and faithfully perform all conditions and covenants of this Agreement or that the face amount of such bond shall be forfeited to COUNTY. The bond may be renewable one-year bond, and shall be renewed annually before its expiration date; provided, however, that such bond must remain in full force and effect from and after the date COUNTY makes any demands for payment on the bond until the COUNTY releases such claim. Provision of such bond or its equivalent, approved by the Transit Manager, is a material covenant of this Agreement. The Transit Manager shall not approve any security which is not unconditionally payable to COUNTY upon COUNTY demand.

27.2 Fidelity Bond

This bond, with a \$50,000 minimum limit, shall insure all officials, agents and employees with access to funds received by CONTRACTOR.

**28. PRECEDENCE OF CONTRACT DOCUMENTS.**

The total agreement between the parties consists of this Agreement and any properly executed amendments thereto. In the event of a conflict or ambiguity arising between such documents or any term therein, the document executed later in time shall prevail over the document executed earlier in time.

**29. ASSIGNMENT.**

This is an agreement for the services of CONTRACTOR. COUNTY has relied upon the skills, knowledge, experience, and training of CONTRACTOR, the CONTRACTOR's firm, associates, and employees of said CONTRACTOR as an inducement to enter into this Agreement. CONTRACTOR shall not assign or subcontract this Agreement without the express written consent of COUNTY. Further, CONTRACTOR shall not assign any monies due or to become due under this Agreement without the prior written consent of COUNTY.

**30. WAIVER OF DEFAULT.**

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

**31. SEVERABILITY.**

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state, or COUNTY statute, ordinance, or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

**32. AMENDMENT.**

This Agreement may be modified, amended, changed, added to, or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

**33. NOTICE.**

Any notice, communication, amendments, additions, or deletions to this Agreement including change of address of either party during the term of this Agreement which CONTRACTOR or COUNTY shall be required or may desire to make shall be in writing and may be personally served or sent by prepaid first class mail or by certified, return receipt requested, mail to the respective parties as follows:



To COUNTY: Stanislaus County Department of Public Works,  
Transit Division  
Attention: Transit Manager  
1010 Tenth Street, Suite 3500  
Modesto, CA 95354

To CONTRACTOR: Storer Transit Systems  
Attention: Donald Storer  
3519 McDonald Avenue  
Modesto, CA 95358

**34. ENTIRE AGREEMENT.**

This Agreement contains the entire agreement of the parties and no representations, inducements, promises, or agreements otherwise between the parties not embodied herein or incorporated herein by reference shall be of any force or effect. Further, no term or provision hereof may be changed, waived, discharged, or terminated unless the same be in writing executed by the parties hereto.

**35. ADVICE OF ATTORNEY.**

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

**36. CONSTRUCTION.**

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.


**37. GOVERNING LAW AND VENUE.**


This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate on the day and year first herein above written.

**COUNTY OF STANISLAUS**

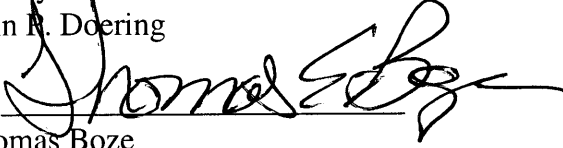
**CONTRACTOR NAME**

By   
Matt Machado, Director of Public Works  
(COUNTY)

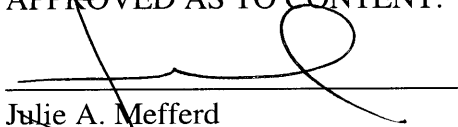
By   
Donald Storer, President, CEO  
(CONTRACTOR)

**APPROVED AS TO FORM:**

County Counsel  
John R. Doering

By   
Thomas Boze  
Deputy County Counsel

~~**APPROVED AS TO CONTENT:**~~

  
Julie A. Mefferd  
General Services Agency  
Purchasing Agent