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APPENDIX G

Ann Arbor Area Transportation Authority

Request for Proposal #2014-15 for Computer Aided Dispatch and Automated Item 1
Vehicle Location (CAD/AVL) Consultant



**ANN ARBOR AREA TRANSPORTATION AUTHORITY
REQUEST FOR PROPOSAL #2014-15**

for:

**COMPUTER AIDED DISPATCH and AUTOMATED
VEHICLE LOCATION(CAD/AVL) CONSULTANT**

ISSUING OFFICE:

ANN ARBOR AREA TRANSPORTATION AUTHORITY
Michelle Whitlow, CPPO, CPPB
Manager of Purchasing
2700 South Industrial Highway
Ann Arbor, Michigan 48104
T: 734-794-1813
F: 734-973-6338
Email: mwhitlow@theride.org

SECTION 1 - INTRODUCTION

1.1 OVERVIEW

Ann Arbor Area Transportation Authority (TheRide) is seeking a firm that will provide TheRide with consultation and advice, including purchasing and implementation plans, for hardware, software, and processes needed to meet the Computer Aided Dispatch and Automated Vehicle Location (CAD/AVL) needs.

1.2 PROCURING AGENCY AND CONTRACTING OFFICER

Procuring Agency: Ann Arbor Area Transportation Authority
2700 South Industrial Highway
Ann Arbor, MI 48104

Contracting Officer: Michelle Whitlow, CPPO, CPPB
Manager of Purchasing
T: 734-794-1813
F: 734-973-6338
E-mail: mwhitlow@theride.org

1.3 SOLICITATION SCHEDULE

The following is the solicitation schedule for this procurement.

Event	Date and Time
Invitation for Bid Issued	Tuesday, November 26, 2013
Questions and Requests for Clarifications Due	Friday, December 6, 2013 at 12:00 noon
AAATA responds to Questions and Requests for Clarifications	Friday, December 13, 2013
Bid Due Date	Monday, December 23, 2013 at 10:00 a.m.
Anticipated Award	No Later Than Friday, January 31, 2014

1.4 PROPOSALS

To be considered, submittals must be received by the due date and time. The receiving time in TheRide's lobby located at 2700 South Industrial Hwy, Ann Arbor, MI 48104 will be the governing time for acceptability of proposals. This solicitation does not commit TheRide to award a contract. TheRide reserves the right to accept or reject any or all proposals received as a result of this request.

1.5 COMMUNICATION

All communication, including questions, **MUST BE IN WRITING** and directed to Michelle Whitlow. Communication may be made via email or facsimile.

SECTION 2 – SCOPE OF WORK

SCOPE OF PROJECT:

Ann Arbor Area Transportation Authority (TheRide) is seeking a firm that will provide TheRide with consultation and advice; to plan for purchasing and implementation of hardware, software, and processes needed to meet the Computer Aided Dispatch and Automated Vehicle Location (CAD/AVL) needs of TheRide and its future growth in an efficient and cost effective manner; and assist TheRide in the implementation and use of the chosen technologies and processes to best position the organization to fulfill its Mission and accomplish its Vision. Technology solutions must be consistent with the Regional and National ITS Architecture and the project must be conducted using a Systems Engineering Methodology.

PROJECT DEPENDENCIES:

Two other time-bound goals are dependent on the outcome of this project

1. Operation of Demand Response
TheRide currently contracts for Demand Response service but will be bringing the reservation and scheduling in-house in 2015. In order to meet the timeline for this goal, a CAD/AVL solution must be chosen before May 2014.
2. Bus Procurement for Fixed Route service.
TheRide is in process of writing an RFP for Bus Procurement. The CAD/AVL system for the intended bus order of 20-29 vehicles must be determined by January 2015. However its implementation would not begin until June 2015 when four(4) of the new buses are planned for delivery (20-25 more new buses will be delivered in November 2015).

The following information is provided as background.

EXHIBITS:

1. Mission and Vision Statements
2. Summary of Five Year Transit Program
3. Brief description of current and required capabilities of any new system
4. Summary of existing processes

Exhibit 1- Mission and Vision

Mission:

It is the mission of the Ann Arbor Area Transportation Authority to provide useful, reliable, safe, environmentally responsible and cost-effective public transportation options for the benefit of the Greater Ann Arbor Community.

Vision:

The Ann Arbor Area Transportation Authority shall be the public transportation provider for Washtenaw County. Our customers shall see TheRide's expanded services as the preferred option for traveling to destinations within the county, as well as to and from the county. TheRide will offer appropriate modes of transportation with the most efficient use of resources. These services shall enhance the quality of life for Washtenaw County stakeholders while promoting the economy, safeguarding the environment, and strengthening communities.

Exhibit 2 - Five Year Transit Plan –Urban Core Expansion

Summary of proposed service changes year 1-5:

Fixed route Service Improvements:

- 44% increase in service-hours
- Longer hours
 - Weekdays end 1 to 1.5 hours later on most routes
- Weekends
 - Much later end times
 - Earlier start times
- Greater frequency on many routes
- New routes / more direct / re-designed routes
 - Increase in geographic coverage
 - More direct service

Dial-a-Ride (Enhanced A-Ride) Services:

- For seniors and people with disabilities
- Expansion of A-Ride service hours evenings and weekends, same as fixed-route service.
- Expansion of A-Ride to new destinations not currently served, including Ypsilanti Twp and Pittsfield Twp

Exhibit 3 – Description of current and required capabilities of any new system.

The following are capabilities TheRide currently has and wants in a new system. However, as this project progresses, additional, desired capabilities will likely be identified. The CAD/AVL system must integrate with existing Business Systems as described in this section. There are two phases to the implementation; Phase 1 – Demand-Response vehicle tracking and Phase 2 – Fixed Route, line haul bus tracking.

Phase 1 - Comprehensive Demand Response Management:

Currently TheRide's Demand Response (DR) service is outsourced to a local provider specializing in taxi service. TheRide's strategic direction for this service is to transition the scheduling and booking of rides and the tracking of vehicles back under management of TheRide (in-house). TheRide holds a license for a scheduling and booking software, Trapeze PASS (hosted currently at the DR provider's premises. It is used for Rider Eligibility only. The scheduling and booking are done within another software system owned by the DR provider. TheRide is in process of moving the hosting of PASS to TheRide's data center and the DR provider will be accessing PASS remotely via TheRide's virtual private network. The new AVL system chosen must be integrated with PASS. TheRide owns 6 DR vehicles that are operated by the DR provider. TheRide will be expanding the number of DR vehicles. All vehicles will be tracked by TheRide. At a minimum the solution shall consist of the following features:

- ADA Adherence
- Trip Demand Capacity of 500+ per day
- Client Certification
- Network Solutions
- **Brokerage Solutions (Single provider)**
- Customizable Reports/Billing
- CAD/AVL
- MDT Integration
- Mapping
- Automated Trip Batching
- Taxi Trips – Dispatching/Shared Rides
- Real Time Scheduling
- Standing/Subscription Order Solutions
- Automated (PC) Dispatch Solutions
- Medicaid Scheduling & Billing
- Automated call back/notification to riders

Phase 2 - Fixed Route:

TheRide currently owns 80 fixed route, line haul buses and 8 emergency contingency buses. The number of peak service vehicles is 67. Currently TheRide tracks fixed route buses using Trapeze's Transitmaster v27.1, an integrated Advanced Operating System (AOS) Computer-aided Dispatch and Automated Vehicle Locator services for fixed route buses and supervisor vehicles. Transitmaster communication system uses 800 mHz radio frequency technology with one voice and one data channel. Buses include a variety of Motorola, Johnson, Harris and Tait radios and a Transitmaster proprietary on-board computer. The Fare Collection System was updated in 2009 and it is the GFI Genfare Odyssey system connected to Transitmaster system to record latitude and longitude in farebox data. On-board surveillance technology is GE Kalatel on older buses and Safety Vision on newer buses (approx. 75% of the fleet).

TheRide prefers to use and maintain only one CAD/AVL system and intends to replace Transitmaster with the CAD/AVL system chosen for Demand Response. Currently TheRide

uses Trapeze FX and Blockbuster for creating the electronic route schedule. Any CAD/AVL system must be able to import the Blockbuster schedule data.

- **Communication System;** An improved radio communication system that supports computer aided dispatch (CAD) is required. Allows vehicles to call by route number, driver number, or run number. Provides backup of recorded data such as call time, and recording of the conversation. An emergency button is located near the driver of the vehicle that transmits data in the event of an emergency. A panic button immediately transmits bus number, route info, location, and immediately provides a priority display in the dispatch and security offices that includes a video and audio display. Transfer bus to bus without driver intervention Canned and free form text messaging – dispatch to vehicle and vehicle to dispatch.
- **Schedule Adherence;** Support for signal preemption. The main benefit of such a system beyond aiding on-time performance is the ability to log vehicle information at signals, enabling development of more accurate passenger schedules based on better data.
- **Drive train Systems Monitoring;** On board vehicle systems monitoring to provide real time data to the Maintenance Department. The system provides continuous updates as to all engine functions, such as engine and transmission temperatures, and other engine diagnostic information. (Does not work on vehicles 430-486)
- **Automatic Vehicle Location (GPS);** The system provides real-time vehicle location information, including the location and speed of the vehicle.
- **Automatic Passenger Counters;** automatically counts passenger boarding's and de-boarding's. (not installed on buses 461-486)
- **Automatic Enunciators;** Buses are equipped to automatically announce major stops, intersections, and transfer points, as required by the Americans with Disabilities Act. These systems are audible both inside and outside of the vehicles.
- **Transfer notification** bus to bus without dispatch intervention.
- **Destination Signage Updates;** Destination signs automatically update at predetermined route locations and integrated into the farebox system as well as the GPS system.

Functionality that uses the AOS system:

- **Real Time Bus Arrival Departure Information;** A system that provides real-time arrival and departure information for the fixed route system via a standard API (SiRi standard) and GTFS for schedule referencing. The system is linked to the TheRide web page so that customers can log in and see what time a bus is due to arrive, and its current

location. The information is available via cell phone, and is electronically posted and updated at the Blake Transit Center. We would like to implement a system where passengers can also travel to bus shelter and find out selected data without being required to talk to a customer service employee (by scanning a QR code on the bus stop sign).

Integrations of a new system that TheRide currently does not have but would like:

- **Bus Stop Audible Locators;** A system that will improve the availability of service for persons with visual impairments. The system should be designed so that persons can be issued remote transmitters that will activate sensors at bus stops with a preset range. The signals shall provide location data, as well as tell the customer what time a bus is due, and what direction the stop is.
- **On Board Security;** TheRide already has this but it is not integrated with AOS. An improved onboard safety system to include cameras with audio and video recording, capable of sending real time playback or live viewing in selected areas. Systems having the ability to monitor both biological and chemical substances may be considered, as such technologies are made available.
- **Automated Driver Log In;** Drivers should be able to log into the on-board AOS system using employee I.D. cards or employee Michigan Driver license. This should be integrated with the farebox so that only one login is required.
- **Vehicle Safety Sensors;** A system of detectors should be included to prevent the bus from moving in the event that a person or object is detected under or immediately adjacent to the vehicle.
- **Back Up Camera and Sensors;** A camera as well as detection system is desired to improve safety and allow for vehicle reversing.
- **Vehicle Warning Technology;** A system that will provide warning when a vehicle is being followed too closely, or there is a danger of a rear end type accident. (Speed too high for vehicle spacing)
- **On Board Terminals;** On board terminals for supervisors and paratransit drivers. The monitors and keyboards would allow for instantaneous schedule changes and updates as well as pick up and drop off time updates.
- **Internet Connections;** Persons utilizing the bus should be provided with connections to connect with the Internet, as well as cell phones on board.
- **On Board Video Displays;** Equip buses with on board video displays to display current news and public information announcements.

- **Operator Payroll integrated with bus schedule**
- **Turn-by-turn GPS information**, displayed on the Mobile Data Terminal (MDT), which leads the driver on the correct route. This can be adjusted in real-time in the event of detours.
- **Integrated Fixed Route and Demand Response scheduling and tracking**; Technology providing real-time information for backend system in coordination of transfers as well as for real-time customer information (especially T-Disp). Reference **Integrated Dynamic Transit Operations (IDTO)** from the DOT website:

http://www.its.dot.gov/factsheets/transit_connectedvehicle.htm

Exhibit 4 – Existing Processes

Fixed Route:

PROCESS FOR DISPATCHING OPERATIONS CONTROL CENTER

1. Boot computers (5:00am)
 - Midas BD (Payroll)
 - Manage absences (Vacation, Sick, Physicals, etc)
 - Manage Extra Board
 - Manage overtime
 - TM Bus Operations (Tabs: Roster, Pull In/Out, Transfer)
 - AVL Map
 - Transfer Locator
2. Assign buses (67 buses for AM pullout; 20 buses for PM pullout Mon-Fri, 14 buses for AM pullout; 5 for PM pullout SAT, 10buses for Sun pullout)
 - Buses hand entered on vehicle line-up map for easy location and driver's use
 - Bus numbers hand entered on vehicle flowchart for dispatcher's quick reference to driver run and block information
3. Monitor
 - Driver attendance and appearance (sign in sheet at window)
 - Pull out (via radio checks, visual observance and log in)
 - Adherence (via TM Operations and AVL map)
4. Manage
 - Transfers without driver intervention (via driver call-in, Transfer locator, confirmed by TM Operations transfer tab)
 - Accidents/Incidents
 - Breakdowns
 - Detours

5. Assign shuttle vehicles (17 vans are assigned throughout the day Mon-Fri, 7 vans on Sat)
 - Hand entered on vehicle shuttle log for easy tracking and driver's use
6. Tactics used when many buses are late due to conditions beyond TheRide's control
 - Backup trunk routes (routes that ply between towns); 4 Washtenaw, 5 Packard, 6 Ellsworth
 - Backup Ann Arbor locals (9, 12A & B, 13, 15, 17) when possible to maintain schedule
 - Curtail buses on same route to bring them back on time when possible.
7. Daily Reports
 - Sign In Roster Sheet
 - Absence/Miss-out List
 - Accident/Incident Reports
 - Vehicle Line up Sheet
 - Vehicle Block Sheet
 - Time Off/Cash-out Requests
 - Payroll

Demand Response process:

Advanced reserved trip requests are initially scheduled on an existing vehicle with Trapeze Pass. These trips must meet current ADA and TheRide trip standards. Qualifying trips are then exported from PASS the night before and imported into Cantech/XDS. On the day of service, from within the Cantech dispatch screen, a dispatcher assigns the trip (or trips) to a dedicated accessible vehicle (i.e. lift equipped vehicle required) via MDT manifest or dispatches the trip to an available independent taxi operator (i.e. non-accessible vehicles).

Same day trip requests (trips requested on the same day of travel) are entirely reserved and dispatched within the DRvendor Cantech/XDS software.

Technical Proposal Package

The following should be included in the submission of the proposal. Please provide three (3) copies.

1. Work completed in other similar projects. Include three former projects, and supply contact persons for each project, including reference name, title, address and contact number.
2. Provide an example of a recently completed Quality Assurance Plan for a relevant project.
3. List of persons that will be involved in the project, including individual resumes outlining the qualifications of the individual(s) to perform the project. Special emphasis should be placed on the experience of the Program Manager with regard to QA/QC responsibilities.

4. A statement of work and report on project approach. An outline of how the consultant will approach the project.

Cost Proposal Package

Please cost out each separately and provide three (3) copies.

1. Paratransit: Proposal of work effort and cost for Planning Only (Drafting Scope of Services for RFP, Evaluation and selection of technology). This part of the project has a firm completion date of April 30, 2014.
2. Paratransit: Proposal of work effort and cost for Planning (Drafting Scope of Services for RFP, Evaluation and selection of technology) and Implementation (hourly cost estimate) completion by January 2015.
3. Paratransit and Fixed Route: Proposal of work effort and cost for Planning Only (Drafting Scope of Services for RFP, Evaluation and selection of technology)
4. Paratransit and Fixed Route: Proposal of work effort and cost for Planning (Drafting Scope of Services for RFP, Evaluation and selection of technology) and Implementation (hourly cost estimate). Implementation could be in 2015 or 2017 depending on available funding.
5. The cost per hour of each discipline required for the project. Costs will be adjusted annually based on the CPI index for services based on a potential contract of up to ten years. A chart reviewing the hours required and the individuals required for the development of the initial study must be provided. Individual costs for implementation of the various phases of the project will be negotiated based upon the hourly rates listed in the proposal.

The top candidates will provide an oral presentation to the selection team.

Project Term

This project will be implemented, as the funding is available to study and implement each technology. This Project is for a period not to exceed five years.

