

**CONTRACT BETWEEN THE ROARING FORK TRANSPORTATION AUTHORITY
AND MOTOR COACH INDUSTRIES, INC.
FOR THE PURCHASE OF COMMUTER COACHES**

RFTA CONTRACT NO. 15-014

This Contract is made and entered into this 17th day of December, 2015 (“Effective Date”) between the **ROARING FORK TRANSPORTATION AUTHORITY** (“RFTA”), a regional transportation authority and a political subdivision of the State of Colorado, and **MOTOR COACH INDUSTRIES, INC.** (“MCI” or “VENDOR”), a corporation organized pursuant to the laws of the State of North Dakota. RFTA and Vendor may hereinafter from time to time be referred to as “Party” or “Parties”.

RECITALS:

WHEREAS, RFTA desires to enter into a Contract with VENDOR for the purchase of commuter coach(es) as described in Section 6 – Technical Specifications (Exhibit A and “Section 6”), fully conformed, of RFTA Solicitation No. 15-014 (“the solicitation”) and incorporated herein by reference (“Goods and Services” or the “Work”); and

WHEREAS, RFTA and the members of the Commuter Coach Purchasing Consortium (“CCPC”) has chosen VENDOR to provide the Goods and Services according to the policy as outlined in the RFTA Procurement Policy and Procedures Manual; and

WHEREAS, the VENDOR has represented to RFTA and the CCPC that it is sufficiently qualified and experienced to provide those Goods and Services described in Section 6 of the solicitation, and RFTA has relied on such representations; and

WHEREAS, sufficient authority exists in RFTA’s rules and regulations and state statute, sufficient funds have been budgeted for these purposes and are available, and other necessary approvals have been obtained.

NOW, THEREFORE, in consideration of the mutual understandings and agreements set forth, RFTA and the VENDOR agree as follows:

ARTICLE 1 – TECHNICAL SPECIFICATIONS

The required Goods and Services are as enumerated and described in RFTA Solicitation No. 15-014, which document is referenced and incorporated as if fully set out herein.

ARTICLE 2 – COMPENSATION AND PAYMENT

The terms for Compensation and Payment are set forth in Exhibit B – Compensation and Method of Payment for Goods and Services, attached hereto and incorporated as if fully set out herein.

Notwithstanding anything to the contrary contained in this Contract, no charges shall be made to RFTA nor shall any payment be made to the VENDOR in excess of the amount for any work done without written approval in accordance with a budget adopted by the RFTA Board of Directors in accordance with provisions of the Colorado Revised Statutes. Moreover, the parties agree that RFTA is a governmental entity and that all obligations beyond the current fiscal year are subject to funds being budgeted and appropriated.

ARTICLE 3 – TERM OF CONTRACT

VENDOR shall commence provision of the Goods and Services on the Effective Date set forth above and agrees to adhere to the Schedule provided within the VENDOR's Proposal (Exhibit D). Time is of the essence in providing the Goods and Services. Time lost due to delays beyond the control of the VENDOR may be considered by RFTA and may result in a revised Schedule.

Any revision to the Schedule or extension of the Term of Contract must be in writing and signed by both parties to the Contract in the form of a Contract Amendment as set forth in Article 15 below.

ARTICLE 4 – TYPE OF CONTRACT

This Contract is a firm, fixed price contract with economic price adjustment based upon the U.S. Department of Labor/Bureau of Labor Statistics' Producer Price Index (PPI) Category 1413, "Truck and Bus Bodies." The total dollar amount of the Contract, as specified in Exhibit B – Compensation and Method of Payment, may only be modified by written agreement of both parties to the Contract in the form of a Contract Amendment as specified in Article 15 below.

ARTICLE 5 – CONTRACT AND CONTRACT DOCUMENTS

The Contract consists of the following documents: Contract for the Purchase of a Commuter Coach between RFTA and VENDOR; Exhibit A – Technical Specifications; Exhibit B – Compensation and Method of Payment for Goods and Services; Exhibit C – Request for Proposals 15-014 Accessible Commuter Coach; and, Exhibit D – Vendor Proposal, referenced herein. In addition, all modifications to the Contract after contract execution that are made in the form of Contract Amendments in accordance with Article 15 below shall be incorporated into and made part of the Contract.

The documents specified in the paragraph above form the Contract for the Purchase of Commuter Coaches between RFTA and VENDOR. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Contract Amendment as defined in Article 15 below.

ARTICLE 6 – ORDER OF PRECEDENCE OF CONTRACT DOCUMENTS

In the event of an inconsistency between any provisions of the documents that comprise the Contract as specified in Article 5 above, the inconsistency will be resolved by giving precedence to the Contract documents in the following order:

- (1) Contract Amendments;
- (2) Contract for the Purchase of a Commuter Coach;
- (3) Exhibit A – Technical Specifications;
- (4) Exhibit C – Request for Proposals; and
- (5) Exhibit D – Vendor's Proposal, including "RFTA Technical Proposal Overview – BAFO Due Nov 2, 2015" and "RFTA BAFO Due Nov 2, 2015"

ARTICLE 7 – VENDOR'S SERVICES AND RESPONSIBILITIES

The VENDOR agrees that it will furnish all of the technical, administrative, professional and other labor; all supplies, materials, equipment, printing, vehicles, office space and facilities, testing and

analyses and calculations; and all other resources necessary to provide the professional and technical services required by Exhibit A – Scope of Work and Technical Specifications.

ARTICLE 8 – PROJECT AUTHORIZATION AND PERFORMANCE

The **VENDOR** agrees to provide the required Goods and Services in accordance with the Project Schedule as agreed upon by RFTA and the **VENDOR** prior to contract execution. Following contract execution, RFTA will issue a “Notice to Proceed” to **VENDOR**, which shall authorize and direct **VENDOR** to begin work on the Contract. The **VENDOR** shall begin work on the Services not later than seven (7) calendar days after the effective date of the Notice to Proceed for the Contract, or three (3) calendar days after receipt of the Notice to Proceed, whichever is later, and shall complete all work within the Project Schedule.

ARTICLE 9 – FINAL COMPLETION

The Contract will not be completed until Notice of Final Acceptance has been issued and RFTA provides a written statement that the **VENDOR** has completed all requirements of the Contract. When RFTA deems the Goods and Services acceptable under the Contract and the Contract fully performed, RFTA will promptly issue a final Certificate for Payment stating that to the best of its knowledge, information and belief, and on the basis of RFTA’s observations and inspections, the Contract has been completed in accordance with the terms and conditions of the Contract document and that the entire balance found to be due the **VENDOR**, and noted in said final Certificate, is due and payable.

It is understood that any warranties do not begin until the Notice of Final Acceptance has been issued by RFTA.

