

**COUNTY OF SONOMA PURCHASE AGREEMENT FOR:
TEN (10) – 40’ LOW-FLOOR, ELECTRIC TRANSIT COACHES – (BP-32)**

The following is an Agreement, dated as of January 31, 2023, by and between the County of Sonoma, hereinafter referred to as “COUNTY,” and Proterra Operating Company, Inc., hereinafter referred to as “CONTRACTOR.”

WHEREAS, COUNTY seeks to purchase ten 40’ electric transit coaches for use by Sonoma County Transit.

WHEREAS, CONTRACTOR has demonstrated compliance in meeting federal requirements for a transit bus manufacturer and has been selected as a vendor by the state of California Department of General Services, Procurement Division for the provision of transit buses eligible for purchase with State, Local and Federal funds.

WHEREAS, CONTRACTOR has provided COUNTY a proposal for ten buses that meet Sonoma County Transit’s specifications and has priced the proposed buses per the California state purchase agreement.

WHEREAS, COUNTY has received sufficient funds from the Federal Transit Administration, the California STA (TIRCP) program and from the local Transportation Development Act (TDA) program to make this purchase possible.

WHEREAS, CONTRACTOR and COUNTY, for the consideration hereinafter named, agree as follows:

AGREEMENT

1. SCOPE OF WORK - CONTRACTOR shall deliver ten (10) - 40’ Low-Floor Electric powered transit coaches in accordance with specifications stated in CONTRACTOR’S proposal to COUNTY dated December 9, 2022, contained in Attachment “A1.” in accordance with State pricing per contract 1-19-23-17C.
2. TIME OF PERFORMANCE - CONTRACTOR shall complete all of the work called for under this Agreement, as more particularly described in Section 1 above, no earlier than July 1, 2024, and no later than August 31, 2024. Liquidated damages shall begin, per Section 11, on September 1, 2024.
3. CONTRACT PRICE - CONTRACTOR shall faithfully perform the work required under this Agreement for the sum of \$10,287,040.

Price paid for each bus provided under this Agreement shall be as follows:

a.	Heavy-Duty Low-Floor 40' Electric Transit Coach – Base price per California agreement pricing: Proterra – ZX5 Max:	\$899,000
b.	Sonoma County Transit requested options – per California agreement pricing of cost + 3%	\$127,824
c.	Total pricing per bus a + b:	\$1,026,824
d.	4.5625% State Sales Tax (on item c., excl ADA)	\$46,309
e.	HVIP credit (applied for by Proterra)	(\$120,000)
f.	Warranty (5-year)	\$66,957
f.	Delivery to Santa Rosa, California	\$8,614
	Total price for each delivered base vehicle (exclusive of any permitted adjustments)	\$1,028,704
	Total for ten (10) buses:	\$10,287,040

4. CONTRACTOR shall invoice COUNTY for each bus separately following delivery. Progress payments shall be made as detailed in Item E of this Any additions or subtractions from this Agreement shall be made only on written authority of authorized representatives of CONTRACTOR and COUNTY. COUNTY’s Transit Systems Manager is designated as the authorized representative of COUNTY.

5. COMPONENT PARTS OF AGREEMENT FOR PURCHASE OF TEN LOW-FLOOR ELECTRIC TRANSIT COACHES - This Agreement shall consist of the following documents, each of which is on file in the office of the COUNTY Transit Systems Manager, and which are incorporated into and made a part of the Agreement:
 - a. This Agreement.
 - b. Statewide Contract for the purchase of Proterra transit buses (State of California) – Supplement 5 dated 09-26-2022
 - c. CONTRACTOR’S proposed pricing per Attachment A1., dated December 9, 2022.
 - c. The following attachments from the State of California Statewide Contract for Zero-Emission Transit buses, manufactured by Proterra Operating Company, Inc.:
 - Attachment A2 – Contract Pricing per California Procurement Department Agreement,
 - Attachment B – Technical Specifications.
 - Attachment C – Proterra Base Bus Configuration for 40’ ZX5 Max bus
 - Attachment D – Technical Questionnaire for 40’ ZX5 Max bus
 - Attachment E – Warranty Requirements
 - Attachment E1- Summary of Standard Warranties
 - Attachment F – Training Requirements
 - Attachment G – FTA Clauses and Certifications
 - Attachment H – New Bus Manufacturing Inspection Guidelines
 - d. Additional terms and conditions for implementing California state contract for

purchase of Proterra buses.