SECTION 3 – TERMS AND CONDITIONS

3.1 PAYMENT TERMS

The Contractor will only be compensated for product delivered and accepted by TheRide. One hundred percent (100%) of each invoice will be paid to the Contractor within thirty (30) days of acceptance, after appropriate invoices have been submitted and approved.

TheRide will strive to meet the payment deadlines of a prompt payment discount whenever such a discount is offered.

3.2 INSURANCE REQUIREMENTS

The successful bidder will have ten (10) calendar days from the date of the Notice to Proceed to submit proof of insurance.

A. The Contractor shall purchase and maintain, throughout the term of the Contract, insurance from an insurance company authorized to do business in the State of Michigan that will protect Contractors, subcontractors, and the owner from all liability claims under the Contract. The insurance must state Ann Arbor Area Transportation Authority as additionally covered. The amount of insurance shall not be less than the following:

1. Workers' Compensation, disability benefit and other similar employee benefit acts in the amount required under State of Michigan law. A nonresident Contractor shall have insurance for benefits payable under Michigan's Workers' Compensation law for any employee resident of and hired in Michigan. The Contractor shall maintain coverage for employees of other states as mandated.

2. Comprehensive General Liability: \$1,000,000

Bodily injury and property damage combined single limit including personal injury and completed operations.

3. Automobile Insurance for Vehicles: \$1,000,000

Liability, including standard no-fault

B. The Contractor may not start work until evidence of all required insurance has been submitted and approved by TheRide. The Contractor must cease work if any of the required insurance is canceled or expires. One copy of the certificate of insurance shall be submitted to and approved by TheRide prior to the execution of Contract.

C. All policies providing contractor's insurance shall be endorsed to provide thirty (30) days written notice of cancellation or non-renewal to TheRide.

- D. The limits of liability may be provided by a single policy of insurance or by a combination of primary, excess or umbrella policies. But in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required.
- E. All policies of insurance presented, as proof of compliance shall be on forms and with insurance companies approved by TheRide. All such insurance policies shall be provided by insurance companies having Best's ratings of B+ or greater and VI or greater (B+/VI) as shown in the most current issue of Best's Key Rating Guide. Policies of insurance insured by insurance companies not rated by Best's or having Best's ratings lower than B+/VI will not be accepted as complying with the insurance requirements of the contract unless such insurance companies were approved in writing prior to award of the contract.
- F. In lieu of insurance, Vendors may also sign a Hold Harmless Agreement (see Appendix).

3.3 NO OBLIGATION BY THE FEDERAL GOVERNMENT

TheRide and the Contractor 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 TheRide, Contractor, or any other party (whether or not a part to that Contract) pertaining to any matter resulting from the underlying Contract.

3.4 FRAUD AND FALSE OR FRAUDULENT STATEMENTS

The Contractor acknowledges that the provision 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 Project. Accordingly, the Contractor 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 Contractor also 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 Contractor to the extent the Federal Government deems appropriate.

The Contractor 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 awarded by FTA under the authority of 49 U.S.C. § 5301 et seq., the Government reserves the right to impose the penalties of 18 U.S.C. §5301 et seq. on the Contractor, to the extent of the Federal Government deems appropriate.

3.5 PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

In accordance with Act No. 453, Public Acts of 1976, The contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or as a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Further, in accordance with Act No. 220, Public Acts of 1976 as amended by Act No. 478, Public Acts of 1980 the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants shall be regarded as a material breach of this contract.

The contractor will take affirmative action to insure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status, or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.

The contractor or their collective bargaining representative will send to each labor union or representative of workers with which they have a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments.

The contractor will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission, which may be in effect prior to the taking of bids for any individual state project.

The contractor will furnish and file compliance reports within such time as upon such forms as provided by the Michigan Civil Rights Commission, said forms may also elicit information as the practices, program, and employment statistics of each subcontractor as well as the contractor themselves, and said contractor will permit access to their books, records, and accounts by the Michigan Civil Rights Commission and/or its agent, for purposes of investigation to ascertain compliance with this contract and relevant with rules, regulations, and orders of the Michigan Civil Rights Commission.

In the event that the Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this agreement, the Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, and including the governing boards of institutions of higher education, until the contractor complies with said order of the Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Civil Rights Commission to participate in such proceedings.

The contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every subcontract or purchase order that said provisions will be binding upon each subcontractor or seller.

3.6 ACCESS TO RECORDS

The Contractor agrees to provide the Comptroller General of the United States, the U.S. Secretary of Transportation, or their duly authorized representatives' access to all records pertaining to this contract as requested to conduct audits and inspections. This requirement is applicable to all subcontractors at any tier as needed for compliance with Federal regulations.

3.7 INCORPORATION OF FTA TERMS

These terms and conditions include in part certain contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, as amended, 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 Contractor shall not perform any act, fail to perform any act, or refuse to comply with any TheRide requests that would cause TheRide to be in violation of the FTA terms and conditions.

3.8 CHANGES IN FEDERAL LAWS AND REGULATIONS

Contractor 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 agreement between TheRide and FTA that funds any part of this Contract, as they may be amended or promulgated from time to time during the term of

this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

3.9 CIVIL RIGHTS

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 Contractor 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 Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

The following equal 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. §5332, the Contractor 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 construction activities undertaken in the course of the Project. The Contractor 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 or pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor 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 Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- C. **Disabilities.** In accordance with Section 102 of the American with Disabilities Act, as amended, 42 U.S.C. §12112, the Contractor 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 Contractor agrees to comply with any implementing requirements FTA may issue.

SECTION 4 – PROPOSAL REQUIREMENTS

4.1 PROPOSER COMMUNICATIONS AND REQUEST

- A. All correspondence and/or contact concerning any aspect of this solicitation or offers shall be with the Contracting Officer. Proposers and their representatives shall not make any contact with or communicate with any members of TheRide, or its employees and consultants, other than the Contracting Officer concerning any aspect of this solicitation or offers. Proposers may be disqualified if any unsolicited contact related to this solicitation is made with an employee or representative of TheRide other than the Contracting Officer.
- B. At any time during this procurement up to the time specified, Proposer's may request in writing, a clarification or interpretation of any aspect, or a change to any requirement of the RFP or any addenda to the RFP. Requests may include suggested substitutes for specified items and for any brand names. Such written requests shall be made to the Contracting Officer. The Proposer making the request shall be responsible for its proper delivery to TheRide. TheRide will not respond to oral. Any request for a change to any requirement of the contract documents must be fully supported with technical data, test results, or other pertinent information evidencing that the exception will result in a condition equal to or better than that required by the RFP, without substantial increase in cost or time requirements. Any responses to such written requests shall be provided by TheRide in the form of addenda only. Only written responses provided as addenda shall be official and no other forms of communication with any officer, employee or agent of TheRide shall be binding on TheRide.
- C. The Proposer's Request for Clarifications must be received by date indicated in the Solicitation Schedule found in Section 1.3 of this RFP.
- D. If it should appear to a prospective Proposer that the Scope of Services, is not sufficiently described or explained in the RFP or Contract documents, or that any conflict or discrepancy exists between different parts thereof or with any federal, state, local law, ordinance, rule, regulation, or other standard or requirement, the Proposer shall submit a written request for clarification to TheRide within the time period specified.

4.2 ADDENDA TO THE RFP

- A. TheRide reserves the right to amend the RFP at any time. Any amendments to or interpretations of the RFP shall be described in written addenda. TheRide shall provide copies of addenda to all prospective Proposer's officially known to have received the RFP. Prospective Proposer's, or their agents, shall be responsible to collect the addendum at the address provided or receive the same otherwise. Failure of any prospective Proposer to receive the notification or addendum shall

not relieve the Proposer from any obligation under its proposal as submitted or under the RFP, as clarified, interpreted or modified. All addenda issued shall become part of the RFP. Proposers shall acknowledge the receipt of each individual addendum and all prior addenda in their proposals. Failure to acknowledge in their proposals receipt of addenda may, at TheRide's sole option disqualify the proposal. Proposers must notify TheRide promptly in writing of any address changes.

- B. If TheRide determines that the addenda may require significant changes in the preparation of proposals, the deadline for submitting the proposals may be postponed by the number of days that TheRide determines will allow Proposer's sufficient time to revise their proposals. Any new due date shall be included in the addenda.

4.3 CONDITIONS, EXCEPTIONS, RESERVATIONS OR UNDERSTANDING

- A. Proposals stating conditions, exceptions, reservations or understandings (hereinafter deviations) relating to the RFP may be rejected.
- B. Any and all deviations must be explicitly, fully and separately stated in the proposal by setting forth at a minimum the specific reasons for each deviation so that it can be fully considered and evaluated by TheRide. All deviations not found to be unacceptable shall be evaluated in accordance with the appropriate evaluation criteria and procedures, but may result in the Proposer receiving a less favorable evaluation than without the deviation.

4.4 AUTHORIZED SIGNATURES

Every proposal must be signed by the person or persons legally authorized to bind the Proposer to a contract for the execution of the work and services. Upon request of TheRide, any agent submitting a Proposal on behalf of a Proposer shall provide a current power of attorney certifying the agent's authority to bind the Proposer. If an individual makes the Proposal, their name, signature, and address must be shown. If a firm or partnership makes the proposal, the name and address of the firm or partnership and the signature of at least one of the general partners must be shown. If a corporation makes the proposal, the proposal shall show the name of the state under the laws of which the corporation is chartered, the name and address of the corporation and the title of the person signing on behalf of the corporation. Upon request of TheRide, the corporation shall provide a certified copy of the bylaws or resolution of the board of directors showing the authority of the officer signing the proposal to execute contracts on behalf of the corporation.

4.5 MODIFICATION OR WITHDRAWAL OF PROPOSALS

- A. A modification of any part of a proposal already received will be accepted by TheRide only if the modification is received prior to the Proposal Due Date.

- B. An Proposer may withdraw the entire proposal already received prior to the Proposal Due Date by submitting a written request for withdrawal executed by the Proposer's authorized representative. After the proposed Due Date, a proposal may be withdrawn only if TheRide fails to award the Contract within the proposal validity period or any agreed upon extension thereof. The withdrawal of a proposal does not prejudice the right of a Proposer to submit another proposal within the time set for receipt of proposals.
- C. This provision for modification and withdrawal of proposals may not be utilized by a Proposer as a means to submit a late proposal and, as such, will not alter TheRide's right to reject a late proposal.

4.6 PROPOSAL EVALUATION, NEGOTIATION AND SELECTION

A. General Information

- 1. Proposals will be evaluated, negotiated, selected and any award made in accordance with the criteria and procedures described in this section. Subject to TheRide's right to reject any or all proposals, the Proposer will be selected whose proposal is found to be most advantageous to TheRide, based upon consideration of the criteria. During the initial review of proposals, TheRide reserves the right to request clarification of minor issues from any Proposer to assure a complete understanding of their offer and to adjust any evaluations made with incorrect or unclear information.
- 2. TheRide will consider all the material submitted by the Proposer and related evidence TheRide may obtain to determine whether the Proposer is capable of and has a history of successfully completing contracts of the type solicited. A clear and complete response to the solicitation is critical so that the evaluation team may adequately understand all aspects of the proposal.
- 3. Proposer's shall furnish acceptable evidence of their ability to perform, such as financial stability and the ability to obtain the necessary personnel when requested by TheRide. Refusal to provide requested information may cause the proposal to be rejected.
- 4. The evaluation team will make such investigations as are considered necessary for complete evaluation. The evaluation panel will employ those evaluation criteria set forth in this solicitation or in addenda that may be issued. The evaluation criteria shall be deemed to include any unstated sub criterion that logically might be included within the scope of the stated criterion.
- 5. TheRide reserves the right to select proposals that are in a competitive range, conduct discussions, and request Best and Final Offers. TheRide

also reserves the right to make an award without discussions or requesting Best and Final Offers.

B. Opening of Proposals

Proposals will not be publicly opened. All proposals and evaluations will be kept strictly confidential, as allowed by law, throughout the evaluation, negotiation and selection process. Only the members of the evaluation team and other TheRide officials, employees and agents that have a legitimate interest will be provided access to the proposals and evaluation results during this period.

C. Evaluation Criteria

The selection of a successful proposer will be based on the following criteria:

1. Technical experience
2. Credentials of Proposed Consultant or Team
3. Project Approach
4. Overall quality and completeness of Proposal
6. Price

D. Evaluation Procedures

1. Proposers may be invited to interview with the Evaluation Team. The Evaluation Team reserves the right to interview the Proposer(s) it selects. The Evaluation Team has no obligation to interview any or all Proposer(s).
2. Evaluations will be made in strict accordance with all of the evaluation criteria and procedures. TheRide will select for any award the highest ranked proposal from a responsible, qualified Proposer, which does not render this procurement financially infeasible, and is judged to be most advantageous to TheRide based on consideration of the Evaluation Criteria.

E. Confidentiality of Proposals

1. Access to government records is governed by the State of Michigan. Except as otherwise required by the State of Michigan, TheRide will exempt from disclosure proprietary information, trade secrets and confidential commercial and financial information submitted in the proposal. Any such proprietary information, trade secrets or confidential commercial information, which a Proposer believes should be exempted from disclosure, shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information will not assure confidentiality. The specific proprietary information, trade secrets or confidential commercial and financial information must be clearly identified as such.

2. The Proposer shall submit proprietary information, trade secrets or confidential commercial and financial information, which a Proposer believes should be exempted from disclosure, in a separate volume specifically identified and marked as such as an appendix to the proposal.
3. Upon a request for records from a third party regarding this proposal TheRide, will notify in writing the party involved. The party involved shall indemnify TheRide's defense costs associated with its refusal to produce such identified information; otherwise, the requested information may be released.
4. TheRide shall employ sound business practices no less diligent than those used for TheRide's own confidential information to protect the confidence of all licensed technology, software, documentation, drawings, schematics, manuals, data and other information and material provided by Proposer's and the Contractor pursuant to the Contract which contain confidential commercial or financial information, trade secrets or proprietary information as defined in or pursuant to the State of Michigan against disclosure of such information and material to third parties except as permitted by the Contract. The Contractor shall be responsible for ensuring that confidential commercial or financial information, trade secrets or proprietary information, with such determinations to be made by TheRide in its sole discretion, bears appropriate notice relating to its confidential character.

4.7 RESPONSE TO PROPOSALS

A. Notice of Award

The contract shall be deemed to include all provisions of this RFP, and all provisions required in public contracts by local, state and federal law.

B. Notice to Unsuccessful Proposers

1. TheRide will inform unsuccessful Proposers who were within the competitive range at the time negotiations closed of the following information:
 - a. The number of proposals TheRide received.
 - b. The name of the successful Proposer.
2. TheRide will try to give the notice under this paragraph promptly after contract award. TheRide's failure to give that notice shall not be deemed to affect the validity of the contract.

C. Acceptance/Rejection of Proposals

1. TheRide reserves the right to reject any or all proposals for sound business reasons, to undertake discussions with one or more Proposer's, and to accept that proposal or modified proposal which, in its judgment, will be most advantageous to TheRide, price and other evaluation criteria considered. TheRide reserves the right to consider any specific proposal that is conditional or not prepared in accordance with the instructions and requirements of this RFP to be noncompetitive. TheRide reserves the right to waive any defects, or minor informalities or irregularities in any proposal that do not materially affect the proposal or prejudice other Proposer's.
2. If there is any evidence indicating that two or more Proposer's are in collusion to restrict competition or otherwise engaged in anti-competitive practices, the proposals of all such Proposer's shall be rejected and such evidence may be a cause for disqualification of the participants in any future solicitations undertaken by TheRide.
3. TheRide may reject a proposal that includes unacceptable deviations.

D. Single Proposal Response

If only one proposal is received and it is found by TheRide to be acceptable, a detailed price/cost proposal may be requested of the single Proposer. A price or cost analysis, or both, possibly including an audit, may be performed by or for TheRide of the detailed price/cost proposal in order to determine if the price is fair and reasonable. The Proposer has agreed to such analysis by submitting a proposal in response to this RFP. It should be recognized that a price analysis through comparison to other similar procurements must be based on an established or competitive price of the elements used in the comparison. The comparison must be made to a purchase of similar quantity, involving similar specifications and in a similar period. Where a difference exists, a detailed analysis must be made of this difference and costs attached thereto. Where it is impossible to obtain a valid price analysis, it may be necessary to conduct a cost analysis of the proposed price. A cost analysis is a more detailed evaluation of the cost elements in the Proposer's Offer. It is conducted to form an opinion as to the degree to which the proposed costs represent what the Proposer's performance should cost. A cost analysis is generally conducted to determine whether the Proposer is applying sound management in proposing the application of resources to the contracted effort and whether costs are allowable, allocable, and reasonable. Any such analyses and the results there from shall not obligate TheRide to accept such a single proposal; and TheRide may reject such proposal at its sole discretion.