ARTICLE 10 – RFTA PROJECT MANAGER

The RFTA Project Manager for this Contract is Kenny Osier, Director of Maintenance, unless otherwise designated in writing by the RFTA Chief Executive Officer (“CEO”).

ARTICLE 11 – INDEPENDENT CONTRACTOR

VENDOR shall provide the Goods and Services required under this Contract as an independent contractor, not as an agent or employee of RFTA. **VENDOR** has no authority to make any statement, representation, or commitment of any kind or to take any action binding upon RFTA, without RFTA’s written authorization. RFTA is only interested in the results achieved by the Goods and Services provided by the **VENDOR**; the manner of legally achieving those results is the responsibility of the **VENDOR**.

All of the Goods and Services required by this Contract shall be provided by **VENDOR** or under its supervision, and all personnel engaged in the provision of the Goods and Services shall be fully qualified.

Furthermore, it is understood that RFTA will not provide insurance or benefits of any nature to the **VENDOR**, its employees, or subcontractors.

The **VENDOR** agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with its performance of the Contract. The **VENDOR** further agrees that in the performance of the Contract, no person having any such interests shall be employed.

ARTICLE 12 – INVOICING AND PAYMENT

- (1) RFTA will pay **VENDOR**, as full and complete compensation for provision of the Goods and Services and assuming all duties, responsibilities, and obligations under the Contract, costs pursuant to Exhibit B – Compensation and Method of Payment for Goods and Services of this Contract.
- (2) In accordance with the requirements of Exhibit B – Compensation and Method of Payment for Goods and Services of this Contract, **VENDOR** shall submit to RFTA’s Project Manager complete, properly supported and audit-worthy invoices for the Goods and Services provided. **VENDOR** may submit no more than one (1) invoice to RFTA for every 30 calendar days of the Term of Contract.
- (3) RFTA will make payment to **VENDOR** in accordance with the Milestone Payment Schedule included in Exhibit B – Compensation and Method of Payment for Goods and Services, conditioned upon compliance by **VENDOR** with all other provisions of the Contract and **VENDOR** furnishing RFTA with the following:
 - (a) Vendor’s properly supported and audit-worthy invoices for the Goods and Services provided.
 - (b) Proof satisfactory to RFTA that the appropriate payment milestone has been completed.
 - (c) Proof satisfactory to RFTA that there are no unsatisfied claims and that no other indebtedness exists in connection with the Goods and Services.
 - (d) All documents, records, correspondence, and deliverables which **VENDOR** and other persons providing the Goods and Services are required to provide to RFTA under the Contract.
- (4) The invoices shall be in a form satisfactory to RFTA and shall reference this RFTA Contract No. 15-014. The invoices shall be submitted to RFTA’s Project Manager at the following address:

Original Invoice to: Roaring Fork Transportation Authority
0051 Service Center Drive
Aspen, CO 81611
Attn: Kenny Osier, Director of Maintenance
Copy to: procurement@rfta.com
- (5) Payment terms are 30 calendar days following receipt of a correct and audit worthy invoice by RFTA.
- (6) The invoices submitted to RFTA for payment shall include the applicable RFTA contract number; total invoice amount (including itemized amounts charged for labor and materials); total number of labor hours expended and labor billing rates; invoice billing period; description of the Goods and Services provided during the invoice billing period (including completed Deliverables); and any other information that RFTA may reasonably require.
- (7) The presentation of the invoices by **VENDOR** to RFTA as set forth in this Article constitutes an express warranty and representation by **VENDOR** to RFTA that the Goods and Services have progressed to the point indicated and that the quality of the Goods and Services provided is in accordance with this Contract.

- (8) No approval of any invoice, nor any payment, final or otherwise, nor any use or approval of Deliverables by RFTA shall itself constitute Acceptance of the Goods and Services.
- (9) RFTA may withhold all or part of any amounts due VENDOR to protect RFTA from a loss, including but not limited to, losses caused by the following:
 - (a) Failure of VENDOR to make proper payments to its subcontractors for Goods and Services.
 - (b) Failure of VENDOR to carry out and/or remedy the Goods and Services in accordance with the Contract.
 - (c) Vendor's breach of warranties.
- (10) By acceptance of final payment under the Contract, VENDOR waives any and all further claims against RFTA arising out of or in connection with provision of the Goods and Services provided under the Contract.
- (11) VENDOR shall maintain books and records supporting all amounts invoiced to RFTA. VENDOR shall preserve such books and records for the duration of this Contract and for three (3) years thereafter, during which time RFTA and its representatives shall have access to such books and records and shall have the right to make any copies thereof for the purpose of auditing or verifying invoices or for any other reasonable business purpose.
- (12) VENDOR warrants and represents that all books and records specified above shall be complete and accurate and that RFTA may rely on such records and books for any purposes. If VENDOR becomes aware that such records are inaccurate or incomplete, VENDOR will promptly notify RFTA in writing.

ARTICLE 13 – EMPLOYMENT OF AUTHORITY'S PERSONNEL

The VENDOR shall not employ any person or persons in the employ of RFTA for any work required by the terms of this Contract without the written permission of RFTA, except as may otherwise be provided for herein.

ARTICLE 14 – REVIEW OF WORK

Authorized representatives of RFTA may, at all reasonable times review and inspect the Goods and Services, financial reports, and data collected under the terms of this Contract and any amendments thereto. All reports, drawings, studies, specifications, estimates, maps, and computations prepared by or for the VENDOR pursuant to this Contract, shall be available to authorized representatives of RFTA for inspection and review at all reasonable times. Acceptance shall not relieve the VENDOR of its professional obligation to correct, at its expense, any of its negligent errors in the work.

ARTICLE 15 – CHANGES

- (1) RFTA shall have the right, without additional consent from VENDOR and without invalidating the Contract, to add, delete, or change the required Goods and Services.
- (2) Contract Amendments. RFTA shall issue Contract Amendments to make additions, deletions, or changes to the required Goods and Services. To initiate a Contract Amendment, RFTA shall send VENDOR a Request for Contract Amendment. Upon receipt, VENDOR shall prepare an estimate of the effects of the change on the Contract Budget and/or Term of Contract. Upon

agreement between VENDOR and RFTA on the effects of the change, RFTA will issue a Contract Amendment specifying any change to the Contract Budget or the Term of Contract.

- (3) The Contract Budget and/or Term of Contract shall be subject to adjustment only by Contract Amendment(s).

ARTICLE 16 – SUBSTANTIAL CHANGES

If, prior to the satisfactory completion of the Goods and Services required under this Contract, RFTA materially alters the scope, character, complexity, or duration of the Goods and Services from those required under the Contract, a Contract Amendment must be executed between the parties.