Attachments listed above are included. To the maximum extent reasonable, the Agreement documents shall be interpreted so that the provisions in each document are harmonized and reconciled with the provisions in all other Agreement documents. However, in the event that there is a conflict among the Agreement documents that cannot be reasonably reconciled, the Agreement shall be interpreted so that the provision(s) in the Agreement document first listed above supersedes the conflicting provision(s) in the later-listed Agreement document above.

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

CONTRACTOR:

Proterra Operating Company, Inc.
1815 Rollins Road
Burlingame, CA 94010

Phone (478) 361-8870

COUNTY:

Sonoma County Transit
Attention: Transit Systems Manager
355 W. Robles Avenue
Santa Rosa, California 95407

Phone: (707) 585-7516

7. GOVERNING LAW - This Agreement shall be governed and construed in accordance with the laws of the state of California. The parties agree that the venue for any court proceeding relating in any way to this Agreement shall lie in Santa Rosa, California. CONTRACTOR and COUNTY acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. CONTRACTOR and COUNTY further acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
8. STATUS OF CONTRACTOR - The parties intend that CONTRACTOR, in performing the work hereinafter specified, shall act as an independent contractor and shall have control of the work and the manner in which it is performed. CONTRACTOR is not to be considered an agent or employee of COUNTY and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits COUNTY provides its employees.
9. PERFORMANCE - Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arises with respect to the performance of either party, the other may, in writing, demand adequate assurance of due performance; and until he receives such assurance may, if commercially reasonable, suspend any performance for which the agreed

return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

10. NONDISCRIMINATION - CONTRACTOR shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race creed, color, sex, age, marital status, physical or mental disability, national origin, or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by this reference.
11. MERGER- This writing and other documents referenced as part of this Agreement herein are intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to California Code of Civil Procedure §1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties. Provided the total funding level does not exceed the contract price plus a ten percent (10%) contingency, COUNTY Transit Systems Manager and CONTRACTOR may agree, in writing, to changes in or additions to the work plan.
12. REASONABLE LIQUIDATED DAMAGES - COUNTY and CONTRACTOR agree that the sum of Two Hundred Dollars (\$200.00) per bus shall be deducted from the CONTRACTOR's compensation as liquidated damages for each and every calendar day delay in the delivery of the bus beyond the time of delivery specified in this Agreement up to a maximum 60 days or \$12,000 per bus. For example, if a bus is delivered three weeks beyond the specified time of delivery, liquidated damages to be deducted amounts to \$4,200.00 (21 days late x \$200/bus x 1 bus = \$4,200.00.) COUNTY and CONTRACTOR acknowledge and agree that the sum per day is a reasonable estimate of the damages that COUNTY will suffer in the event of such a delay. COUNTY and CONTRACTOR agree that COUNTY may deduct any liquidated damages due COUNTY from the amounts otherwise due CONTRACTOR.

The CONTRACTOR may not be charged liquidated damages when the delay in bus delivery is caused by a Force Majeure event. A Force Majeure event includes strikes, lockouts, or other industrial disputes; explosions, epidemics, supply chain disruptions, new technology issues related to battery pack development, civil disturbances, acts of domestic or foreign terrorism, wars within the continental United States, riots or insurrections; embargos, natural disasters, including but not limited to landslides, earthquakes, floods or washouts; interruptions by government or court orders; declarations of emergencies by applicable federal, state or local authorities; and present or future orders of any regulatory body having proper jurisdiction.

CONTRACTOR shall document in writing to COUNTY, how a Force Majeure event is alleged to be impacting the CONTRACTOR's ability to complete this project on time.

13. INDEMNIFICATION - CONTRACTOR agrees to accept all responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release COUNTY, its officers, agents, and employees, from and against any and all actions, claims, damages, disabilities or expenses that may be asserted by any person or entity, including CONTRACTOR, arising out of or in connection with the performance of CONTRACTOR hereunder, whether or not there is concurrent negligence on the part of COUNTY, but excluding liability due to the sole active negligence or sole willful misconduct of COUNTY. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for CONTRACTOR or its agents under Workers' Compensation acts, disability benefits acts or other employee benefit acts.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the later date set forth below.

PROTERRA OPERATING CO., INC.

COUNTY OF SONOMA

By: _____

By: _____
Director, Sonoma County Public Infrastructure
Under authority granted by the Board of
Supervisors

APPROVED AS TO FORM FOR COUNTY:

By: _____
County Counsel

REVIEWED AS TO SUBSTANCE:

By: _____
Transit Systems Manager