E. Cancellation of Procurement

TheRide reserves the right to cancel the procurement, for sound business reasons, at any time before the Contract is fully approved and executed on behalf of

TheRide. TheRide will not pay Proposers any costs incurred in the preparation of a proposal responding to this RFP.

4.8 PROTEST PROCEDURES

a. General Procedures

- A. Any Proposer or Contractor whose direct economic interest would be affected by the award of the Contract or the failure to award the Contract may file a protest, claim or dispute with AAATA pursuant to these protest procedures prior to filing any protest, claim or dispute with the FTA.
- B. Protests, claims or disputes, where applicable, shall be in writing and filed with AAATA directed to the Chief Executive Officer, 2700 South Industrial Hwy, Ann Arbor, MI. 48104. Failure to comply with any of the requirements may result in rejection of the protest.

b. Protest Before Proposal Opening

- A. Protests shall be submitted in writing prior to the opening of proposals, unless the aggrieved person did not know and could not have known of the facts giving rise to such protest prior to the opening. In that case, the protest shall be submitted within five (5) calendar days after such aggrieved person knows or should have known of the facts giving rise to the protest. The protest shall clearly identify:
 - 1. The name, address, and telephone number of the protester
 - 2. The grounds for the protest, any and all documentation to support the protest and the relief sought
 - 3. Steps that have been taken to date in an attempt to correct the alleged problem or concern.

c. Protest After Award

- A. Any individual or entity may file a protest with AAATA alleging a violation of applicable federal, state law and/or AAATA policy or procedure relative to seeking, evaluating and/or intent to award a procurement Contract. In addition, any individual or entity may file a protest with AAATA alleging that AAATA has failed to follow its Procurement Protest Procedures. Such protest must be filed no later than five (5) calendar days from the notice of intent to award or non-award of the procurement Contract.
- B. protest, dispute, or claim with respect to the award of a Contract through solicitation of bids shall be submitted in writing within five (5) days of

notification of such award to the Chief Executive Officer for a decision. All claims shall clearly identify:

1. The name, address, and telephone number of the protester.
2. The grounds for the protest, any and all documentation to support the protest and the relief sought
3. Steps that have been taken to date in an attempt to correct the alleged problem or concern.

A written decision by the AAATA Chief Executive Officer stating the grounds for allowing or denying the protest will be mailed to the protestor prior to execution of the Contract. Such decision shall be final unless the Board of Directors accepts an appeal of the Chief Executive Officer's decision.

C. FTA Protest Procedures

FTA will only review protests regarding the alleged failure of AAATA to have written protest procedures, or the alleged failure to follow such procedures. An alleged violation on other grounds falls under the jurisdiction of the appropriate State or local administrative or judicial authorities. Alleged violations of a specific Federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with the Federal regulation. FTA will only review protest submitted by an intercede party as defined in FTA 4220.1F. FTA's decision on any appeal will be final.

4.9 PROPOSAL AS A CONTRACT

Each proposal will be submitted with the understanding that acceptance in writing by AAATA of the offer to furnish the products or services described shall bind the Proposer to furnish and deliver at the proposed price and in accordance with the specifications, terms and conditions, and other requirements detailed in the RFP or subsequent addendum.

4.10 WAIVER

The Proposer shall represent and warrant that they have sufficiently informed themselves in all matters affecting the performance of the work called for in the scope of this project; that they have checked the proposal for errors and omissions; that the prices stated in the proposal are correct and as intended by them and is a complete and correct statement of the prices for performing the work required.

4.11 CONTRACT AWARD AND EXECUTION

The acceptance of an Offer for award, if made, shall be evidenced by a notice of award of Contract in writing delivered in person or by registered mail to the Offeror whose Offer is accepted. No other act by AAATA shall evidence acceptance of an Offer. Such notice shall obligate said Offeror to commence performance under the Contract as specified in Production of Documents.

4.12 CONTRACT DOCUMENTS AND PRECEDENCE

The documents embodying the legally binding obligations between AAATA and the Contractor for the work to be performed under the Contract consist of the documents listed below. The Contract documents constituting the Contract between AAATA and the Contractor are intended to be complementary so that what is required by any one of them shall be as binding as if called for by all of them. In the event of any conflicting provisions or requirements within the several parts of the Contract Documents, they shall take precedence in the following order:

- A. The Contract, together with any written change orders or amendments executed subsequent to the Contract, attached exhibits which are part of the Contract as well as documents incorporated in the Contract by reference.
- B. AAATA's Specifications and all Terms and Conditions incorporated in the Contract by reference.
- C. The Contractor's Proposal, as accepted by AAATA.
- D. AAATA's Solicitation Package

4.13 CONTRACTOR CHANGES

Any proposed change in this Contract shall be submitted to AAATA for its prior approval.

4.14 WRITTEN CHANGE ORDERS

Oral change orders are not permitted. No change in this Contract shall be made unless the Contracting Officer gives prior written approval therefore. The Contractor shall be liable for all costs resulting from, and/or for satisfactorily correcting, any specification change not properly ordered by written modification to the Contract and signed by the Contracting Officer.

4.15 CHANGE ORDER PROCEDURE

As soon as reasonably possible but no later than thirty (30) calendar days after receipt of

the written change order to modify the contract, the Contractor shall submit to the contracting Officer a detailed price and schedule proposal for the work to be performed. This proposal shall be accepted or modified by negotiations between the Contractor and the Contracting Officer. At the time a detailed modification shall be executed in writing by both parties. Disagreements that cannot be resolved within negotiations shall be resolved in accordance with the contract disputes clause.

4.16 PRICE ADJUSTMENT FOR REGULATORY CHANGES

If price adjustment is indicated, either upward or downward, it shall be negotiated between AAATA and the Contractor for changes that are mandatory as a result of legislation or regulations that are promulgated and become effective after the Due Date. Such price adjustment may be audited, where required.

4.17 PARTIES

The parties to the contract are the Procuring Agency and the Offeror as set out in the accepted Offer.

4.18 SUCCESSION

The Contract will be binding on the parties, their successors, and assigns.

4.19 SPECIFICATIONS AND OFFER OMISSIONS

- 1 The Contractor shall have the responsibility of providing all services required to meet the requirements of the Scope of Services.
- 2 Any request, condition, exception, reservation, understanding or other deviation by Contractor not separately stated as required by Instructions to Offerors by completing the specified form(s) shall be invalid and shall not be binding on AAATA.

4.20 TERMINATION FOR CONVENIENCE

AAATA, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, AAATA shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

4.21 TERMINATION FOR DEFAULT

- 1 If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, AAATA may terminate this contract for default. AAATA shall terminate by delivering to the Contractor a Notice of

Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

- 2 If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for convenience of AAATA.

4.22 DISPUTES

- 1 Disputes arising in the performance of this Contract, which are not resolved by agreement of the parties, shall be decided in writing by the authorized representative of AAATA's Chief Executive Officer. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Chief Executive Officer. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Chief Executive Officer shall be binding upon the Contractor and the Contractor shall abide by the decision.
- 2 Unless otherwise directed by AAATA, Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- 3 Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts they are legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
- 4 Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the AAATA and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Michigan.
- 5 The duties and obligations imposed by the Contract Documents and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the AAATA, or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or consent in any breach hereunder, except as may be specifically agreed in writing.

4.23 COMMUNICATIONS

Communications in connection with this Contract shall be in writing and shall be delivered personally; electronic mail, or by facsimile; or by regular, registered, or certified mail addressed to the officer(s) or employee(s) of AAATA and of the Contractor designated to receive such communications. Telephone calls may be used to expedite communications but shall not be official communication unless confirmed in writing. Communications shall be considered received at the time actually received by the addressee or designated agent.

4.24 INDEMNIFICATION

- 1 The Contractor shall, to the extent permitted by law (1) protect, indemnify and save AAATA and its officers, employees and agents, including consultants, harmless from and against any and all liabilities, damages, claims, demands, liens, encumbrances, judgments, awards, losses, costs, expenses, and suits or actions or proceedings, including reasonable expenses, costs and attorneys' fees incurred by AAATA and its officers, employees and agents, including consultants, in the defense, settlement or satisfaction thereof, for any injury, death, loss or damage to persons or property of any kind whatsoever, arising out of, or resulting from, the negligent acts, errors or omissions of the Contractor, including negligent acts, errors or omissions of its officers, employees, servants, agents, subcontractors and suppliers; (2) upon receipt of notice and if given authority, shall settle at its own expense or undertake at its own expense the defense of any such suit, action or proceeding, including appeals, against AAATA and its officers, employees and agents, including consultants, relating to such injury, death, loss or damage. Each party shall promptly notify the other in writing of the notice or assertion of any claim, demand, lien, encumbrance, judgment, award, suit, action or other proceeding hereunder. The Contractor shall have sole charge and direction of the defense of such suit, action or proceeding. AAATA shall at the request of the Contractor furnish to the Contractor all reasonable assistance that may be necessary for the purpose of defending such suit, action or proceeding, and shall be repaid all reasonable costs incurred in doing so. AAATA shall have the right to be represented therein by advisory counsel of its own selection at its own expense.
- 2 The obligations of the Contractor shall not extend to circumstances where the injury, or death, or damages is caused solely by the negligent acts, errors or omissions of AAATA, its officers, employees, agents or consultants, including negligence in (1) the preparation of the Contract documents, or (2) the giving of directions with respect to the requirements of the Contract by written order. The obligations of the Contractor shall not extend to circumstances where the injury, or death, or damages is caused, in whole or in part, by the negligence of any third party operator, not including an assignee or subcontractor of the Contractor, subject to the right of contribution as provided in the next sentence below In case of joint

or concurrent negligence of the parties hereto giving rise to a claim or loss against either one or both, each shall have full rights of contribution from the other.

- 3 Nothing in this Contract shall be construed to waive AAATA's immunities or liability limits provided under applicable state or federal law.

4.25 NO OBLIGATION BY THE FEDERAL GOVERNMENT

AAATA and the Contractor 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 no a party to this Contract and shall not be subject to any obligations or liabilities to AAATA, Contractor, or any other party (whether or not a part to that Contract) pertaining to any matter resulting from the underlying Contract.

4.26 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTIONS

- 1 The Contractor acknowledges that the provision 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 Project. Accordingly, by signing the underlying Contract, the Contractor 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 Contractor also 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 Contractor to the extent the Federal Government deems appropriate.
- 2 The Contractor 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 awarded by FTA under the authority of 49 U.S.C. § 5301 et seq., the Government reserves the right to impose the penalties of 18 U.S.C. §5301 et seq. on the Contractor, to the extent of the Federal Government deems appropriate.

4.27 DEBARMENT AND SUSPENSION CERTIFICATION REQUIREMENTS

- 1 By signing and submitting this proposal, the prospective lower tier participant is providing the signed certification set out in Debarment and Suspension Certification.

- 2 The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, AAATA may pursue available remedies, including suspension and/or debarment.
- 3 The prospective lower tier participant shall provide immediate written notice to AAATA if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 4 The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact AAATA for assistance in obtaining a copy of these regulations.
- 5 The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by AAATA.
- 6 The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled Debarment and Suspension Certification Requirements and the certificate form, without modification, in all lower tier covered transactions and in all solicitations for lower tiered covered transactions.
- 7 A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List issued by U.S. General Service Administration.
- 8 Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

- 9 Except for transactions authorized under paragraph 62.5, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, AAATA may pursue available remedies including suspension and/or debarment.

4.28 LOBBYING CERTIFICATION AND DISCLOSURE STATEMENTS

In accordance with 31 U.S.C. (1352, and U.S. DOT regulations, "New Restrictions on Lobbying", 49 C.F.R., Part 20), the Contractor must have provided a certification to AAATA that the Contractor has not and will not use Federal appropriated funds to pay any person or organization to influence or attempt to influence an 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.

4.29 PUBLICITY

All publicity releases or releases of reports, papers, articles, maps or other documents in any way concerning this Contract, which the Contractor or any of its subcontractors desire to make for purposes of public announcement, in whole or in part, shall be subject to approval by the Authority's Manager of Community Relations, prior to release.

4.30 PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

In connection with the performance of work under this contract the Contractor agrees as follows:

- 1 In accordance with Act No. 453, Public Acts of 1976, The contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or as a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Further, in accordance with Act No. 220, Public Acts of 1976 as amended by Act No. 478, Public Acts of 1980 the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants shall be regarded as a material breach of this contract.
- 2 The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same.

- 3 The contractor will take affirmative action to insure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 4 The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status, or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.
- 5 The contractor or their collective bargaining representative will send to each labor union or representative of workers with which they have a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments.
- 6 The contractor will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission, which may be in effect prior to the taking of bids for any individual state project.
- 7 The contractor will furnish and file compliance reports within such time as upon such forms as provided by the Michigan Civil Rights Commission, said forms may also elicit information as the practices, program, and employment statistics of each subcontractor as well as the contractor themselves, and said contractor will permit access to their books, records, and accounts by the Michigan Civil Rights Commission and/or its agent, for purposes of investigation to ascertain compliance with this contract and relevant with rules, regulations, and orders of the Michigan Civil Rights Commission.
- 8 In the event that the Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this agreement, the Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, and including the governing boards of institutions of higher educations, until the contractor complies with said order of the Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Civil Rights Commission to participate in such proceedings.

- 9 The contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every subcontract or purchase order that said provisions will be binding upon each subcontractor or seller.

4.31 CONFLICT OF INTEREST

- 1 The Contractor, by entering into the Contract with AAATA, has thereby covenanted that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest, which conflicts in any manner or degree with the work, services, or materials required to be performed or provided under the Contract and that it shall not employ any person or agent having such interests. In the event that the Contractor or its agents, employees, or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such interest to AAATA and take action immediately to eliminate the conflict or to withdraw from this Contract, as AAATA may require.
- 2 The Contractor also certifies that to the best of its knowledge, no AAATA Board Member or employee, or employee or officer of any agency interested in the Contract has a pecuniary interest in the business of the Contractor or with the Contract and that no person associated with the Contractor has any interest that would conflict in any manner or degree with the performance of the Contract.
- 3 The Contractor, by entering into a Contract with AAATA further covenants: 1) that no person or selling agency except bona fide employees or designated agents or representatives of the Contractor has been employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and 2) that no gratuities were offered or given by the Contractor or any of its agents, employees or representatives, to any official, member, or employee of AAATA or other governmental agency with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this service.

4.32 COMPLETE AGREEMENT

The Contract resulting from this Solicitation, including exhibits and other documents incorporated in the Contract or made applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of the Contract between the Contractor and AAATA. The Contract supersedes all prior representations, understandings, and communications. The validity in whole or in part of any term or condition of the Contract shall not affect the validity of other terms or conditions. AAATA's failure to insist in any one or more instances upon the Contractor's performance of any term or condition of the Contract shall not be construed as a waiver or relinquishment of AAATA's right to such performance, or to future performance, of

such term or condition b the Contractor, and Contractor's obligation for performance of that term or condition shall continue in full force and effect.

APPENDIX A

REQUIRED FORMS and CERTIFICATIONS

PROPOSAL FORM

Proposer:

Name

Name of Authorized Representative

Signature of Authorized Representative

Title

Address, including Zip Code

Telephone Number

Fax Number

Please note if a prompt payment discount is offered.

_____ % @ _____ days

REPRESENTATIONS AND CERTIFICATIONS

REPRESENTATIONS

Proposers firm is as: (check or complete all applicable boxes)

- ☐ an individual
- ☐ a partnership
- ☐ a non-profit organization
- ☐ a corporation, incorporated under the laws of the State of _____
- ☐ a limited liability corporation (LLC)
- ☐ other, _____

CERTIFICATIONS

(check applicable box)

1. Covenants Against Gratuities:

Neither Proposer nor any of its employees, representatives or agents have offered or given gratuities or will offer or give gratuities (in the form of entertainment, gifts or otherwise) to any director, officer or employee of AAATA with the view toward securing favorable treatment in the awarding, amending, or the making of any determination with respect to Proposer selection or the performance of the Contract.

The undersigned Proposer certifies that the foregoing is true.

Date

Authorized Representative

PROPOSAL ADDENDA

Addenda:

The undersigned acknowledges receipt of the following addenda to the document:

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Failure to acknowledge receipt of all addenda may cause the bid to be considered non-responsive to the solicitation. Acknowledged receipt of each addendum must be clearly established and included with the offer.

The undersigned understands that any conditions stated above, clarifications made to above or information submitted on or with this form other than that requested, will render bid unresponsive.

(Name of Individual, Partnership or Corporation)

(Address)

(Authorized Signature)

(Title)

(Date)

(Telephone)

AGREEMENT OF SERVICES

TO: Ann Arbor Area Transportation Authority
2700 South Industrial Hwy.
Ann Arbor, MI 48104

The undersigned hereby agrees to furnish the services as listed below in accordance with the specifications on file with the Ann Arbor Transportation Authority, which have been carefully examined and attached hereto.