Minor changes in the Goods and Services which do not involve increased compensation, extensions of time or changes in the goals and objectives of the Goods and Services may be made by written notification of such change by either RFTA or the VENDOR with written approval by the other party.

ARTICLE 17 – INDEMNIFICATION

- (1) [INTENTIONALLY OMITTED].
- (2) Indemnification. To the fullest extent permitted by law, the VENDOR shall indemnify, defend, and hold harmless RFTA and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the provision of the Goods and Services, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Goods and Services) including the loss of use resulting there from, but only to the extent caused by the negligent act or omission of, or breach of contract by, the VENDOR, any subcontractor of the VENDOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. The Parties agree that nothing contained herein waives or is intended to waive any protections that may be applicable to RFTA under the Governmental Immunity Act, §24-10-101 et. seq., C.R.S., or any other rights, protections, immunities, defenses or limitations on liability provided by law, and subject to any applicable provisions of the Colorado Constitution and applicable laws.

Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Contract. RFTA may, if it so desires, withhold the payments due the VENDOR so long as shall be reasonably necessary to indemnify RFTA on account of such injuries.

In any and all claims against RFTA or any of its agents or employees by any employee of the VENDOR, any subcontractor of the VENDOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations under this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the VENDOR or any subcontractor under the Worker's Compensation acts, disability benefits acts or other employee benefits acts.

ARTICLE 18 – INSURANCE REQUIREMENTS

- (1) VENDOR'S INSURANCE
 - (a) Worker's Compensation Insurance. The VENDOR shall carry, at its own expense, valid Worker's Compensation Insurance throughout the entire term of its obligations to RFTA. A

copy of the policy or signed certificate of insurance shall be on file with RFTA at all times. Limits of liability shall be in conformance with applicable statutory requirements of the Worker's Compensation Laws.

(b) Commercial General Liability Insurance. The VENDOR shall carry and maintain, at its own expense, Commercial General Liability Insurance throughout the entire term of its obligations to RFTA. A copy of the policy or signed certificate of insurance shall be on file with RFTA at all times.

i. Limits of liability shall be a minimum of:

General Aggregate	\$2,000,000
Each Occurrence Limit	\$1,000,000
Personal/Advertising Injury	\$1,000,000

ii. The following coverages shall be included in the policy:

- a. Premises, to cover all claims for bodily injury (including but not limited to death, disease or sickness) and damage or destruction or loss of use of any tangible property.
- b. Liability assumed under an Insured contractor (including defense costs assumed under contract)
- c. Personal injury liability
- d. Independent Contractors.
- e. Additional Insured – Owners, Lessees or Contractors Endorsement, ISO Form 2010 or equivalent
- f. Additional Insured Completed Operations – Owners, Lessees or Contractors Endorsement, ISO Form 2037 or equivalent

(c) Business Automobile Liability. [INTENTIONALLY OMITTED]

(d) Umbrella/Excess Liability Insurance. The VENDOR shall carry and maintain, at its own expense and Umbrella (excess) Liability policy throughout the entire term of its obligations to RFTA. A copy of the policy or signed certificate of insurance shall be on file with RFTA at all times.

i. Policy shall be in excess of all underlying insurance including employer's liability.

ii. Limits of liability shall be a minimum of:

Each Occurrence	\$3,000,000
Products/Completed Operations	\$3,000,000
General Aggregate	\$3,000,000

iii. The products and completed operations coverage shall be maintained in effect for a period of eight (8) years after the date of the final acceptance of Work.

(e) Contractor's Pollution Liability. [INTENTIONALLY OMITTED]

(2) **ADDITIONAL INSURED.** RFTA shall be named as an additional insured under the Vendor's Commercial General and Umbrella Liability coverages. All of the coverages noted above shall apply on a primary basis with respect to claims made by RFTA.

- (3) BUILDERS RISK/PROPERTY INSURANCE. [INTENTIONALLY OMITTED]
- (4) GENERAL REQUIREMENTS
- (a) The **VENDOR** shall file two copies of the Certificate of Insurance of all policies with the Project Manager prior to commencement of the Work. If RFTA is damaged by failure of the **VENDOR** to maintain such insurance and to so notify RFTA, then the **VENDOR** shall bear all reasonable costs and properly attributable thereto.
- (b) Notice of Cancellation: Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to RFTA except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to RFTA's Representative. If the insurance company refuses to provide the required notices, the Vendor or its insurance broker shall notify RFTA of any cancellation, suspension, non-renewal or any insurance within seven (7) days of receipt of insurers' notification to that effect.
- (c) All insurance policies and/or certificates of insurance required under the Contract Documents shall be issued subject to the following stipulations by the Insurer:
- i. The clause entitled "Other Insurance Provisions" contained in any policy including RFTA as an additional insured shall not apply to RFTA.
 - ii. The insurance companies issuing the policy or policies shall have no recourse against the RFTA for payment of any premiums due or for any assessments under any form of any policy.
 - iii. Any and all deductibles contained in any insurance policy shall be assumed by and shall be the sole liability of the **VENDOR**.
- (d) Additional coverages or higher limits of liability may be required by RFTA should the scope or nature of the work change during the course of the Contract. All liability insurance policies required by this Article shall specifically provide that all coverage limits shall be exclusive of the costs of defense, including attorneys' fees.
- (e) The **VENDOR** shall be solely responsible for ensuring that all subcontractors obtain and maintain in force for the term of this Contract insurance policies sufficient to meet the minimum coverages required under the Contract Documents.
- (f) Nothing contained in this Article 18 shall be construed as limiting the extent of the Vendor's responsibility for payment of damages resulting from his operations under the Contract. **VENDOR** agrees that it alone shall be completely responsible for procuring and maintaining full coverage insurance to adequately insure against the risk attendant to the performance of this Contract. Any approvals of Vendor's insurance coverages by RFTA shall not operate to the contrary.
- (g) The risk of loss to any property to be provided by **VENDOR** to RFTA pursuant to this Contract shall be upon the **VENDOR** until said property has been delivered to RFTA.
- (h) Nothing in this Article 18 shall be deemed or construed as a waiver of any of the protections to which RFTA may be entitled under the Constitution of the State of Colorado or pursuant

to the Colorado Governmental Immunity Act, sections 24-10-101, et seq., C.R.S., as amended.