Signed: _____

Printed Name: _____ Title: _____

Date: _____ Telephone: _____

For (Company): _____

Address: _____

CERTIFICATION OF PRIMARY PARTICIPANT REGARDING DEBARMENT

All primary participants in contracts over \$25,000 shall be required to execute the certification listed below.

The Primary Participant (applicant for an FTA grant or cooperative agreement, or potential contractor for a major third party contract), _____ certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(If the primary participant (applicant for an FTA grant, or cooperative agreement, or potential third party contractor) is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.)

THE PRIMARY PARTICIPANT (APPLICANT FOR AN FTA GRANT OR COOPERATIVE AGREEMENT, OR POTENTIAL CONTRACTOR FOR A MAJOR THIRD PARTY CONTACT), CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

The undersigned chief legal counsel for the _____ hereby certifies that
(entity)
the _____ has authority under State and local law to comply with the subject
(entity)
assurances and that the certification above has been legally made.

LOBBYING

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]

Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or proposal 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 or State legislature, 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 AAATA.

49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans and Cooperative Agreements

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress or State Legislature, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official: _____

Name and Title of Contractor's Authorized Official: _____

Date: _____

DISCLOSURE OF LOBBING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352. For this RFQ, in Boxes 1, 2 and 3 – circle A; in Box 4 – put the Bidding firm's name and address; Boxes 5, 7, 8 and 9 – leave blank; Box 6 has already been completed; Box 10 – put NA if Bidding firm does NOT participate in lobbying; Box 11 – read and complete neighboring box.

<p>1. Type of Federal Action: (circle one)</p> <ul style="list-style-type: none"> a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance 	<p>2. Status of Federal Action: (circle one)</p> <ul style="list-style-type: none"> a. bid/offer/application b. initial award c. post-award
<p>3. Report Type: (circle one)</p> <ul style="list-style-type: none"> a. initial filing b. material change <p>For Material Change Only: year _____ quarter _____ date of last report _____</p>	<p>4. Name and Address of Reporting Entity:</p> <p>Prime</p> <p>Sub-awardee</p> <p>Tier _____, <i>if known:</i></p> <p>Congressional District, <i>if known:</i></p>
<p>5. If Reporting Entity in No. 4 is a Sub-awardee, Enter Name and Address of Prime:</p> <p>Congressional District, <i>if known:</i></p>	<p>6. Federal Department/Agency:</p>
<p>A. Federal Program Name/Description: CFDA Number, <i>if applicable:</i></p>	<p>8. Federal Action Number, <i>if known:</i></p>
<p>9. Award Amount, <i>if known:</i></p> <p>\$ _____</p>	<p>10. a. Name and Address of Lobbying Registrant (<i>if individual, last name, first name, MI</i>):</p> <p>b. Individual Performing Services (<i>including address if different from No. 10a</i>) (<i>last name, first name, MI</i>):</p>
<p>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not</p>	<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No.: _____</p> <p>Date: _____</p>

more than \$100,000 for each such failure.	
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

CERTIFICATE OF NON COLLUSION

I hereby swear (or affirm) under penalty for perjury:

1. That I am the Proposer or an officer or employee of the proposing corporation having authority to sign on its behalf (if the Proposer is a corporation);
2. That the attached proposal has been arrived at by the Proposer independently and have been submitted without collusion and without any agreement, understanding, or planned course of action with any other vendor of materials, supplies, equipment, or service described in the Request for Proposal, designed to limit independent proposals or competition;
3. That the contents of the proposal has not been communicated by the Proposer or its employees or agents to any person not an employee or agent of the Proposer or its surety on any bond furnished with the Proposer, and will not be communicated to any such person prior to the official opening of the proposals; and,
4. That I have fully informed myself regarding the accuracy of the statement made in this affidavit.

SIGNED _____

FIRM NAME _____

Subscribed and sworn to before me this _____ day of _____, 20____

Notary Public

My commission expires _____,

Proposers E.I. Number _____
(Number used on employer's Quarterly Federal Tax Return)

AFFIRMATIVE ACTION PLAN CERTIFICATION

The undersigned hereby certifies that the business is in compliance with all federal affirmative action requirements applicable to the business.

Signature: _____

Typed Name: _____

Company: _____

Title: _____

Date: _____

AAATA LIVING WAGE POLICY

1.00 PURPOSE

1.01 *It is the purpose of this Living Wage Policy*

- *to increase the quality and reliability of services procured for AAATA or provided to AAATA by contractors, Proposers, and grantees by promoting higher productivity and retention of employees working on AAATA contracts and grants;*
- *to use AAATA spending to encourage the development of jobs paying wages above the poverty level;*
- *to use AAATA spending and procurement of services to require covered employers that provide services to AAATA or that receive certain other forms of financial assistance from AAATA for providing services to AAATA to pay their employees a "Living Wage," sufficient to meet their employees' basic subsistence needs in the Ann Arbor urbanized area;*
- *to raise the income of low-income working people and their families employed by covered employers on AAATA contracts or grants;*
- *to permit hardship exemptions for certain non-profit employers from the provisions of this Policy;*
- *to provide incentives for covered employers to provide health insurance to their employees;*
- *to monitor and enforce the requirements of this Policy; and for other purposes.*

1.02 *This Policy is not intended to contradict any existing federal, state, county, or city laws, regulations, or ordinances, and provides for payment of living wages only to employees of covered employers. This Policy does not affect the wages paid by any business or individual that chooses not to provide services covered by this Policy to AAATA, or that chooses not to accept AAATA grants falling within this Policy's coverage.*

2.00 DEFINITIONS

For purposes of this Policy, the following definitions shall apply:

- 2.01 *Contractor/Proposer is a person or entity that has a contract with AAATA primarily for the furnishing of services where the total amount of the contract or contracts with AAATA exceeds \$10,000.00 for any 12-month period. "Contractor/Proposer" does not include a person or entity that has a contract with AAATA primarily for the purchase of goods or property or for the lease of goods or property to or from AAATA.*
- 2.02 *Covered employee means a person employed by a covered employer to perform*

services which are covered or funded by the contract with or grant from AAATA; provided, however, that persons who are employed pursuant to federal, state or local laws relating to prevailing wages shall be exempt from this Policy

- 2.03 *Covered employer means a contractor/Proposer or grantee that has not been granted an exemption from this Policy.*
- 2.04 *Employee means an individual who provides personal services performed for wages under any contract calling for the performance of personal services, whether written or oral, express or implied. The term "employee" does not include any individual who volunteers to perform services for an employer if:*
- a. *The individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and*
 - b. *Such services are not the same type of services which the individual is employed to perform for such employer.*
- 2.05 ***Employee health benefits*** or ***health benefits*** means providing health care benefits for employees (or employees and their dependents) at employer cost or making an employer contribution toward the purchase of such health care benefits for employees (or employees and their dependents) of at least 50% of the cost for such benefits, provided that matching contributions from the employee shall not exceed 20% of the employee's average weekly wages.
- 2.06 ***Grant*** means any form of financial assistance to a "***Grantee***" (as set forth in item #7 below). "***Grant***" does not include financial assistance used for the purchase or lease of property or other non-personnel costs.
- 2.07 ***Grantee*** is a person or entity that is a recipient of any financial assistance from AAATA in the form of any federal, state or local grant program administered AAATA, bond financing, direct grant, or any other form of financial assistance that exceeds \$10,000.00 for any 12-month period, including any contractors, subcontractors, or leaseholders of the grantee whose contract, subcontract or lease with the grantee exceeds \$10,000.00 for any 12-month period.
- 2.08 ***Living wage*** means a wage equal to the levels established in this Policy.
- 2.09 ***Person*** means any individual, co-partnership, corporation, association, club, joint adventure, estate, trust, and any other group or combination acting as a unit, and the individuals constituting such group or unit.
- 2.10 ***\$10,000.00 for any 12-month period*** is computed by taking the total amount of the contract, grant or loan and dividing it by the number of months the contract, grant or loan covers.

3.00 APPLICABILITY

- 3.01 *This Policy shall apply to any person that is a contractor/Proposer or grantee as defined above that employs or contracts with five (5) or more individuals; provided, however, that this Policy shall not apply to a non-profit contractor/Proposer or non-profit grantee unless it employs or contracts with twenty (20) or more individuals.*
- 3.02 *This Policy shall apply to any grant, contract, or subcontract or other form of financial assistance awarded to or entered into with a contractor/Proposer or grantee after the effective date of this Policy and to the extension or renewal after the effective date of this Policy of any grant, contract, or subcontract or other form of financial assistance with a contractor/Proposer or grantee.*

4.00 LIVING WAGES REQUIRED

- 4.01 *Every contractor/Proposer or grantee, as defined in this Policy, shall pay its covered employees a living wage no less than the living wage as established by ordinances of the City of Ann Arbor. The living wage, as established by the City of Ann Arbor, will take into account whether the employer provides health care benefits (as defined in this policy) to its covered employees, or does not provide such health care benefits.*
- 4.02 *In order to qualify to pay the living wage rate for covered employers providing employee health care under this Policy, a covered employer shall furnish proof of said health care coverage and payment thereof to AAATA's Manager of Purchasing or his/her designee.*
- 4.03 *The amount of the living wage established by this Policy for all existing and future contracts shall be adjusted by AAATA and all of its covered employers no less than ninety (90) days following any change in the Living Wage Ordinance as established, changed, or adjusted by the City of Ann Arbor.*

5.00 EMPLOYEES COVERED

- 5.01 *A covered employer shall pay each of its employees performing work on any covered contract or grant with AAATA no less than a living wage as defined in Section 4.00 above.*

6.00 EXEMPTIONS

Notwithstanding any other provisions in this Policy, the following exemptions shall apply:

- 6.01 *For any contract or grant, the AAATA Board of Directors may grant a partial or complete exemption from the requirements of this Policy if it determines one of the following:*

- a. To avoid any application of this Policy that would violate federal, state or local law(s); or
 - b. *The application of this Policy would cause demonstrated economic harm to an otherwise covered employer or grantee that is a non-profit organization, and the AAATA Board of Directors finds that said harm outweighs the benefits of this Policy.*
- 6.02 *A loan shall be considered a grant under this ordinance only to the extent that a loan is provided at below market interest rates and then only the difference between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan, shall be treated as financial assistance under this Policy.*
- 6.03 *A payment of funds for the purpose of purchasing services, property, or goods on behalf of individuals being assisted by a covered employer or potentially covered employer (known as a "pass through" grant) that is used for said purchases shall not be considered a grant; such funds shall be considered a grant only to the extent that any such funds are retained by the covered employer or potentially covered employer to provide financial assistance and support to its own operations.*

7.00 MONITORING AND ENFORCEMENT

- 7.01 Every covered employer shall agree to the payment of a living wage as a condition of entering into or renewing a covered contract or grant with AAATA, shall agree to post a notice regarding the applicability of this Policy in every work place or other location in which employees or other persons contracted for employment are working, and shall agree to provide payroll records or other documentation as deemed necessary within ten (10) business days from the receipt of a request made by AAATA. All AAATA contracts and grants covered by this Policy shall provide that a violation of the living wage requirements of this Policy shall be a material breach of the contract or grant.
- 7.02 *Each covered employer shall submit to AAATA's Manager of Purchasing information regarding number of employees and applicable wage rates of its employees covered by this Chapter in such manner as requested by that office. At the request of AAATA's Manager of Purchasing, any contractor/Proposer or grantee shall provide satisfactory proof of compliance with the living wage provisions of this Policy*
- 7.03 *Any person may submit a complaint or report of a violation of this Policy to the AAATA Chief Executive Officer's Office. Upon receipt of such a complaint or report, AAATA's Manager of Purchasing shall investigate to determine if there has been a violation of this Policy.*

8.00 PENALTIES AND ENFORCEMENT

- 8.01 A violation of any provision of this Policy will be considered a material breach of the contract between AAATA and the employer. As satisfaction of this breach, AAATA may require the employer to pay all affected employees the difference between wages actually paid and the living wage that should have been paid, together with interest, and other relief deemed appropriate. The employer shall have a period of time not to exceed sixty days from the issuance by AAATA of a notice of breach due to a violation of this Policy to make any and all corrections.
- 8.02 In addition to enforcement under 8.01 above, AAATA shall have the right to modify, terminate, and/or seek specific performance of any contract or grant with an affected covered employer or to cancel, terminate or suspend the contract in whole or in part and/or to refuse any further payments under the contract or grant.
- 8.03 Nothing contained in this Policy shall be construed to limit in any way the remedies, legal or equitable, which are available to AAATA or any other person for the correction of violations of this Policy.

9.00 OTHER POLICY PROVISIONS

- 9.01 *No affected covered employer shall reduce the compensation, wages, fringe benefits, or leave available to any covered employee or person contracted for employment in order to pay the living wage required by this Policy.*
- 9.02 *Nothing in this Policy shall be construed to require AAATA to take action which would conflict with, interfere with, and/or supersede any provision of a collective bargaining agreement with any union representing AAATA employees, which deals with the provision of health care to AAATA employees.*
- 9.03 No employee covered by a federal, state or local law requiring the payment of prevailing wages shall be covered by this Policy.
- 9.04 This Policy shall not be construed to apply to any person or entity that is a tax exempt religious, educational or charitable organization under state or federal law, but is not a contractor/Proposer or grantee as defined in this Policy.
- 9.05 This Policy shall not be applicable to the establishment and/or continuation of the following if developed specifically for youth, high school and/or college students:
- a. A bona fide training program.
 - b. A non-profit summer program.
 - c. A non-profit youth employment program.
 - d. A work-study, volunteer/public service, or internship program.

AAATA LIVING WAGE POLICY PROPOSER DECLARATION OF COMPLIANCE

The Ann Arbor Transportation Authority (AAATA) Living Wage Policy requires that employers providing services to AAATA or recipients of grants for financial assistance (in amounts greater than \$10,000 in a twelve-month period of time) pay their employees who are working on the AAATA project or grant, a minimum level of compensation known as the Living Wage. This wage must be paid to the employees for the length of the contract or project, and is subject to adjustment in accordance with the **Living Wage Policy**.

Companies or individuals employing fewer than 5 persons and non-profit organizations employing fewer than 20 persons are exempt from the Policy. If this exemption applies to your firm, please check below:

- _____ This **company or individual** is exempt due to the fact that we employ or contract with fewer than 5 individuals.
- _____ This **non-profit agency** is exempt due to the fact that we employ or contract with fewer than 20 employees.

The Policy requires that all contractors/Proposers and/or grantees agree to the following terms as a part of their contract with AAATA:

- a) To pay each of its employees performing work on any covered contract or grant with AAATA a living wage rate no less than the living wage as established by ordinances as the Living Wage of the City of Ann Arbor. Such living wage, as established by the City of Ann Arbor, will take into account whether the employer provides health care benefits (as defined in this policy) to its covered employees, or does not provide such health care benefits
- b) Please check the spaces below which apply to your workforce:

_____ Employees who are assigned to any covered AAATA project or grant will be paid at or above the applicable living wage **without health benefits**. The rate, effective April 30, 2013 – ending April 29, 2014 is \$13.96 per hour and adjusts annually.

OR

_____ Employees who are assigned to any covered AAATA project or grant will be paid at or above the applicable living wage **with health benefits**. The rate, effective April 30, 2013 – ending April 29, 2014 is \$12.52 per hour and adjusts annually.

- c) To post a notice approved by AAATA regarding the Living Wage Policy in every work place or other location in which employees or other persons contracting for employment are working.
- d) To provide AAATA payroll records or other documentation as requested; and,
- 3) To permit access to work sites to AAATA representatives for the purposes of monitoring compliance, investigating complaints or non-compliance.

The undersigned authorized representative hereby obligates the contractor/Proposer or grantee to the above stated conditions and agrees to abide by the penalties as provided in the Policy for non-compliance.

<hr/>	
Company Name	Address: City, State, Zip
<hr/>	
Signature of Authorized Representative	Phone (area code)
<hr/>	
Type or Print Name and Title	Email address
<hr/>	
Date signed	

Act No. 517
Public Acts of 2012
Approved by the Governor
December 28, 2012
Filed with the Secretary of State
December 28, 2012
EFFECTIVE DATE: April 1, 2013

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Senators Kahn, Marleau, Brandenburg, Anderson, Green and Booher

ENROLLED SENATE BILL No. 1024

AN ACT to prohibit persons who have certain economic relationships with Iran from submitting bids on requests for proposals with this state, political subdivisions of this state, and other public entities; to require bidders for certain public contracts to submit certification of eligibility with the bid; to require reports; and to provide for sanctions for false certification.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the "Iran economic sanctions act".

Sec. 2. As used in this act:

- (a) "Energy sector of Iran" means activities to develop petroleum or natural gas resources or nuclear power in Iran.
- (b) "Investment" means 1 or more of the following:
 - (i) A commitment or contribution of funds or property.
 - (ii) A loan or other extension of credit.
 - (iii) The entry into or renewal of a contract for goods or services.
- (c) "Investment activity" means 1 or more of the following:
 - (i) A person who has an investment of \$20,000,000.00 or more in the energy sector of Iran.
 - (ii) A financial institution that extends \$20,000,000.00 or more in credit to another person, for 45 days or more, if that person will use the credit for investment in the energy sector of Iran.
 - (d) "Iran" means any agency or instrumentality of Iran.
 - (e) "Iran linked business" means either of the following:
 - (i) A person engaging in investment activities in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers or products used to construct or maintain pipelines used to transport oil or liquefied natural gas for the energy sector of Iran.
 - (ii) A financial institution that extends credit to another person, if that person will use the credit to engage in investment activities in the energy sector of Iran.
 - (f) "Person" means any of the following:
 - (i) An individual, corporation, company, limited liability company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group.
 - (ii) Any governmental entity or instrumentality of a government, including a multilateral development institution, as defined in section 1701(c)(3) of the international financial institutional act, 22 USC 262r(c)(3).

(ii) Any successor, subunit, parent company, or subsidiary of, or company under common ownership or control with, any entity described in subparagraph (i) or (ii).

(g) "Public entity" means this state or an agency or authority of this state, school district, community college district, intermediate school district, city, village, township, county, public authority, or public airport authority.

Sec. 3. (1) Beginning April 1, 2013, an Iran linked business is not eligible to submit a bid on a request for proposal with a public entity.

(2) Beginning April 1, 2013, a public entity shall require a person that submits a bid on a request for proposal with the public entity to certify that it is not an Iran linked business.

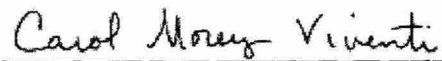
Sec. 4. If a public entity determines, using credible information available to the public, that a person has submitted a false certification under section 3(2), the public entity shall provide the person with written notice of its determination and of the intent not to enter into or renew a contract with the person. The notice shall include information on how to contest the determination and specify that the person may become eligible for a future contract with the public entity if the person ceases the activities that cause it to be an Iran linked business. The person shall have 90 days following receipt of the notice to respond in writing and to demonstrate that the determination of false certification was made in error. If a person does not make that demonstration within 90 days after receipt of the notice, the public entity may terminate any existing contract and shall report the name of the person to the attorney general together with information supporting the determination.

Sec. 5. The attorney general may bring a civil action against any person reported under section 4. If a civil action results in a finding that the person submitted a false certification, the person is responsible for a civil penalty of not more than \$250,000.00 or 2 times the amount of the contract or proposed contract for which the false certification was made, whichever is greater, the cost of the public entity's investigation, and reasonable attorney fees, in addition to the fine. A person who submitted a false certification shall be ineligible to bid on a request for proposal for 3 years from the date the public entity determines that the person has submitted the false certification.

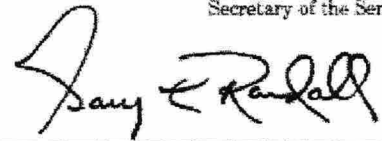
Sec. 6. The provisions of this act are effective only if Iran is a state sponsor of terror as defined under section 2 of the divestment from terror act, 2008 PA 234, MCL 129.292.

Enacting section 1. This act takes effect April 1, 2013.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved _____

Governor

**VENDOR CERTIFICATION
THAT IT IS NOT AN
"IRAN LINKED BUSINESS"**

Pursuant to Michigan law, (*the Iran Economic Sanctions Act, 2012 PA 517, MCL 129.311 et seq.*), before accepting any bid or proposal, or entering into any contract for goods or services with any prospective Vendor, the Vendor must first certify that it is not an "IRAN LINKED BUSINESS, as defined by law.

Vendor	
Legal Name	
Street Address	
City	
State, Zip	
Corporate I.D. Number / State	
Taxpayer I.D. #	

The undersigned, with: 1) full knowledge of all of Vendors business activities, 2) full knowledge of the requirements and possible penalties under the law MCL 129.311 et seq. and 3) the full and complete authority to make this certification on behalf of the Vendor, by his/her signature below, certifies that: the Vendor is NOT an "IRAN LINKED BUSINESS" as required by MCL 129.311 et seq., and as such that Vendor is legally eligible to submit a bid and be considered for a possible contract to supply goods and/or services to the County of Oakland.

Signature of Vendor's
Authorized Agent:

Printed Name of Vendor's
Authorized Agent:

Witness Signature:

Printed Name of Witness:

Ann Arbor Area Transportation Authority

Hold Harmless Agreement

The Vendor shall indemnify, defend and hold harmless Ann Arbor Area Transportation Authority (aka TheRide), TheRide's representatives, officers, directors, shareholders, partners, employees, and agents, (collectively, 'TheRide's Indemnified Parties') from and against any and all claims, actions, losses, damages, liabilities, costs and expenses (including without limitation, reasonable attorneys' fees and disbursements) resulting from damage to property (other than to the Work) or injury to, or death of, persons in or about the Project caused by, arising out of or in connection with the construction, services, labor, materials and equipment which, on or after the date hereof, have been performed, provided or supplied to the Project, by the Vendor, its consultants, subcontractors, laborers, suppliers or materialmen, at any tier, and their respective agents and employees, whether incorporated or not incorporated in the Project and whether or not completed or partially completed (collectively, the 'Vendor's Work'), except to the extent wholly or partially caused by the negligence or wrongful acts of any of TheRide's Indemnified Parties. The Vendor shall defend or cause to be defended, at no expense to any of TheRide's Indemnified Parties, any claim, action or proceeding brought against any of TheRide's Indemnified Parties or any of TheRide's Indemnified Parties and the Vendor, jointly and severally, arising out of the foregoing; and the Vendor shall hold TheRide's Indemnified Parties harmless from any judgment, loss, damage or settlement on account thereof. TheRide's Indemnified Parties shall promptly notify the Vendor of any claim which may be asserted for which indemnity might be sought. The Vendor shall have the right to defend any such claim at its sole cost and expense. The indemnity contained in this paragraph shall survive the expiration or sooner termination of this Agreement. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this section.

In claims against any person or entity indemnified by an employee of the Vendor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Vendor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

Signature

Date

Name Printed

Title

Company

Phone Number

Address

City, State, Zip

Ann Arbor Area Transportation Authority

Contract between Ann Arbor Area Transportation Authority (AAATA) and
TranSystems, March 1, 2014, in reference to AAATA's Request for Proposal
#2014-15 (CAD/AVL)

Item 2

CONTRACT

THIS CONTRACT, between Ann Arbor Area Transportation Authority, called AAATA, and TranSystems, Contractor is effective as of March 1, 2014.

1.0 SCOPE OF WORK

The Contractor is to perform all work to provide goods and services to AAATA as defined in the Scope of Services in AAATA's Request for Proposal #2014-15 and the Contractor's Proposal as accepted by AAATA. All provisions and terms and conditions of the RFP are incorporated as part of this Contract.

2.0 CONTRACT TERM

The Contract term is effective as of March 1, 2014 and shall remain in effect until satisfactory completion of the Services specified above unless terminated as provided for in this agreement.

3.0 CONTRACT PRICE AND PAYMENTS

3.1 AAATA shall pay the Contractor a not-to-exceed price of one hundred sixty seven thousand, seven hundred forty two (\$167,742.00). Any expenses exceeding this amount **must** be approved by AAATA **prior** to expenditure.

3.2 Payments
Invoices shall be submitted to the Project Manager.

3.3 Payment Terms and Withhold
The Contractor will only be compensated for product delivered and accepted by AAATA. One hundred percent (100%) of each invoice will be paid to the Contractor within thirty (30) days of acceptance, after appropriate invoices have been submitted and approved.

AAATA will strive to meet the payment deadlines of a prompt payment discount whenever such a discount is offered.

3.4 Maximum Payment
AAATA shall pay a maximum of the total amount listed on the original Purchase Order to the Contractor for the work to be provided under the Contract, unless otherwise amended by a change order.

3.5 Final Payment as Release of the Owner
The acceptance by the Contractor of the final payment shall be a release to the owner of all claims and of all liability to the Contractor for all things done or furnished in connection with the Contract and for every act and neglect, including claims arising out of misrepresentation or breach of contract and claims based on

claims of third persons, unless there are unresolved issues between the Contractor and the owner.

4.0 CONTRACT DOCUMENTS

This Contract includes a Contract signature sheet together that is incorporated into the contract and shall be construed together to form the contract between the two parties. In case of any conflict among these documents where the parties' intended resolution is not clear, the order of precedence shall be as follows and are listed as number one as the highest precedence.

1. Change Orders issued to this Contract, in order of date issued, most recent highest
2. This Contract signed by both parties
3. AAATA's RFP # 2014-15
4. Contractor's Cost Proposal dated December 19, 2013
5. Contractor's Proposal as accepted by AAATA

All the above-named contract documents are intended to be complementary. Work required by any one of the above documents shall be done as if required by all.

5.0 ASSIGNMENT OF RESPONSIBILITIES

5.1 Contracting Officer

The Contracting Officer is the AAATA purchasing official who is authorized to enter into and administer this Contract, and to be the AAATA's single authority for authorizing actions that reflect the formal business relationship between AAATA and the Contractor. The Contracting Officer for this project is:

Michelle Whitlow, CPPO, CPPB
Manager of Purchasing
Phone: 734-794-1813
FAX: 734-973-6338
Email: mwhitlow@theride.org

5.2 AAATA Project Manager

The Project Manager is the AAATA employee charged with the responsibility for providing technical oversight of the Contract effort, including making certain that the Contractor performs according to the technical requirements of the Contract. The Project Manager for this project is:

Jan Black
Manager of Information Technology
Phone: 734-794-1791
FAX: 734-973-6338
Email: jblack@theride.org

6.0 CHANGE ORDERS

- 6.1 A change order is a written order in the form of a purchase order signed by the owner and issued to the Contractor, authorizing a change in the work and the amount of adjustment to the contract sum or the contract time; or the terms and conditions of the contract. Changes may only be authorized by a change order. The only exception to this is emergencies, which threaten life, or property.
- 6.2 Any change order, which may be executed, shall be a part of the contract documents and shall take precedence over any other part of the contract documents, including addenda, wherever there is a conflict.

7.0 PRICE ADJUSTMENT FOR REGULATORY CHANGES

If price adjustment is indicated, either upward or downward, it shall be negotiated between AAATA and the Contractor for changes that are mandatory as a result of legislation or regulations that are promulgated.

8.0 INSURANCE/INDEMNIFICATION

- A. The Contractor shall procure and maintain during the life of this Contract, such insurance policies, including those set below, as will protect itself from all claims for bodily injuries, death or property damage which may arise under this Contract; whether the acts were made by the Consultant or by any subcontractor or anyone employed by them directly or indirectly. The following insurance policies are required:

1. Workers' Compensation, disability benefit and other similar employee benefit acts in the amount required under State of Michigan law. A nonresident Contractor shall have insurance for benefits payable under Michigan's Workers' Compensation law for any employee resident of and hired in Michigan. The Contractor shall maintain coverage for employees of other states as mandated.

2. Comprehensive General Liability: \$1,000,000

Bodily injury and property damage combined single limit including personal injury and completed operations.

3. Automobile Insurance for Vehicles: \$1,000,000

Liability, including standard no-fault

- B. Contractor may not start work until evidence of all required insurance has been submitted and approved by AAATA. Contractor must cease work if any of the

required insurance is canceled or expires.

- C. All policies providing Contractor's insurance shall be endorsed to provide thirty (30) days written notice of cancellation or non-renewal to AAATA.
- D. The limits of liability may be provided by a single policy of insurance or by a combination of primary, excess or umbrella policies. But in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required.
- E. All policies of insurance presented, as proof of compliance shall be on forms and with insurance companies approved by AAATA. All such insurance policies shall be provided by insurance companies having Best's ratings of B+ or greater and VI or greater (B+/VI) as shown in the most current issue of Best's Key Rating Guide. Policies of insurance insured by insurance companies not rated by Best's or having Best's ratings lower than B+/VI will not be accepted as complying with the insurance requirements of the contract unless such insurance companies were approved in writing prior to award of the contract.

9.0 WARRANTIES BY THE CONTRACTOR

- A. The Contractor, in providing services under this Agreement, will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.
- B. The Contractor warrants that it has the skills, experience, and professional licenses necessary to perform the Services it is to provide pursuant to this agreement.
- C. The Contractor warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services specified in this contract.

10.0 OBLIGATIONS TO AAATA

- A. AAATA agrees to give the Contractor access to the project area and other AAATA owned properties as required to perform the necessary Services under this agreement.
- B. AAATA shall notify the Contractor of any defects in the Services of which the Contract Administrator has actual notice.

12.0 ASSIGNMENT

- A. The Contractor shall not subcontract or assign any portion of the Services without prior written consent from AAATA. Notwithstanding any consent by AAATA to any assignment, Contractor shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described as are required of it

under the Contract unless specifically released from the requirement, in writing, by AAATA.

- B. The Contractor shall retain the right to pledge payment(s) due and payable under this agreement to third parties.

13.0 OWNERSHIP OF DOCUMENTS

Upon completion or termination of this agreement, all documents prepared by the Contractor, including tracings, drawings, estimates, specifications, field notes, investigations, studies and reports shall become the property of, and, at the option of AAATA, be delivered to, AAATA. AAATA acknowledges that the documents are prepared only for the Project. Prior to completion of the contracted Services AAATA shall have a recognized proprietary interest in the work product of the Contractor.

IN WITNESS WHEREOF, the parties have duly executed three (3) identical counterparts of this instrument, each of which shall be for all purposes deemed an original thereof, on the dates set forth below.

Ann Arbor Area Transportation Authority

TranSystems

By: _____

By: _____

Michael Ford
Chief Executive Officer

Carol Schweiger
Vice President

Dated: _____

Dated: _____

Alameda Contra Costa Transit District

Notice to Proceed and Contract # 2015-1311 for CAD/AVL and Radio
Communication Systems

Item 3



Alameda-Contra Costa Transit District

Clever Devices Ltd.
Attn: Francis J. Ingrassia
300 Crossways Park Drive
Woodbury, New York 11797

July 24, 2015

SUBJECT: Contract # 2015-1311
Notification to Proceed
For: CAD/AVL AND RADIO COMMUNICATIONS SYSTEMS

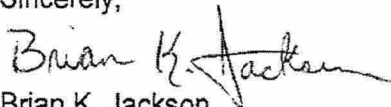
Dear Francis:

This Letter serves as notification for Clever Devices Ltd. to proceed with the execution of Contract 2015-1311 in accordance with the scope of work contained in the original Contract.

Please contact the project manager Sandra Lewis Williams at 510-891-7116 prior to starting any work.

Please find attached to this letter a fully executed Contract and Amendment Number One documents to retain for your file. If you have questions or comments regarding this contract please contact Brian K. Jackson, Contract Specialist at 510-891-5494.

Sincerely,


Brian K. Jackson
Contract Specialist
AC Transit

Cc: Program Manager
Contract file

**CAD/AVL AND RADIO COMMUNICATIONS SYSTEMS
FOR THE TERM July 1, 2015 THROUGH December 31, 2019**

CONTRACT

THIS CONTRACT is made and entered into this 1st day of July, 2015, by and between the ALAMEDA CONTRA COSTA TRANSIT DISTRICT (hereinafter "District"), a special transit district established pursuant to California Public Utilities Code, Section 24501 et seq., and Clever Devices Ltd, 300 Crossways Park Drive, Woodbury, New York 11797 (hereinafter "Contractor").

THE PARTIES AGREE AS FOLLOWS:

1. SCOPE OF WORK

Contractor shall furnish the District all materials and services in full accordance with Request For Proposal No. 2015-11311 prepared and issued by the District entitled **CAD/AVL AND RADIO COMMUNICATIONS SYSTEMS** dated October 8, 2014.