- (i) All insurance required under the Contract documents shall be obtained from financially responsible insurance companies and approved by RFTA and shall be maintained until the Vendor's Work is accepted by RFTA. The VENDOR shall provide certificates of insurance required under the Contract Documents before commencing any work. RFTA may, in writing, specifically indicate its reasonable approval or disapproval of each separate policy provided pursuant to the Contract Documents, should the policy(ies) not meet the obligations set out in this Article 18.
- (j) All policies under the Contract Documents which are scheduled to expire prior the time the Vendor's Work is finally accepted by RFTA shall be renewed prior to the scheduled expiration date and evidence of such renewal shall be submitted to RFTA for approval.
- (k) [INTENTIONALLY OMITTED]
- (l) All liability insurance policies required by this Article shall be occurrence-based policies.

ARTICLE 19 – SUBLETTING, ASSIGNMENT, OR TRANSFER

It is understood by the parties to this Contract that the work of the VENDOR is considered personal by RFTA. The VENDOR agrees not to assign, sublet, or transfer any or all of its interest in this Contract without prior written approval by RFTA; provided, however, that RFTA acknowledges and agrees that VENDOR'S affiliate, Motor Coach Industries Limited, will be manufacturing the coach shell that is the subject of this Contract.

RFTA reserves the right to review all subcontracts prepared in connection with the Contract, and the VENDOR agrees that it shall submit to RFTA any proposed subcontract documents together with subcontractor cost estimates for review and written concurrence of RFTA no later than five (5) business days in advance of their execution.

Any contract between the VENDOR and any subcontractor shall comply with all provisions of this Contract. RFTA's approval of any assignment, sublet, or transfer shall not release the VENDOR of any obligation under this Contract. As between RFTA and the VENDOR, the VENDOR shall be fully responsible for the acts and omissions of the subcontractors and persons either directly or indirectly employed by the VENDOR. Nothing contained in this Contract shall create any contractual relation between any subcontractor and RFTA.

All subcontracts in the amount of \$10,000.00 or more shall include the provisions set forth in this Contract.

ARTICLE 20 – TERMINATION

The rights and remedies of RFTA under this Article shall be non-exclusive, and shall be in addition to all the other remedies available to RFTA at law or in equity.

- (1) **Termination for Cause:** If the VENDOR fails to perform in the manner called for in this Contract or if the VENDOR fails to comply with any other provisions of this Contract, and fails to cure such default within thirty (30) days after receiving written notice from RFTA specifying the default(s), RFTA may terminate this Contract for cause. Termination shall be effected by serving a notice of termination on the VENDOR setting forth the manner in which the VENDOR

has breached or is in default. The VENDOR will only be paid the contract price for Goods and Services provided in accordance with the manner of performance set forth in this Contract.

If it is later determined by RFTA that the VENDOR has an excusable reason for not performing, such as a strike, fire, flood or other events which are not the fault of or are beyond the control of the VENDOR, RFTA, after setting up a new delivery of performance schedule, will allow the VENDOR to continue work or treat the termination as a termination of convenience.

Any such termination for breach or default shall not in any way operate to preclude RFTA from also pursuing all available remedies against the VENDOR and its sureties for said breach or default.

- (2) **Termination for Convenience:** RFTA may terminate this Contract for its convenience at any time by giving written notice to the VENDOR of such termination and specifying the effective date thereof, at least five (5) business days before the effective date of such termination. If the Contract is terminated by RFTA for convenience, the VENDOR will be paid compensation for those Goods and Services actually provided, and which VENDOR is unable to cancel. Partially completed tasks will be compensated for based on a signed statement of completion to be submitted by the VENDOR which shall itemize each task element and briefly state what work has been completed and what work remains to be done.
- (3) **Suspension of Performance:** RFTA shall have the right to suspend, delay or interrupt VENDOR from any part or all of the Work pursuant to the Contract. RFTA may, at any time, at will and without cause, suspend, delay, interrupt or terminate any part or all of the Work for any reason whatsoever for such period of time as RFTA may determine by giving written notice to VENDOR specifying the part of the Work to be suspended, delayed, interrupted or terminated and the effective date of such suspension, delay, interruption or termination. VENDOR shall continue to prosecute the part of the Work not suspended, delayed, interrupted or terminated and shall properly protect and secure the part of the Work so suspended, delayed, interrupted or terminated. If any part of the Work is so suspended, delayed, interrupted or terminated, VENDOR shall be entitled to payment of reasonable standby fees (or at RFTA's option, payment for demobilization and subsequent remobilization) and of costs directly associated with protecting and securing the affected Work. No payment shall be made by RFTA however, to the extent that such Work is, was, or could have been suspended, delayed, or interrupted under the Contract or an equitable adjustment is made or denied under another provision of the Contract. In case of such suspension, delay, interruption or termination, RFTA will issue a written contract directive to the VENDOR or authorize a Contract Amendment making any required adjustment to the date of Substantial Completion or the Vendor's compensation. For the remainder of the Work, the Contract shall remain in full force and effect.

ARTICLE 21 – APPLICABLE LAWS AND VENUE AND CONTRACT DISPUTES

This Contract shall be governed by the laws of the State of Colorado. This Contract shall be deemed entered into in Garfield and Pitkin County, State of Colorado, as RFTA is located in both counties. At RFTA's option, the location for settlement of any and all claims, controversies and disputes arising out of or related to this Contract or any breach thereof, whether by alternative dispute resolution or litigation, shall be proper only in either county.

ARTICLE 22 – CLAIMS AND DISPUTES

- (1) **Definition.** A claim is a demand or assertion by one of the Parties seeking, as a matter of right, adjustment of contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract. The term "claim" also includes other disputes between RFTA and the VENDOR arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate claims shall rest with the party making the claim.
- (2) **Time Limits on Claims.** Claims by VENDOR must be made within seven (7) days after occurrence of the event giving rise to such claim or within seven (7) days after the claimant first recognizes, or reasonably should have recognized, the condition giving rise to the claim, whichever is the later. An additional claim made after the initial claim has been resolved will not be considered unless submitted in a timely manner.
- (3) **Continuing Contract Performance.** Pending final resolution of a claim, including litigation, unless otherwise directed by RFTA in writing, the VENDOR shall proceed diligently with performance of the Contract and RFTA shall continue to make payments in accordance with the Contract.
- (4) **Waiver of Claims: Final Payment.** The making and acceptance of Final Payment shall constitute a waiver of claims by RFTA except those arising from:
 - a. Liens, claims, security interests, or encumbrances arising out of the Contract and unsettled;
 - b. Failure of the Work to comply with the requirements of the Contract;
 - c. Terms of special warranties required by the Contract; or
 - d. Faulty or defective work appearing after Final Completion.
- (5) **Claims for Concealed or Unknown Conditions.** [INTENTIONALLY OMITTED]
- (6) **Claims for Additional Cost.** If the Vendor wishes to make claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the work. Said notice shall itemize all claims and shall contain sufficient detail and substantiating data to permit evaluation of same by the Project Manager. No such claim shall be valid unless so made. Prior notice is not required for claims relating to an emergency endangering life or property.