2. COMPONENT PARTS

This contract shall consist of the following documents, each of which is on file with the District, and is incorporated into and made a part of this Contract by reference:

- A. This Contract
- B. Statement of Work as defined in Clever Device's Technical Proposal submitted December 16, 2014, all Attachments and Addendums.
- C. Statement of Work as defined in Clever Devices' BAFO Response submitted March 19, 2015.
- D. Functional Requirements dated June 25, 2015.
- E. Submitted Price Proposal dated May 22, 2015
- F. Payment Milestones dated June 4, 2015
- G. Request for Proposal 2015-1311
- H. AC Transit Voice Over IP Communications Options Power Point Presentation dated April 16, 2015
- I. Project Schedule dated June 25, 2015
- J. Attachments

**CAD/AVL AND RADIO COMMUNICATIONS SYSTEMS
FOR THE TERM July 1, 2015 THROUGH December 31, 2019**

CONTRACT

3. RECEIPT OF ONBOARD EQUIPMENT

For all onboard equipment, the contractor agrees to furnish and assemble all component parts into 'kits'. The contractor further agrees to install these kits on AC Transit vehicles. Functionality and verification of the proper installation of these kits will be performed by AC Transit authorized personnel. After verification, these kits will be documented as 'received' into the District's ERP (PeopleSoft) system.

4. CONTRACT ORDER OF PRECEDENCE

In the event of inconsistency between any provisions of this Contract, the inconsistency shall be resolved by giving precedence in the following descending order:

1. Amendments to the Contract, if any;
2. Special Provisions/Alterations, if any;
3. Contract Award including Signature Page;
4. Submitted Price Proposal (May 22, 2015); Functional Requirements as negotiated through BAFO (June 25, 2015); Payment Milestones (June 4, 2015);
5. Statement of Work as defined in Clever Device's BAFO Response submitted March 19, 2015 including all attachments
6. Statement of Work as defined in Clever Device's Technical Proposal submitted December 16, 2014;
7. Request for Proposal with attachments and addenda

Unless expressly agreed by The District in the form of a Special Provision/Alteration or Contract amendment, any agreement, license, provision, or other document not listed above but made a part of this Contract shall be deemed an Attachment for purposes of determining Contract order of precedence.

5. PERIOD OF PERFORMANCE

Services under this Contract shall commence upon execution of the contract by

**CAD/AVL AND RADIO COMMUNICATIONS SYSTEMS
FOR THE TERM July 1, 2015 THROUGH December 31, 2019**

CONTRACT

both parties and continue for fifty-four (54) months unless extended by both parties. Contractor shall achieve final acceptance of the complete CAD/AVL system (this includes all components of the CAD/AVL system with the exception of the Bus Security System and the Advanced HASUTS Integration) within the first thirty (30) month period of this contract. Contractor shall achieve final acceptance of the Bus Security System by the end of the first year (year 1) warranty period of this contract. Contractor shall achieve final acceptance of the Advanced HASTUS Integration by the end of the 2nd year (year 2) warranty period of this contract. Contractor shall not be held liable for delays resulting from problems of scheduling on the part of the District.

6. CONTRACT PRICE

The District agrees to pay the Contractor all fees in accordance with the Contractors submitted payment milestones (June 4, 2015) for the base contract as listed in the Price Proposal section of the Price Proposal tables (May 22, 2015), in the not-to-exceed amount of Seventeen Million Two Hundred Twenty Four Thousand Thirty Five Dollars and Zero Cents (**\$17,224,035.00**) for the fifty-four month base period for work to be completed not later than December 31, 2019. Services performed are in accordance with this Contract Number 2015-1311. The District and the Contractor must mutually agree upon any adjustments in payment. Invoices for services performed shall be submitted in accordance to the payment milestones to AC Transit Accounts Payable, P.O. Box 28507, Oakland, California. 94604. **Please reference the Request for Proposal Number and Purchase Order Number on all invoices.**

7. PRICED OPTIONS

At the sole discretion of the District, the priced options shall be exercised in accordance with the Contractors submitted Best and Final Offer (BAFO). If exercised, the District shall notify the contractor in writing of its intent to exercise each priced option at least thirty (30) days prior to the exercise of said option(s). The Operations Control Center Furniture Allowance option and the Real Time Passenger Information Wayside Passenger Display System option must be exercised and work completed in conjunction with the base contract work within the first 30-month period of this contract. The priced options are as follows:

Priced Option Items

Additional Training Vouchers	\$242,602.00
Operations Control Center Furniture Allowance	\$411,000.00

**CAD/AVL AND RADIO COMMUNICATIONS SYSTEMS
FOR THE TERM July 1, 2015 THROUGH December 31, 2019**

CONTRACT

Real Time Passenger Information Wayside	
Passenger Display System	<u>\$2,615,278.00</u>
Grand total of Priced Options if exercised:	\$3,268,880.00

8. EXTENDED MAINTENANCE AND HOSTING PRICED OPTIONS

Although the Extended Maintenance and Hosting Priced Options are not a part of the base price of this Contract award, the District and Clever Devices Ltd. mutually agreed upon the priced options for years six through ten with the caveat that the District notifies Clever Devices within five years from the date of this Contract 2015-1311 of its intent to exercise one or more of those options. The agreed upon Maintenance and Hosting Priced Options are included in the Submitted Price Proposal (May 22, 2015): Final Extended Hosting and Warranty Options.

9. NOTICES

Any notice which may be required under this Contract shall be in writing, shall be effective when received, and shall be given by personal service or by certified or registered mail, return receipt requested, to the addresses set forth below or to such other addresses which may be specified in writing by the parties to this Agreement.

DISTRICT:

Purchasing and Materials Director
1600 Franklin Street
Oakland, California 94612

CONTRACTOR

Clever Devices Ltd.
300 Crossways Park Drive
Woodbury, New York 11797

10. ATTORNEY'S FEES

In the event that it becomes necessary for either party to bring a lawsuit to enforce any of the provisions of the Contract, the parties agree that the court having jurisdiction over such dispute shall have the authority to determine and fix reasonable attorney's fees to be paid to the prevailing party.

11. SEVERABILITY

If any provision of this Contract is declared void or unenforceable, such provision shall be deemed severed from this agreement, which shall otherwise remain in full force and effect.

CAD/AVL AND RADIO COMMUNICATIONS SYSTEMS
FOR THE TERM July 1, 2015 THROUGH December 31, 2019

CONTRACT

12. BINDING EFFECT

All of the terms, provisions, and conditions of the Contract hereunder, shall be binding upon and inure the parties hereto and their respective successors, assigns, and legal representatives.

13. CONFLICT OF INTEREST

By signing this Contract, the Contractor covenants that it presently has no interest, direct or indirect, which would conflict in any manner or degree with the performance of the services called for under this agreement. The Contractor further covenants that in the performance of this agreement, no person having any such interest shall be employed by the Contractor, and that the Contractor receives no commissions or other payments from parties other than the District as a result of work performed hereunder.

Failure to comply with this provision serves as a basis for termination for default and the collection of any damages.

14. GOVERNING LAW

All matters arising under the contract shall be governed by California law.

15. VENUE

In the event of a dispute or breach of Contract, venue shall be in Alameda County, California.

16. PROGRAM MANAGER

- A. The Program Manager is the primary point of contact for program management and Contract amendments. Changes and administration are the responsibility of the Contract Specialist as coordinated between the Contractor, and Program Manager. Technical program/project questions, issues and requests for clarifications should be directed to:

**Alameda-Contra Costa Transit District
Attn: Sandra Lewis Williams
1600 Franklin Street
Oakland, California 94612
Office (510) 891-7116**

CAD/AVL AND RADIO COMMUNICATIONS SYSTEMS
FOR THE TERM July 1, 2015 THROUGH December 31, 2019

CONTRACT

- B. All issues, decisions or potential contract changes, in conflict with any term and/or condition of the contract, are to be coordinated with the Contract Specialist Brian K. Jackson at bkjackson@actransit.org prior to a final interpretive determination. Contractor will provide reports and other data as coordinated with the Program manager.

17. ENTIRE AGREEMENT

This Contract represents the entire agreement of the parties with respect to the subject matter hereof, and all such agreements entered into prior hereto are revoked and superseded by this Contract, and no representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements.

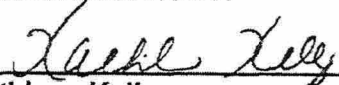
This Contract may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this agreement shall be void and of no effect.

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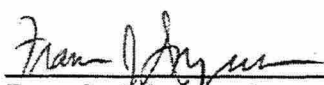
IN WITNESS WHEREOF, the parties have executed this Contract on the dates set forth below.

ALAMEDA-CONTRA COSTA
TRANSIT DISTRICT:

CLEVER DEVICES, LTD.



Kathleen Kelly
Interim General Manager

7/24/15
Date


Francis J. Ingrassia
President

6/30/15
Date

Approved as to Form and Content:


Denise Standridge
General Counsel

7/23/15
Date

**CAD/AVL AND RADIO COMMUNICATIONS SYSTEM
FOR THE TERM OF JULY 1, 2015 THROUGH DECEMBER 31, 2022**

AMENDMENT NUMBER 1

This Amendment No. 1 to the Contract is made and entered into this 20TH day of July 2015, by and between the Alameda-Contra Costa Transit District (hereinafter "District"), a special transit district established pursuant to California Public Utilities Code, Section 24501 et seq., and Clever Devices Ltd., 300 Crossways Park Drive, Woodbury, New York 11797 (hereinafter "Contractor").

RECITALS

WHEREAS, Contractor and District entered into a Contract on July 01, 2015 for CAD/AVL and Radio Communication Systems; and

WHEREAS, the parties desire to modify portions of the Contract;

NOW THEREFORE, in consideration of the faithful performance of the terms, conditions, promises and covenants contained in this Amendment No. 1 to the Contract, and the continuing provisions of the Contract, as amended to date the parties agree as follows:

1. Paragraph 5, **PERIOD OF PERFORMANCE:** Contract 2015-1311 Period of Performance is hereby amended as follows:

Services under this Contract shall commence upon execution of the contract by both parties. Completion of the Operability Test Period milestone will indicate that final acceptance has been achieved and will also mark the completion of the base period of this contract unless extended by both parties. The Warranty period of the contract shall commence immediately upon completion of the operability test period and extend for 60 months, unless extended by both parties. Contractor shall achieve final acceptance of the complete CAD/AVL system (this includes all components of the CAD/AVL system with the exception of the Bus Security System and the Advanced HASUTS Integration) within the first thirty (30) month period of this contract, indicated by completion of the Operability Test Period. Contractor shall achieve final acceptance of the Bus Security System by the end of the first year (year 1) warranty period of this contract. Contractor shall achieve final acceptance of the Advanced HASTUS Integration by the end of the 2nd year (year 2) warranty period of this contract. Contractor shall not be held liable for delays resulting from problems of scheduling on the part of the District.

Furthermore, the ending date of December 31, 2019 specified in the header of this Contract states an expiration date of December 31, 2022 which reflects the thirty month period for the time of acceptance followed by the 60 month base warranty for a base term of 90 month, or 7.5 years. As neither party knows for certain the exact date of acceptance, this Contract

CAD/AVL AND RADIO COMMUNICATIONS SYSTEM
FOR THE TERM OF JULY 1, 2015 THROUGH DECEMBER 31, 2022

AMENDMENT NUMBER 1

will expire after the five (5) year base period warranty, regardless of the date of acceptance.

2. Paragraph 5, **EXTENDED MAINTENANCE AND HOSTING PRICED OPTIONS:** Contract 2015-1311 Extended Maintenance and Hosting Priced Options is amended as follows:

Although the Extended Maintenance and Hosting Priced Options are not a part of the base price of this Contract award, the District and Clever Devices Ltd. mutually agreed upon the priced options for years six through ten with the caveat that the District notifies Clever Devices within five years from the date of this Contract 2015-1311 of its intent to exercise one or more of those options. The agreed upon Maintenance and Hosting Priced Options are included in the Submitted Price Proposal (May 22, 2015): Final Extended Hosting and Warranty Options.

The District reserves the right to notify Clever Devices of its intent to exercise one or more of the extended maintenance and hosting options for years six through ten (that follows the expiration of the base warranty period) during each extended option year. The District will notify Clever Devices, no less than thirty (30) days prior to the end of the option year, of its intent to exercise each warranty or hosted option on a year by year basis, prior to each extended year warranty expiration date. This will be accomplished through a contract amendment.

In the case of the back-up hosted site, the District will notify Clever Devices of its intent to exercise each extended back-up hosting option for years three through five during each option year on a year by year basis.

3. Paragraph 4, **CONTRACT PRICE.** There was no price cost associated with the change of period of performance and extended maintenance and hosting options and the Contract cost remains the same. The Contract value is remains the same as follows:

Total amount this Amendment #1	\$0.00
Original Contract Amount:	<u>\$17,224,035.00</u>
Revised Contract Amount:	\$17,224,035.00

4. Except as expressly modified by this Amendment No. 1, the terms and conditions of the Contract of July 1, 2015, shall remain in full force and effect and be binding on the parties as if the provisions of the Contract as amended to date were set forth in this Amendment No. 1.

AC TRANSIT DISTRICT
PURCHASING DEPARTMENT

CONTRACT NO.
2015-1311

CAD/AVL AND RADIO COMMUNICATIONS SYSTEM
FOR THE TERM OF JULY 1, 2015 THROUGH DECEMBER 31, 2022

AMENDMENT NUMBER 1

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 on the
dates set forth below.

ALAMEDA-CONTRA COSTA
TRANSIT DISTRICT:

CLEVER DEVICES, LTD

Kathleen Kelly 7/24/15
Kathleen Kelly Date
Interim General Manager

Francis J. Ingrassia
Francis J. Ingrassia Date
President

Approved as to Form and Content:

Denise Standridge 7/23/15
Denise Standridge Date
General Counsel

Central Florida Regional Transportation Authority (LYNX)

Contract for Intelligent Transportation System Technology Solution between
Central Florida Regional Transportation Authority and Doublemap, Inc., August
11, 2015

Item 4

CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY

CONTRACT No: 15-C13

For

INTELLIGENT TRANSPORTATION SYSTEM TECHNOLOGY SOLUTION

THIS AGREEMENT (hereinafter, the "Contract") is made as of the 11 day of August 2015 (the "Effective Date"), by and between THE CENTRAL FLORIDA REGIONAL TRANSPORTATION AUTHORITY d/b/a LYNX, a body politic and corporate, created by Part II, Chapter 343, Florida Statutes ("LYNX"), whose address is 455 North Garland Avenue, Suite 500, Orlando, Florida 32801, and DOUBLEMAP INC., an Indiana corporation ("DOUBLEMAP" or "Contractor"), located at 748 E. Bates St., Suite 300W., Indianapolis, Indiana 46202.

RECITALS

WHEREAS, LYNX was created by the above-stated charter to perform functions necessary for the achievement of an integrated, efficient and well-balanced public transportation system and to take all steps and actions necessary or convenient for the conduct of its business; and

WHEREAS, LYNX desires to obtain goods and/or services (collectively, the "Services"), according to the requirements in LOI 13-L01 (the "Solicitation") and as further described in the scope of services, attached hereto as Exhibit "A-1" as amended and qualified in its entirety by the amended scope of services attached hereto as Exhibit "A-2" (collectively, the "Scope of Services"); and

WHEREAS, DOUBLEMAP submitted a proposal in connection with the Solicitation, which has been selected by LYNX (the "Response"); and

WHEREAS, DOUBLEMAP desires to provide the Services and meet the obligations set forth in the Solicitation, the Response and the Scope of Services in accordance with the terms and conditions set forth in the Contract Documents (as hereinafter defined);

NOW, THEREFORE, in consideration of the premises herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. RECITALS. The Recitals set forth above are incorporated herein by this reference.

2. DEFINITIONS. Terms not defined herein shall have the meanings as set forth in the Contract Documents (hereafter defined). Terms not defined in the Contract Documents shall have the meanings ascribed to such terms in applicable state, local or federal regulations, including but not limited to LYNX's Administrative Rules as the same may be amended and restated from time to time and which are available at www.golynx.com (the "Administrative Rules").

3. CONTRACT DOCUMENTS. For the purposes of this Contract, the following documents are collectively referred to herein as the "Contract Documents":

(a) This Contract, together with all Exhibit(s) and Appendices hereto;

(b) The General Provisions Document, as set forth in Exhibit "B" hereto (the "General Provisions");

(c) The Solicitation; and

(d) The Response.

The terms of the Contract Documents are incorporated herein by this reference. In the event of conflict between the terms of the Contract Documents, the order of precedence is as set forth above (thus, if there is a conflict between the terms of the Solicitation and the terms of the Response, the terms of the Solicitation shall govern). Contract Documents shall further include any later amendments or change orders.

4. FURNISHING OF SERVICES.

(a) Furnishing of Services. Subject to the terms and conditions of the Contract Documents, DOUBLEMAP shall make the Services available to LYNX solely for LYNX's and its Affiliates' internal business operations. The terms of this Contract shall also apply to updates and upgrades to the Services subsequently provided by DOUBLEMAP to LYNX during the Term. During the Term, DOUBLEMAP shall host the Services and may update the functionality and user interface of the Services from time to time in its sole discretion and in accordance with the Contract Documents as part of its ongoing mission to improve the Services; provided, however, that to the extent that DOUBLEMAP updates the functionality and user interface for the base software and such updates are

made generally available to other clients of DOUBLEMAP, DOUBLEMAP shall promptly make such updates available to LYNX's instance of the software as well.

(b) Right to Use Services. DOUBLEMAP hereby grants to LYNX a non-exclusive, royalty-free right to access and use the Services during the Term of this Contract in the ordinary course of LYNX's business and for its own internal purposes.

(c) License upon Termination. Upon termination of this Contract, DOUBLEMAP will deliver a copy of the then current version of the software underlying the Services, in object code form (the "Software"), and will grant to LYNX a royalty-free, non-exclusive, nontransferable, non-sublicensable, perpetual license to use, copy, reproduce, publicly display, publicly perform and make and maintain derivative works of the Software, solely for LYNX's internal business use; provided, however, upon termination of this Contract and delivery of the Software to LYNX, DOUBLEMAP shall have no further obligation to maintain, host or support the Software, and LYNX will no longer be entitled to any enhancements, modifications, releases or upgrades made by DOUBLEMAP to the Software after termination of this Contract. Further, DOUBLEMAP agrees that upon termination of this Contract it shall, at no cost to LYNX, export all data inputted by LYNX or its customers and provide a copy of same to LYNX in a form useable and compatible with the systems used by LYNX. If requested by LYNX, DOUBLEMAP will at LYNX's expense, assist LYNX in installing or transitioning the Software and uploading the data.

(d) Restrictions. LYNX's use of the Services shall not include service bureau use, outsourcing, renting, reselling, sublicensing, concurrent use of a single user login, or time-sharing of the Services. LYNX shall not and shall not knowingly permit any third party to: (i) copy, translate, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the Services or any part thereof or otherwise attempt to discover any source code or modify the Services in any manner or form; (ii) use unauthorized modified versions of the Services, including (without limitation) for the purpose of building a similar or competitive product or service or for the purpose of obtaining unauthorized access to the Services; (iii) use the Services in a manner that is contrary to applicable law or in violation of any third party rights of privacy or intellectual property rights; (iv) knowingly publish, post, upload or otherwise transmit LYNX data that contains any viruses, Trojan horses, worms, time bombs,

corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any systems, data, personal information or property of another; or (v) use or knowingly permit the use of any security testing tools in order to probe, scan or attempt to penetrate or ascertain the security of the Services. LYNX agrees not to access the Services by any means other than through the interfaces that are provided or authorized by DOUBLEMAP. LYNX shall not do any "mirroring" or "framing" of any part of the Services, or create Internet links to the Services, which include log-in information, user names, passwords, and/or secure cookies. LYNX shall ensure that all access and use of the Services by its users is in accordance with the terms and conditions of this Contract, including but not limited to those users that are contractors and agents, and LYNX's Affiliates. Notwithstanding the foregoing, to the extent LYNX is required to conduct penetration testing on any of the services it offers to riders by any governmental agency or auditor to fulfill legal obligations of LYNX, DOUBLEMAP will be notified of any penetration testing requirement, and LYNX shall be allowed to conduct such tests as may be required.

(c) User Names and Passwords. LYNX shall authorize access to and assign unique passwords and user names to those users LYNX authorizes to use the Services. Unless otherwise agreed to by the parties, user logins are for designated users and cannot be shared or used by more than one user, but any user login may be reassigned to another user as needed. LYNX will be responsible for the confidentiality, use of and all activities conducted under its users' passwords and user names. LYNX will also be responsible for all electronic communications, including those containing business information, account registration, account holder information, financial information, LYNX data, and all other data of any kind contained within emails or otherwise entered electronically through the Services or under LYNX's account. DOUBLEMAP will act as though any electronic communications it receives under LYNX's passwords, user names, and/or account numbers will have been sent by LYNX. LYNX shall use commercially reasonable efforts to prevent unauthorized access to or use of the Services and shall promptly notify DOUBLEMAP of any unauthorized access or use of the Services and any loss or theft or unauthorized use of any user's password or name and/or Services account numbers. Notwithstanding anything else herein, DOUBLEMAP shall be responsible for any unauthorized access, whether using LYNX's credentials or otherwise, due to breach of or through DOUBLEMAP's system by third parties.

(f) Transmission of Data; Availability of Wireless Communications Networks. LYNX understands that the technical processing and transmission of LYNX's data is fundamentally necessary to use of the Services, which will involve transmission of LYNX's data over the Internet, and over various networks, including without limitation wireless communications networks, only part of which may be controlled and/or operated by DOUBLEMAP. LYNX further acknowledges and understands that such transmissions may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone or other electronic means. Except with respect to any transmissions intercepted coming from DOUBLEMAP's systems, DOUBLEMAP is not responsible for (i) any electronic communications and/or LYNX data, which are delayed, lost, altered, intercepted or stored during the transmission of any data whatsoever across any networks or (ii) any failure of any networks or any gaps in coverage of any networks in LYNX's area, to the extent such networks are not owned, controlled and/or operated by DOUBLEMAP, including, but not limited to, the Internet, wireless carrier communication networks (GSM/GPRS/CDMA), the Amazon cloud and LYNX's local network.

(g) Escrow of Source Code. DOUBLEMAP and LYNX shall enter into a software escrow agreement with NCC Group Escrow Associates, LLC or such other escrow agent reasonably selected by LYNX (the "Escrow Agent") prior to implementation of the DOUBLEMAP FlexRide software acquired hereunder. The terms of the escrow agreement shall be negotiated in good faith by the parties. DOUBLEMAP shall deposit with the Escrow Agent the source code needed to support the Services purchased hereunder and, for so long as this Contract remains in effect, deposit updates to said source code either: (1) after new releases or (2) quarterly in the case where only small updates have been made in the last ninety (90) days. The cost of the Escrow Agent shall be borne by LYNX; however, LYNX shall not be responsible for any expenses incurred by DOUBLEMAP in making deposits as called for herein.

(h) Mobile Payment Solution Option. Upon successful implementation of the DOUBLEMAP FlexRide software, DOUBLEMAP and LYNX may agree to execute a final option for the Contract to add a mobile payment solution to the existing software. This solution will provide accounts for Neighborlink riders to pay for their rides via credit card. The base price for this solution will be \$108,000. This includes a fare structure that offers multiple options for riders. Any additional services

added to the mobile payment solution will be priced based on requests from LYNX. LYNX will not be required to exercise this option unless it elects to do so in its sole and absolute discretion. In the event that LYNX chooses to utilize a different vendor to add additional functionality to the mobile payment solution, DOUBLEMAP agrees to reasonably cooperate with said vendor. To the extent that such cooperation results in an additional cost to DOUBLEMAP, LYNX and DOUBLEMAP shall work together in good faith to quantify that cost and DOUBLEMAP shall be entitled to payment from LYNX for same.

5. TERM.

(a) Initial Term. Subject to the further provisions set forth in this Section 5, the initial term of this Contract shall be for a period one (1) year, commencing on the Effective Date of this Contract (the "Term").

(b) Options. LYNX shall have two (2) separate one (1) year options to extend the Term of this Contract for an additional one (1) year period of time, which LYNX may exercise by providing written notice to DOUBLEMAP any time on or before thirty (30) days prior to the expiration of the then existing Term.

6. PAYMENT.

(a) Payment. LYNX agrees to pay DOUBLEMAP for the Services the amounts provided in the Addendum to Exhibit "A-2" attached hereto (or in the event that LYNX elects to exercise the mobile payment solution option described in Section 4(h), the amount set forth in such Section 4(h)).

(b) Maximum Contract Amount. In any event, the total amount to be paid by LYNX pursuant to this Contract for the Services shall not exceed the firm fixed amount of \$888,500 (the "Not to Exceed Amount").

(c) Procedure for Invoicing. Invoicing for Services must be rendered in accordance with LYNX policies and procedures and in accordance with the timeline provided for under the heading "Payment Schedule" in the Addendum to Exhibit "A-2" attached hereto. The invoice must be sent to Central Florida Regional Transportation Authority, Accounts Payable, 455 North Garland Avenue, Orlando, Florida 32801, or such other address as may be specified by LYNX from time to time.

(d) Time of Payment by LYNX. Subject to the terms and conditions provided herein, LYNX will pay invoices within thirty (30) days after receipt and approval by LYNX of DOUBLEMAP's invoice.

(e) Additional Information. LYNX may request additional documentation from DOUBLEMAP prior to payment of any invoice or bill from DOUBLEMAP. LYNX may disallow and deduct any cost for which proper documentation is not provided, provided LYNX delivers DOUBLEMAP written notice of the exclusion of proper documentation and a reasonable period of time (not less than thirty (30) days) to cure the exclusion.

(f) Subcontractors. In the event DOUBLEMAP is utilizing any subcontractors for the furnishing of Services (which would only be as permitted in the Contract Documents), then, upon request by LYNX, DOUBLEMAP shall further provide to LYNX copies of billings and other invoices which may be received from any such subcontractors and, in addition, DOUBLEMAP will obtain releases from time to time in favor of LYNX from any subcontractor(s) for work so performed by that subcontractor. LYNX shall have the right from time to time to directly contact and discuss with the subcontractor any work performed by that subcontractor under the Contract Documents, but LYNX will not have any liability or obligation to said subcontractor(s).

(g) Withholding 5% in the Event of Default. If DOUBLEMAP defaults in the performance of any of its obligations under this Contract, LYNX may withhold five percent (5%) of any amounts then owed or that become owed to DOUBLEMAP under this Contract (in addition to any retainage); provided, however, that this withholding option may only be exercised by LYNX after providing DOUBLEMAP with thirty (30) days written notice of DOUBLEMAP's default and DOUBLEMAP has failed to cure such default within said thirty (30) days. Any amounts withheld pursuant to this Section will be paid by LYNX to DOUBLEMAP within a reasonable time following the date that DOUBLEMAP's default has been cured. In the event that DOUBLEMAP fails to cure its default prior to the termination or expiration of this Contract, LYNX shall not be obligated to pay DOUBLEMAP the withheld amount and LYNX may keep said amount. The withholding option set forth in this Section shall be in addition to any damages and remedies available to LYNX as set forth elsewhere in this Contract or which are otherwise available to LYNX under applicable law. The exercise by LYNX of the withholding option set forth in this Section

shall in no way constitute a waiver of LYNX's ability to seek or exercise any other damages or remedies available under this Contract, the other Contract Documents or otherwise available to it at law or in equity.

7. DOUBLEMAP'S OBLIGATIONS.

(a) Furnishing of Materials and Labor. DOUBLEMAP shall, for the consideration set forth herein, and at its sole cost and expense, as an independent contractor, provide all labor, materials, equipment, tools, supplies and incidentals necessary to perform this Contract in the manner and to the full extent as set forth in the Contract Documents.

(b) Standard of Care. DOUBLEMAP shall furnish, provide or fulfill its obligations under this Contract in a professional manner to the reasonable satisfaction of the duly authorized representatives of LYNX, who shall have, at all times, full opportunity to monitor the Services performed under this Contract.

(c) Compliance with Applicable Requirements. DOUBLEMAP shall conform to all applicable governmental requirements and regulations, whether or not such requirements and regulations are specifically set forth in the Contract Documents, including, but not limited to, any federal and state data privacy and protection laws and regulations. DOUBLEMAP in this regard understands that LYNX is a public agency which receives both federal and state funding, and, if applicable, the Contract Documents and the performance by DOUBLEMAP shall be subject to any applicable rules and regulations promulgated by the Federal Transit Administration (FTA) and/or the Florida Department of Transportation (FDOT).

(d) Payment of Taxes and Fees. DOUBLEMAP shall pay license fees, if any, and all sales, consumer, use and other similar taxes, if any, relating to the Contract and the matters to be performed thereunder. LYNX is exempt from payment of Florida sales and use taxes. LYNX will sign an exemption certificate submitted by DOUBLEMAP. DOUBLEMAP shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with LYNX, nor is DOUBLEMAP authorized to use LYNX's tax exemption number in securing such materials. LYNX reserves the right to "direct buy" any materials to be furnished by DOUBLEMAP under the Contract Documents and, if LYNX so submits, then the parties will enter into an appropriate agreement reflecting said direct purchase, the effect of which will be for LYNX to

directly purchase those materials, for the contract amount to be reduced by the amount of the purchase price paid by LYNX for said materials, for those materials to be physically acquired and/or delivered to DOUBLEMAP, who will install them or deliver them as provided in the Contract Documents, with full warranties regarding those materials as if those materials were purchased from DOUBLEMAP. Any bonds furnished by DOUBLEMAP will apply to those materials.

(e) FICA. DOUBLEMAP shall be responsible for payment of its employee(s)' Federal Insurance Contributions Act benefits with respect to this Contract.

(f) Permits and Approvals. Unless otherwise expressly set forth in the Contract Documents, DOUBLEMAP shall be responsible to secure, at DOUBLEMAP's expense, all necessary permits and approvals. DOUBLEMAP shall promptly furnish copies of all such permits and approvals to LYNX as and when obtained.

(g) Tests and Inspections. DOUBLEMAP shall be responsible to coordinate all tests and inspections necessary for the proper execution and timely completion of this Contract.

(h) Insurance/Bond. During the Term of this Contract (as well as during all option Terms), DOUBLEMAP shall procure and maintain, at its sole expense, commercial general liability insurance with a financially responsible insurance carrier in an amount reasonably acceptable to LYNX and, at the request of LYNX, DOUBLEMAP shall name LYNX as an additional insured. The requirements set forth in the previous sentence shall be in addition to any other requirement that DOUBLEMAP maintain a specified level of insurance as otherwise set forth in the Contract Documents. DOUBLEMAP shall provide LYNX with a copy of insurance certificate(s) demonstrating the satisfaction of the requirements set forth herein or as otherwise set forth in the Contract Documents, as and when requested by LYNX.

(i) Environmental Principles. To the extent practicable, DOUBLEMAP shall assist LYNX in achieving the principles set forth in the LYNX Environmental Policy, a copy of which is available at <http://golynx/EMSpolicyManual.com>.

(j) Additional Information. DOUBLEMAP, at the request of LYNX, shall further provide to LYNX such other information as LYNX

may reasonably request from time to time. Further, DOUBLEMAP shall at LYNX's request meet and have its employees and representatives meet with LYNX at most once every 6 months, regarding any of the Services to be rendered under the Contract.

8. NO DISCRIMINATION/DBE REQUIREMENTS.

(a) No Discrimination. Neither DOUBLEMAP nor any of its subcontractors shall discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. DOUBLEMAP shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of DOT-assisted contracts. Failure by DOUBLEMAP 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 LYNX deems appropriate.

(b) DBE Requirements. In the event that a Disadvantaged Business Enterprise ("DBE") goal has been established by the Solicitation, DOUBLEMAP covenants and agrees to comply with the requirements set forth in Exhibit "C" attached hereto and incorporated herein by this reference (the "DBE Addendum"). In the event that DOUBLEMAP is in breach of the DBE Addendum, in addition to any other damages and remedies available to LYNX in accordance with applicable law, the Contracting Officer (as hereinafter defined) may issue a termination for default proceeding pursuant to Section 11 hereof.

9. PUBLIC RECORDS. LYNX is an agency of the State and is subject to Florida's Public Records Act, Chapter 119, Florida Statutes (the "Public Records Act"). It is possible that DOUBLEMAP, as a result of the Contract, may also be subject to the Public Records Act and, if so, DOUBLEMAP will promptly respond in accordance with said statute to any and all third party requests for "public records," as that term is defined in the Public Records Act. In regard to any such request, DOUBLEMAP will promptly notify LYNX. LYNX's determination as to the necessity of such response shall be presumptively correct.

10. LYNX PROPRIETARY INFORMATION. DOUBLEMAP may, by virtue of this Contract, come into possession of certain non-publicly available information relating to LYNX, which information may or may not be proprietary to LYNX (the "LYNX Information"). In any event, DOUBLEMAP agrees that any such LYNX Information is solely for the purpose of enabling DOUBLEMAP to fulfill its duties and obligations under this Contract, and DOUBLEMAP may not use any such LYNX Information for

any other purpose whatsoever without the express, written permission of LYNX. By way of illustration and not limitation, any such LYNX Information may not be used by DOUBLEMAP in submitting a Request for Proposal for any other purpose, whether to LYNX or to any other third party. Upon the expiration or termination of the Contract, DOUBLEMAP will return to LYNX any proprietary LYNX Information and will not, without LYNX's prior written approval, keep or maintain any copies or transcripts thereof.