If the Vendor believes additional cost is involved for reasons including but not limited to

- i. a written interpretation from the Project Manager,
- ii. an order by RFTA to stop the Work where the Vendor was not at fault,
- iii. a written order for a minor change in the Work issued by the Project Manager,
- iv. failure of payment by RFTA,
- v. termination of the Contract by RFTA,
- vi. RFTA's suspension, or
- vii. other reasonable grounds,

claims shall be filed in accordance with the procedure established herein. Any change in the Contract Sum resulting from such claim shall be authorized by change order or construction change directive.

- (7) **Claims for Additional Time.** If the Vendor wishes to make claim for an increase in the Contract Time, written notice as provided herein shall be given. The Vendor's claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one claim is necessary.
- (8) **Injury or Damage to Person or Property.** Subject to the Parties' obligations and responsibilities under the Contract Documents in general, and Article 11 hereof in particular, if either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter.

ARTICLE 23 – RESOLUTION OF CLAIMS AND DISPUTES

RFTA will review claims and take one or more of the following preliminary actions within 10 days of receipt of a claim:

- (1) request additional supporting data from the claimant;
- (2) submit a schedule to the Parties indicating when RFTA expects to take action;
- (3) reject the claim in whole or in part, stating reasons for rejection;
- (4) recommend approval of the claim by the other party; or
- (5) suggest a compromise.

RFTA may also, but is not obligated to, notify the surety, if any, of the nature and amount of the claim.

If a claim has been resolved, RFTA will prepare or obtain appropriate documentation. If a claim has not been resolved, RFTA will notify the parties in writing that RFTA's decision will be made within seven (7) days, which decision shall be considered advisory only and not binding on the parties in the event of litigation in respect of the claim. Upon expiration of such time period, RFTA will render to the parties RFTA's written decision relative to the claim, including any change in the Vendor's compensation or contract time or both. If there is a surety and there appears to be a possibility of Vendor's default, RFTA may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy. Claims by the VENDOR in opposition to such determination must be made within 21 days after RFTA has given notice of the decision.

If VENDOR does not agree on an adjustment of the Vendor's compensation or contract time, then the decision of RFTA shall be final and conclusive unless, within 15 days from the date of receipt of such copy, the VENDOR mails or otherwise furnishes to RFTA, a written request for RFTA's Chief Executive Officer ("CEO") to attempt settlement or resolve the controversy.

Pursuant to Section 3.14 of RFTA's Procurement Manual, RFTA's CEO is authorized upon written request, prior to commencement of an action in court or arbitration concerning the controversy, to settle and resolve any controversy.

Once RFTA receives the Vendor's written request for the RFTA CEO to attempt settlement or resolve the controversy, RFTA shall notify the VENDOR within 10 days that the CEO's decision will be made within seven (7) days, which decision shall state the reason for the action taken. The decision of the

CEO shall also inform the **VENDOR** of its rights to an administrative review by the RFTA Board of Directors, acting as the RFTA Procurement Appeals Board, as provided in Section 3.17 of RFTA's Procurement Manual.

The decision of the RFTA CEO shall be final and conclusive unless within 60 calendar days from the date of delivery of the decision to the **VENDOR**, the **VENDOR** delivers a written appeal to the RFTA General Counsel for consideration by the RFTA Procurement Appeals Board. The appeals proceeding shall be de novo.

The RFTA Procurement Appeals Board shall, at its next regularly scheduled monthly meeting, review the claims, hear evidence from **VENDOR** and RFTA and render a decision. The decision on the appeal by the RFTA Procurement Appeals Board shall be final and conclusive and shall become binding upon the **VENDOR** and the **VENDOR** shall abide by the decision unless the same is fraudulent or so grossly erroneous as necessarily to imply bad faith.

This provision can be affirmatively pled by RFTA in any suit involving a question of fact arising under this Contract as limiting judicial review of any such decision. In connection with any appeal proceeding under this clause, the **VENDOR** shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the **VENDOR** shall proceed diligently with the performance of the Contract and in accordance with the Appeals Board's decision.

In addition to the requirements of Article 26 in this Contract entitled "Notices", a copy of any written notices, appeals, and documents pertaining to a contract claim or dispute under this Article shall also be delivered to RFTA's Procurement Manager and General Counsel.

ARTICLE 24 – SEVERABILITY

If any provision of this Contract is held to be invalid, illegal, or unenforceable for any reason, the validity, legality, and enforceability of the remaining provisions of this Contract will not be adversely affected.

ARTICLE 25 – ASSIGNABILITY

- (1) **Succession.** The covenants herein contained shall, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.
- (2) **Assignability by RFTA.** This Contract shall be available for use by RFTA and other public agencies in Colorado. These agencies shall have the option of participating in this Contract at the same prices, terms and conditions as RFTA provided that RFTA agrees in writing to the assignment of contract rights.

Once assigned, each agency will enter into its own contract with the **VENDOR**. RFTA shall incur no financial responsibility in connection with contracts issued by another public agency. The public agency shall accept sole responsibility for placing orders or payments to the **VENDOR**.

- (3) **Assignability by **VENDOR**.** The **VENDOR** shall not assign this Contract in whole or in part, including the **Vendor's** right to receive compensation hereunder, without the prior written consent of RFTA; provided, however, that such consent shall not be unreasonably withheld with respect to assignments to the **Vendor's** affiliated or subsidiary companies, and provided, further, that any such assignment shall not relieve the **VENDOR** of any of its obligations under this

Contract. This restriction on assignment includes, without limitation, assignment of the Vendor's right to payment from its surety or lender.

ARTICLE 26 – NOTICES

- (1) All official notices and 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 date of actual receipt if mailed by U.S. Postal Service, postage prepaid, return receipt requested.
- (2) Notices and other communications shall be directed to the parties at the addresses listed below:

Notice to VENDOR:

Motor Coach Industries, Inc.
200 East Oakton Street
Des Plaines, Illinois 60018-1948
Attn: Patrick Scully, Executive Vice President, Sales and Marketing
Copy to: tim.nalepka@mcicoach.com

Notice to RFTA:

Roaring Fork Transportation Authority
0051 Service Center Drive
Aspen, CO 81611
Attn: Dan Blankenship, CEO
Copy to: procurement@rfta.com

- (3) Telephonic and electronic mail communications and facsimile transmittals may be used to expedite communications, but neither shall be considered official communications under this Contract unless and until confirmed in writing in accordance with this Article 26, paragraph (1) above.

ARTICLE 27 – LIQUIDATED DAMAGES

Time is of the essence in the provision of the Goods and Services under the Contract. In the event of Vendor's failure to provide the Goods and Services as specified in the Contract, it would be difficult to determine the exact amount of the loss or damages suffered by RFTA due to the Vendor's failure to perform the Work; therefore:

For every day that the Work is not completed after the agreed upon Milestone Payment Schedule, included in Exhibit B – Compensation and Method of Payment for Goods and Services, the VENDOR will be liable to RFTA in the amount of One Hundred and no/100 Dollars (\$100.00), as liquidated damages and not as penalty, for each and every day the VENDOR shall be in default. This clause will not apply to any failure to perform the Work due to acts of God, acts of the Public Enemy, acts of the Government (in either its sovereign or contractual capacity), fires, floods, strikes, and unusually severe weather; provided, that the VENDOR shall, within five (5) days of any such failure to perform, notify a designated representative of RFTA in writing of the causes of same and the facts relating thereto.

RFTA reserves that right to waive the liquidated damages for non-performance of the Work. A written request for said waiver shall be forwarded to the RFTA Procurement Manager as soon as the VENDOR is aware of circumstances that have caused the delay. Said request shall include a statement of cause and expected time delay.

It is expressly understood and agreed to by the Parties that the VENDOR shall not be entitled to damages or compensation and shall not be reimbursed for losses on account of delays resulting from any cause under this provision.

ARTICLE 28 – PERFORMANCE BOND

[INTENTIONALLY OMITTED]

ARTICLE 29 – SOFTWARE LICENSES AND ESCROW

[INTENTIONALLY OMITTED]

ARTICLE 30 – OWNERSHIP OF DOCUMENTS

The VENDOR agrees that all reports, drawings, computer disks, specifications, survey notes, estimates, maps, computations, and other data prepared by or for it under the terms of this Contract shall be delivered to, become, and remain the property of RFTA upon termination or completion of the work. RFTA shall have the right, at its sole risk, to use the same without restriction or limitation and without compensation to the VENDOR other than that provided for in this Contract. The VENDOR shall not have the right to use same for sale or other benefit without express written permission from RFTA.

ARTICLE 31 – PATENT AND RIGHTS IN DATA

If patentable discoveries or inventions should result from work described herein, all rights accruing from such discoveries or inventions will be the sole property of RFTA. However, RFTA agrees to and does hereby grant to the VENDOR an irrevocable, non-exclusive, non-transferable, and royalty-free license to practice each invention in the manufacture, use, and disposition according to law of any article or material and in use of any method that may be developed as a part of the work under this Contract.

ARTICLE 32 – COPYRIGHTING

The VENDOR and RFTA agree that any papers, interim reports, forms, and any other material which are part of the Work under this Contract are to be deemed a “work for hire,” as such term is defined in the Copyright Laws of the United States. As a “work made for hire”, all copyright interests in said works will vest in RFTA upon creation of the copyrightable work. If any papers, interim reports, forms, or other material which are a part of work under this Contract are deemed by law not to be a “work for hire”, any copyright interests of the VENDOR are hereby assigned completely and solely to RFTA. Publication rights to any works produced under this Contract are reserved by RFTA.

ARTICLE 33 – PUBLICATION AND PUBLICITY

Articles, papers, bulletins, data, studies, statistics, interim or final reports, oral transmittals, or any other materials reporting the plans, progress, analyses, results, or findings of work conducted under this Contract shall not be presented publicly or published without prior written approval by RFTA.

All releases of information, findings, and recommendations shall include a disclaimer provision and all published reports shall include that disclaimer on the cover and title page in the following form:

"The contents of this publication reflect the views of the author(s), who is (are) responsible for the facts and accuracy of the data presented herein. The opinions, findings, and conclusions in this publication are those of the author(s) and do not necessarily reflect the official views or policies of those of the Roaring Fork Transportation Authority or the Federal Transit Administration. This publication does not constitute a standard, specification, or regulation."

If any information concerning the Goods or Services, their conduct, results, or data gathered or processed should be released by the VENDOR without prior approval from RFTA, the release of same shall constitute grounds for termination of this Contract without indemnity to the VENDOR. In addition, the VENDOR shall indemnify and hold harmless RFTA, its officers, employees, and agents from any liability arising from such unauthorized release of data.

Any request for information directed to the VENDOR, pursuant to the Colorado Open Records Act, by the public shall be immediately redirected to RFTA for handling. RFTA shall be responsible for providing the response to requests under the Colorado Open Records Act. The VENDOR acknowledges and agrees that all records of the Services and the work, including records of the VENDOR and its subcontractors are subject to the Colorado Open Records Act, C.R.S. 24-72-201 through 24-72-309 et. seq.

ARTICLE 34 – COVENANT AGAINST CONTINGENT FEES

The VENDOR shall comply with all relevant requirements of all Federal, State, and local laws. The VENDOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the VENDOR, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the VENDOR, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, RFTA shall have the right to annul this Contract without liability, or in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

ARTICLE 35 – CONFLICTS OF INTEREST

RFTA employees and directors are bound by the RFTA Code of Ethics and Standards of Conduct, which were adopted by the RFTA Board of Directors on April 13, 2006. The RFTA Code of Ethics and Standards of Conduct prohibits RFTA employees and directors engaged in the award and administration of contracts, or any person acting on their behalf, from accepting, directly or indirectly, any gift with a value of more than a nominal amount, including meals or tickets to sporting events, from any person with whom the employee interacts on official RFTA business. Therefore, VENDOR, or its subcontractors or suppliers, may not make gifts or favors to any RFTA employee or director. It is a violation of the RFTA Code of Ethics and Standards of Conduct for any RFTA employee to accept any such gift or favor.

ARTICLE 36 – WARRANTIES

The VENDOR warrants that it shall use the highest professional principles and practice in the performance of its obligations under this Contract and that its performance shall reflect the highest professional knowledge, skill, and judgment. VENDOR further warrants and agrees that it, and any persons assigned by VENDOR, shall perform this Contract in compliance with all federal, state, and local laws, statutes, acts, ordinances, rules, regulations, codes, or standards.

ARTICLE 37 – NONWAIVER

No failure or waiver or successive failures or waivers on the part of either party, its successors or permitted assigns, in the enforcement of any condition, covenants, or article of this Contract shall operate as a discharge of any such condition, covenant, or article nor render the same invalid, nor impair the right of either party hereto, their successors or permitted assigns, to enforce the same in the event of any subsequent breaches by the other party hereto, its successors or permitted assigns.

ARTICLE 38 – MERGER

This Contract constitutes the entire agreement of the parties, all prior discussions, representations, and agreements being merged herein. The Contract may not be changed, modified, extended, or amended, nor any provision thereof waived, except by a written amendment executed by duly authorized representatives of the respective parties. The captions in this Contract are for convenience only and shall not affect the substantive meaning of any provision herein.

ARTICLE 39 – NO THIRD PARTY RIGHTS

Except as expressly set forth herein, the representations, warranties, terms, and provisions of this Contract are for the exclusive benefit of the parties hereto and no other person or entity shall have any right or claim against either party by reason of any of these terms and provisions or be entitled to enforce any of these terms and provisions against either party.

ARTICLE 40 – ATTACHMENTS

Any attachment or exhibit to this Contract will be incorporated into and made a part of this Contract. In the event of a conflict between the provisions contained in the body of this Contract and any attachment or exhibit, the terms in the body of this Contract will control.

ARTICLE 41 – SEPARATE COUNTERPARTS

This Contract may be executed in one or more counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall together constitute and be one and the same instrument.

ARTICLE 42 – IMMIGRATION COMPLIANCE

To the extent this Contract constitutes a public contract for services pursuant to C.R.S. 8-17.5-101 et seq., the following provisions shall apply:

- (1) VENDOR certifies that, prior to executing this Contract, it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in either the E-verify program administered by the United States Department of Homeland Security and the Social Security Administration (the “E-verify Program”), or the employment verification program administered by the Colorado Department of Labor and Employment (the “Colorado Verification Program”).
- (2) VENDOR shall comply with all reasonable requests by the Colorado Department of Labor and Employment made in the course of an investigation undertaken pursuant to the authority established in C.R.S. 8-17.5-102(5).

- (3) To the extent required by C.R.S. 8-17.5-102(1), by submitting a proposal or bid, the **VENDOR** certifies that at the time of proposal or bid submission it did not knowingly employ or contract with an illegal alien who will perform work under this Contract, and that the **VENDOR** will participate in the E-verify Program or the Colorado Verification Program in order to verify the employment eligibility of all employees who are newly hired for employment to perform work under this Contract.

ARTICLE 43 – REGULATORY COMPLIANCE

The work to be performed as the Services under this Contract may be financed, in part, by grants provided under programs of the Federal Transit Act, as amended, and as such is subject to the Terms and Conditions set forth in the grant agreements. **VENDOR** understands that Federal laws, regulations, policies, and related administrative practices applicable to the Contract may be modified from time to time. **VENDOR** acknowledges that the most recent of such Federal requirements will govern the Contract at any particular time, unless the Federal Government determines otherwise. Likewise, new Federal laws, regulations, policies, and administrative practices may be established after the Contract is executed and may apply to the Contract. The laws and regulations detailed in this Contract include, but are not limited to, those that will be applicable to the Contract. To the extent applicable, **VENDOR** shall comply with the Federal, State, and RFTA imposed requirements contained in this Contract.

ARTICLE 44 – NO GOVERNMENT OBLIGATION TO THIRD PARTIES

- (1) RFTA and **VENDOR** acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to RFTA, **VENDOR**, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.
- (2) The **VENDOR** agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

ARTICLE 45 – PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

- (1) The **VENDOR** acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Contract. Upon execution of the underlying Contract, the **VENDOR** certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, the **VENDOR** further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the **VENDOR** to the extent the Federal Government deems appropriate.
- (2) The **VENDOR** also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a

contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the VENDOR, to the extent the Federal Government deems appropriate.

- (3) The VENDOR agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

ARTICLE 46 – ACCESS TO RECORDS

The following access to records requirements apply to this Contract:

- (1) Where the Purchaser (RFTA) is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the VENDOR agrees to provide the Purchaser (RFTA), the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers, and records of the VENDOR which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions.
- (2) The VENDOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The VENDOR agrees to maintain all books, records, accounts, and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case VENDOR agrees to maintain same until the Purchaser (RFTA), the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- (4) FTA does not require the inclusion of these requirements in subcontracts.

ARTICLE 47 – FEDERAL CHANGES

VENDOR shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser (RFTA) and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Vendor's failure to so comply shall constitute a material breach of this Contract.

ARTICLE 48 – CIVIL RIGHTS

The following requirements apply to the underlying Contract:

- (1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the VENDOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the VENDOR agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

- (2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying Contract:
- (a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the VENDOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor", 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity", as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity", 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Contract. The VENDOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the VENDOR agrees to comply with any implementing requirements FTA may issue.
 - (b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the VENDOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the VENDOR agrees to comply with any implementing requirements FTA may issue.
 - (c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the VENDOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act", 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the VENDOR agrees to comply with any implementing requirements FTA may issue.
- (3) The VENDOR also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

ARTICLE 49 – DISADVANTAGED BUSINESS ENTERPRISES (DBE)

- (1) This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. RFTA's overall goal for DBE participation in federally funded contracts during FY 2016 (October 1, 2015 – September 30, 2016) is 3%. A separate contract goal has not been established for this Contract.
- (2) The VENDOR shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The VENDOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the VENDOR to carry out these requirements is a material breach of this Contract, which may result in the

termination of this Contract or such other remedy as RFTA deems appropriate. Each subcontract the VENDOR signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

- (3) The VENDOR will be required to report its DBE participation obtained through race-neutral means throughout the Term of Contract.
- (4) The VENDOR is required to pay its subcontractor(s) performing work related to this contract for satisfactory performance of that work no later than 15 calendar days after the Vendor's receipt of payment for that work from RFTA. In addition, the VENDOR may not hold retainage from its subcontractor(s).
- (5) The VENDOR must promptly notify RFTA, whenever a DBE subcontractor performing work related to this Contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The VENDOR may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of RFTA.

ARTICLE 50 – INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The VENDOR shall not perform any act, fail to perform any act, or refuse to comply with any RFTA requests which would cause RFTA to be in violation of the FTA terms and conditions.

ARTICLE 51 – ENERGY CONSERVATION

The VENDOR agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

ARTICLE 52 - DEBARMENT AND SUSPENSION

This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the VENDOR is required to verify that neither the VENDOR, its principals as defined at 49 CFR 29.995, or affiliates as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The VENDOR is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its proposal, VENDOR certifies as follows:

The certification in this clause is a material representation of fact relied upon by Roaring Fork Transportation Authority. If it is later determined that the VENDOR knowingly rendered an erroneous certification, in addition to remedies available to Roaring Fork Transportation Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The VENDOR agrees to comply with the requirements of 49 CFR 29, Subpart C throughout the Term of

Contract. The **VENDOR** further agrees to include a provision requiring such compliance in its lower tier covered transactions.

ARTICLE 53 – BUY AMERICA REQUIREMENTS

This contract is subject to the Buy America provisions of the Surface Transportation Assistance Act of 1982, as amended, and the Federal Transit Administration's implementing regulations found at 49 C.F.R. Part 661. The provisions of that Act and its implementing regulations are hereby incorporated by reference into this Contract.

ARTICLE 54 – FLY AMERICA REQUIREMENTS

The **VENDOR** agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The **VENDOR** shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The **VENDOR** agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

ARTICLE 55 – CLEAN WATER REQUIREMENTS

- (1) The **VENDOR** agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* The **VENDOR** agrees to report each violation to RFTA and understands and agrees that RFTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The **VENDOR** also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

ARTICLE 56 – CLEAN AIR REQUIREMENTS

- (1) The **VENDOR** agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* The **VENDOR** agrees to report each violation to RFTA and understands and agrees that RFTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (2) The **VENDOR** also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

ARTICLE 57 – CARGO PREFERENCE (USE OF UNITED STATES FLAG VESSELS)

The **VENDOR** agrees:

- (1) To utilize privately owned United States flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and

tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this section, to the extent such vessels are available at fair and reasonable rates of United States flag commercial vessels; and

- (2) To furnish within twenty (20) working days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipments originating outside of the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph above to RFTA (through the prime contractor in the case of a subcontractor's bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 7th Street, S.W., Washington, D.C. 20590, marked with appropriate identification of the project; and
- (3) To insert these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

ARTICLE 58 – LOBBYING

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

The Certification Regarding Lobbying submitted by VENDOR with its proposal is attached to this Contract in Exhibit D – VENDOR Response to RFP.

If a Standard Form LLL, "Disclosure Form to Report Lobbying," is required to be completed by the VENDOR or subcontractor at any tier, such disclosure form shall be furnished to RFTA.

ARTICLE 59 – AUTHORIZATION

The person or persons signing and executing this Contract on behalf of each Party do hereby warrant and guarantee that he/she or they have been fully authorized to execute this Contract and to validly and legally bind such Party to all the terms, performances and provisions herein set forth.

ARTICLE 60 – CONTRACT SUBJECT TO APPROPRIATION

RFTA's financial obligation under the Contract shall be contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of RFTA for any payment may arise until funds are made available for the Contract by RFTA's Board of Directors.

IN WITNESS WHEREOF, said parties have hereunto set their hand and affixed their seals the day and year above first written.

MOTOR COACH INDUSTRIES, INC.

**ROARING FORK TRANSPORTATION
AUTHORITY**

By: 
Patrick Scully (Dec 22, 2015)

By: 

Patrick Scully
Executive Vice President – Sales and Marketing

Dan Blankenship
RFTA Chief Executive Officer

Vendor Address:

200 East Oakton Street
Des Plaines, Illinois 60018-1948

Address:

2307 Wulfsohn Road
Glenwood Springs, Colorado 81601

**APPROVED AS TO FORM AND
LEGALITY**

By: 
Paul Taddune (Dec 22, 2015)

Paul Taddune, Esq.
RFTA General Counsel

EXHIBIT A
TECHNICAL SPECIFICATIONS

[RFTA Solicitation No. 15-014, Section 6 – Technical Specifications, fully conformed, is referenced and incorporated, as if fully set out herein.]

EXHIBIT B
COMPENSATION AND METHOD OF PAYMENT FOR GOODS AND SERVICES

1. Per Vehicle Cost and PPI Index Escalator. RFTA reserves the right to order buses and equipment over the five (5) year period beginning upon the date of contract award. The prices of such buses and equipment shall be at the prices quoted below. These prices shall remain firm/fixed for any orders issued by RFTA or other procuring agencies within a period of ninety (90) days of contract award.

The price(s) of any buses or equipment ordered by RFTA or other procuring agencies after the initial ninety (90) day firm/fixed price period shall be that quoted (Base Order Price) plus/minus any change in the U.S. Department of Labor/Bureau of Labor Statistics' Producer Price Index (PPI) Category 1413, "Truck and Bus Bodies."

The Base Order Price and CNG Option costs, itemized below, may only be modified by written agreement of both parties to the Contract in the form of a Contract Amendment as specified in Article 15 of this Contract. However, in no event will the price(s) for any purchase exceed, by more than five percent (5%) the previous purchase in the preceeding twelve (12) month period.

A. Base Order Price - \$567,430.00

B. CNG Option - \$734,167.00

If any significant equipment modifications are made, exclusive of cardinal changes, and in compliance with the terms of the Contract, RFTA and the VENDOR will enter into negotiations to determine the price of the equipment modification(s) and the impact of the modification(s) on the Base Order Price(s).

All future releases, including any equipment modification(s), will be priced based upon the revised Base Award Price¹. All manufacturer (OEM) chassis increases must be documented and provided to RFTA.

2. General Terms and Conditions

- A. For full and complete compensation for all work, materials, and services furnished under the terms of this Contract, the VENDOR shall be paid the fixed price specified in Exhibit B, Section 1 above.
- B. The fixed price amount for the Contract shall not be exceeded unless RFTA determines that there is a requirement for a substantial change in the scope, character, or complexity of the Work from that originally negotiated for the Contract and issues a Contract Amendment.
- C. RFTA shall pay the VENDOR for Goods and Services provided in accordance with Article 12 of the Contract.
- D. The VENDOR expressly agrees that it shall do, perform and carry out in a satisfactory and proper manner, as determined by RFTA, all of the Work described in the Contract.

¹ Base Award Price is that price for base vehicle or CNG Option that is enumerated above in Exhibit B, Part 1.

E. Should the work under the Contract be terminated for convenience by RFTA, the VENDOR shall be paid in accordance with Article 20 of the Contract.

3. Partial Payment. [INTENTIONALLY OMITTED]

4. Final Payment. Upon completion, delivery and acceptance of all work contemplated under the Contract, the VENDOR shall submit one (1) final invoice statement. At such time, payment of 100% of the invoiced amount shall be paid by RFTA to the VENDOR.

The VENDOR agrees that acceptance of this final payment for the Contract shall be full and final settlement of all claims arising against RFTA for work done, materials furnished, costs incurred, or otherwise arising out of this Contract and shall release RFTA from any and all further claims of whatever nature, whether known or unknown, for and on account of said Contract, and for any and all work done, and labor and materials furnished, in connection with same.

**EXHIBIT C
REQUEST FOR PROPOSALS**

[Solicitation No. 15-014 Accessible Commuter Coaches, fully conformed, is incorporated herein by reference.]

EXHIBIT D

PROPOSAL SUBMITTED BY VENDOR [VENDOR'S Proposal, including "RFTA Technical Proposal Overview – BAFO Due Nov 2, 2015" and "RFTA BAFO Due Nov 2, 2015," are referenced here and incorporated herein]











15-014 RFTA-MCI Commuter Coach

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