11. TERMINATION.

(a) Default by DOUBLEMAP. LYNX may, in its sole and absolute discretion, by written notice of default to DOUBLEMAP, terminate all or any part of this Contract if (i) DOUBLEMAP fails to perform the Services described herein, within the time specified herein or any extension hereof; or (ii) if DOUBLEMAP fails to satisfy any of the other provisions of the Contract, or so fails to make progress as to endanger performance of this Contract in accordance with its terms; and in either of these two circumstances does not cure such failure within a period of thirty (30) days (or such longer period as the Contracting Officer may in his/her absolute discretion authorize in writing) after receipt of notice from the Contracting Officer specifying such failure. In the event that LYNX elects to waive its remedies for any breach by DOUBLEMAP of any covenant, term or condition of this Contract, such waiver by LYNX shall not limit LYNX's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

(b) Termination by LYNX for Convenience. This Contract may be terminated by LYNX in its absolute discretion, in whole or in part, whenever the LYNX Contracting Officer or LYNX shall determine that such termination is in the best interest of LYNX. Any such termination shall be effected by delivery of a notice of termination by LYNX to DOUBLEMAP, specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective. DOUBLEMAP shall be paid its costs, including contract closeout costs, and profit on Services performed by DOUBLEMAP up to the effective date of Contract termination. DOUBLEMAP shall promptly submit its claim for final payment to LYNX. Settlement of claims by DOUBLEMAP under this Section 11(b) shall be in accordance with the provisions set forth in Part 49 of Title 48 - Federal Acquisition Regulations (48 C.F.R. 49), except that wherever the word "Government" appears it shall be deleted and the word "LYNX" shall be substituted in lieu thereof.

(c) Default by LYNX. In the event LYNX is in default under this Contract, DOUBLEMAP shall first provide written notice to LYNX of said condition alleged by DOUBLEMAP to be a default, and LYNX shall have a reasonable period of time, not to exceed thirty (30) days, within which to cure said default. During said period, DOUBLEMAP shall continue to provide the Services to LYNX. In the event LYNX continues to be in default under this Contract upon the expiration of the time period set forth above for curing its default, this Contract may be terminated by DOUBLEMAP upon providing a notice of termination to LYNX.

(d) Termination Due to Insufficient Funds. If at any time during the term of the Contract the LYNX Governing Board makes a determination that LYNX has insufficient funds with which to carry out its performance and obligations under the Contract, then LYNX may terminate the Contract by delivering a notice of termination to DOUBLEMAP. The effective date of any termination shall be the date which is thirty (30) days following the delivery of the notice of termination or such later date, if any, specified in the notice of termination. DOUBLEMAP shall be paid its costs, including Contract closeout costs, and profit on work performed up to the time of termination. DOUBLEMAP shall promptly submit its claim for final payment to LYNX.

(e) Termination Due to Failure to Receive a Grant or other Funding Device. If at any time during the term of the Contract LYNX ceases to receive a grant or other funding device from a third party with which it intended to pay for the goods or services contracted for, then, unless otherwise directed by the LYNX Governing Board, LYNX may terminate the Contract by delivering a notice of termination to DOUBLEMAP. The effective date of any termination shall be the date which is thirty (30) days following the delivery of the notice of termination or such later date, if any, specified in the notice of termination. DOUBLEMAP shall be paid its costs, including Contract closeout costs, and profit on work performed up to the time of termination. DOUBLEMAP shall promptly submit its claim for final payment to LYNX.

(f) Remedies for Default. If this Contract is terminated by either party for the other party's default, the non-defaulting party shall, except as otherwise expressly set forth in the Contract Documents, retain any and all remedies available for it against the defaulting party, all of which remedies shall be cumulative.

12. DISPUTE RESOLUTION. If there is any controversy or claim arising out of or relating to this Contract, or the breach thereof (collectively, a "Legal Dispute"), unless otherwise agreed to by the parties, the parties shall attempt to resolve any Legal Dispute in the following order of priority (with the exception that (c) and (d) below are mutually exclusive) and abide by the provisions thereto:

(a) Informal Meeting between the Parties. First, the parties should initially attempt to resolve the Legal Dispute informally by holding a meeting between the LYNX CEO and DOUBLEMAP's CEO (or other such officer with equivalent binding authority) whereby both parties try in good faith to settle the Legal Dispute and reach an agreement.

(b) Mediation. If the informal meeting fails to resolve the Legal Dispute, then the parties agree to try in good faith to settle the dispute by mediation, which shall follow the practices and procedures as set forth by the Circuit Court of Orange County Florida, subject to the Florida Rules of Appellate Procedure 9.700-9.740 and conducted by a Florida Supreme Court Certified Mediator before resorting to arbitration or judicial action. Any such mediation shall be held in Orange County, Florida.

(c) Court of Law. If mediation fails to resolve the Legal Dispute, then either party may pursue legal action, and such action, suit or proceeding arising in conjunction with the Legal Dispute shall be brought exclusively in the Ninth Judicial Circuit of the State of Florida or the United States District Court for the Middle District of Florida, Orlando Division.

Nothing in this Section 12 shall in any way limit the right of LYNX to terminate this Contract under Section 11 hereof.

13. Warranties and Disclaimer Thereof. DOUBLEMAP WARRANTS THAT THE SERVICES WILL OPERATE IN ALL MATERIAL RESPECTS AS REQUIRED BY THE SCOPE OF SERVICES. DOUBLEMAP DOES NOT REPRESENT THAT LYNX'S USE OF THE SERVICE WILL BE SECURE (EXCEPT WITH RESPECT TO DOUBLEMAP'S SYSTEMS), TIMELY, UNINTERRUPTED OR ERROR-FREE OR THAT ALL ERRORS IN THE SERVICE AND/OR DOCUMENTATION WILL BE CORRECTED OR THAT THE OVERALL SYSTEM THAT MAKES THE SERVICE AVAILABLE (INCLUDING BUT NOT LIMITED TO THE INTERNET, THE AMAZON CLOUD, OTHER TRANSMISSION NETWORKS, EQUIPMENT AND LYNX'S LOCAL NETWORK AND EQUIPMENT) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE WARRANTIES STATED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY DOUBLEMAP. THERE ARE NO OTHER WARRANTIES

OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. EXCEPT AS OTHERWISE STATED HEREIN, THE SERVICE IS PROVIDED TO LYNX ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND IS FOR COMMERCIAL USE ONLY.

14. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO ANYONE FOR LOST PROFITS OR LOST REVENUE OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, RELIANCE OR EXEMPLARY DAMAGES, OR INDIRECT DAMAGES OF ANY TYPE OR KIND HOWEVER CAUSED, WHETHER FROM BREACH OF WARRANTY, BREACH OR REPUDIATION OF CONTRACT, NEGLIGENCE, GROSS NEGLIGENCE OR ANY OTHER LEGAL CAUSE OF ACTION (EXCEPTING WILLFUL MISCONDUCT) FROM OR IN CONNECTION WITH THIS AGREEMENT (AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) TO THE MAXIMUM EXTENT PERMITTED BY LAW AND SHALL IN NO EVENT EXCEED THE DIRECT DAMAGE LIMITATIONS AS SET FORTH BELOW.

Except with regard to amounts due under this Contract, liability resulting from gross negligence or willful misconduct, or claims subject to the indemnification provisions contained herein, the maximum liability one party may have to the other party whatsoever arising out of or in the connection with this Contract, use or other employment of the Services, whether such liability arises from any claim based on breach or repudiation of contract, breach of warranty, negligence, tort, or otherwise, shall in no case exceed the Not to Exceed Amount. In no event shall this Contract limit a party's right to seek monetary damages and/or injunctive relief for misappropriation, theft, conversion or infringement by one party, directly or indirectly, of another party's intellectual property rights. The parties acknowledge that the limitations set forth in this Section are integral to the amount of fees charged in connection with making the Services available to LYNX and that, were DOUBLEMAP to assume any further liability other than as set forth herein, such fees would of necessity be set substantially higher.

15. Indemnification.

(a) By DOUBLEMAP. DOUBLEMAP understands that in performing the Services hereunder it will be responsible for the consequences of its own actions. Therefore, except as provided in Subsection 15(b) below, DOUBLEMAP agrees that it will indemnify, defend and hold harmless LYNX as well as LYNX's officers, directors, employees, agents and representatives and each of the heirs, executors, successors and assigns of each of the foregoing from, against and in

respect of all Claims (defined below) and Losses (defined below), arising out of or related to DOUBLEMAP's performance of the Services hereunder, including, without limitation, any acts or omissions with respect thereto.

(b) Indemnification for Infringement. DOUBLEMAP shall, at its own expense and subject to the limitations set forth in this Section, defend LYNX from and against any and all allegations, threats, claims, suits, and proceedings brought by third parties (collectively "Claims") alleging that the Services, as used in accordance with this Contract, infringes third party copyrights, patents, trade secrets or trademarks and shall indemnify and hold LYNX harmless from and against liability, damages and costs finally awarded or entered into in settlement (including, without limitation, reasonable attorneys' fees) (collectively, "Losses") to the extent based upon a Claim.

Excluded from the above infringement indemnification obligations are Claims to the extent arising from (a) use of the Services in violation of this Contract, any user guides furnished by DOUBLEMAP or applicable law; or (b) modifications to the Services or use of the Services in combination with any software, application or service made or provided other than by DOUBLEMAP, subcontractors of DOUBLEMAP, or at DOUBLEMAP's express recommendation.

If a Claim of infringement is brought or threatened, DOUBLEMAP shall, at its sole option and expense, use commercially reasonable efforts either (a) to procure a license that will protect LYNX against such Claim without cost to LYNX; (b) to modify or replace all or portions of the Services as needed to avoid infringement, such update or replacement having substantially similar or better capabilities; or (c) if (a) and (b) are not commercially feasible, terminate this Contract and refund to the LYNX a pro-rata refund of any prepaid amounts paid by LYNX to DOUBLEMAP for the terminated portion of the Term. To the extent that DOUBLEMAP elects to terminate this Contract it shall pay all out-of-pocket migration costs incurred by LYNX resulting from such termination. The rights and remedies granted LYNX under this Section state DOUBLEMAP's entire liability, and LYNX's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party.

(c) **Indemnification Procedures and Survival.** In the event of a potential indemnity obligation under this Section, the indemnified party shall: (i) promptly notify the indemnifying party in writing of such Claim; (ii) allow the indemnifying party to have sole control of its defense and settlement (provided that the indemnifying party shall make no admission of fault or wrongdoing or other statement reflecting negatively on the indemnified party without the indemnified party's prior express written consent); and (iii) upon request of the indemnifying party, cooperate in all reasonable respects, at the indemnifying party's cost and expense, with the indemnifying party in the investigation, trial, and defense of such Claim and any appeal arising therefrom. The indemnification obligations under this Section are expressly conditioned upon the indemnified party's compliance with this Section, except that failure to notify the indemnifying party of such Claim shall not relieve that party of its obligations under this Section but such Claim shall be reduced to the extent of any damages attributable to such failure. The indemnification obligations contained in this Section shall survive termination of this Contract for one year.

16. **Confidential Information.**

(a) **Confidential Information.** For purposes of this Contract, "**Confidential Information**" shall include the (i) those provisions of this Contract identified as "confidential", (ii) each party's proprietary technology, intellectual property, trade secrets, business processes and product information, designs and issues, customer lists, pricing lists, and (iii) any information provided by one party to other, in each case with respect to any item identified in clause (i), (ii) or (iii), that is that is clearly labeled or designated by the disclosing Party as "confidential," "proprietary" or "trade secret" or with words of like meaning. Confidential Information shall not include: (1) information which is known publicly; (2) information which is generally known in the industry before disclosure; (3) information which has become known publicly, without fault of the receiving party, subsequent to disclosure by the disclosing party; or (4) information which the receiving party receives from a third party without a duty of confidentiality, where such third party had the lawful right to disclose such information to the receiving party.

(b) **Non-Disclosure.** Each receiving party agrees: (i) to keep confidential all Confidential Information; (ii) not to use or disclose Confidential Information, except to the extent necessary to perform its obligations or exercise its rights under the Contract or as directed by the disclosing party; (iii) to protect the confidentiality thereof in the same manner as it protects the confidentiality of similar information and data of its own

(at all times exercising at least a reasonable degree of care in the protection of such Confidential Information); and (iv) to only make Confidential Information available to authorized persons of receiving party on a "need to know" basis. Receiving party may disclose Confidential Information on a need to know basis to its contractors and service providers who have executed written agreements requiring them to maintain such information in strict confidence and use it only to facilitate the performance of their services in connection with the performance of the Contract. Notwithstanding the foregoing, this Section will not prohibit the disclosure of Confidential Information to the extent that such disclosure is required by law (including pursuant to the Public Records Act) or order of a court or other governmental authority or regulation.

(c) Public Records Request; Indemnification. In the event LYNX receives a public records request relating to any Confidential Information, LYNX will provide said request to DOUBLEMAP and DOUBLEMAP shall promptly respond as to whether or not it objects to any portion of said material being produced and, should DOUBLEMAP assert that any of such information is a "trade secret" within the meaning of Section 812.081(1)(c), Florida Statutes (or confidential or exempt under another provision of the Public Records Act or Florida law), LYNX may rely upon said assertion by DOUBLEMAP and not release the un-redacted information based upon DOUBLEMAP's assertion and DOUBLEMAP will indemnify and hold harmless LYNX, together with its officers, directors, employees, agents and representatives, to the fullest extent permitted by the laws of the State of Florida, against any and all expenses (including, without limitation, attorneys' fees and costs), damages, losses, liabilities, judgments, fines, penalties (whether civil, criminal or other), and amounts paid or payable in settlement, including any interest, assessments, that such persons incur as a result of LYNX declining to furnish the Confidential Information in response to requests for Public Records.

17. Ownership. As between DOUBLEMAP and LYNX, all title and intellectual property rights in and to the LYNX data is owned exclusively by LYNX. LYNX service marks, logos and product and service names are marks of LYNX (the "LYNX Marks"). LYNX grants DOUBLEMAP during the Term the right to display the LYNX Marks on its websites and marketing and other promotional materials; provided, that the display of such LYNX Marks does not portray LYNX in a disparaging light or suggest that LYNX is endorsing any products or service prohibited under LYNX Administrative Rule 11. In the event that the LYNX Marks are utilized in a way that LYNX determines to have violated the terms of the previous sentence, DOUBLEMAP shall, upon receipt of written notice of same, promptly remove such marks.

LYNX agrees that all rights, title and interest in and to all intellectual property rights in the Services are owned exclusively by DOUBLEMAP. Except as provided in this

Contract, any license granted to LYNX does not convey any rights in the Services, express or implied, or ownership in the Services or any intellectual property rights thereto. In addition, DOUBLEMAP shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, and perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by LYNX, including Users, relating to the operation of the Services. Any rights not expressly granted herein are reserved by DOUBLEMAP. DOUBLEMAP service marks, logos and product and service names are marks of DOUBLEMAP (the "DOUBLEMAP Marks"). LYNX agrees not to display or use the DOUBLEMAP Marks in any manner without DOUBLEMAP's express prior written permission.

18. NOTICES. All notices shall be made to the addresses listed in the preamble to this Contract, unless otherwise provided below:

(a) DOUBLEMAP's primary point of contact for daily operations of the Services pursuant to this Contract is: Austin Dixon; austin@doublemap.com; Telephone: 317-331-2678; Facsimile: _____.

(b) DOUBLEMAP's primary point of contact for legal notice and authority to modify or act under this Contract is: Jeffrey J. Kirk, II, Esq.; Taft Stettinius & Hollister LLP; jkirk@taftlaw.com; Telephone: (317) 713-3686.

(c) DOUBLEMAP may appoint other individuals upon written notice to, and approval by, LYNX. DOUBLEMAP shall provide written notice to LYNX promptly with respect to any changes to the aforesaid contact information.

(d) From the period of the date hereof until the deployment of the Services, LYNX designates Doug Jamison with respect to DOUBLEMAP's performance of this Contract, and who will also serve as the primary point of contact for operational issues (such person, the "Project Manager"). Following the deployment of the Services, Tim May shall serve as the Project Manager. LYNX may change such designations upon written notice to DOUBLEMAP.

(e) As of the date hereof, LYNX designates Mark Forsyth (the "Contracting Officer") as the primary point of contact for issues pertaining to contractual changes, modifications and overall Contractor performance. LYNX may change such designation upon written notice to DOUBLEMAP.

(f) The Project Manager, Contracting Officer, and all other officers, employees, executives, agents and representatives of LYNX have only such authority to act on behalf of and bind LYNX to the extent granted to such individuals by the LYNX Governing Board, and no apparent authority of any such individuals shall be binding upon LYNX. No individual shall have the authority to act pursuant to this Contract or to modify or amend this Contract except in accordance with the LYNX Administrative Rules and such other policies and procedures that may be adopted by LYNX pursuant thereto. No such action, modification or amendment shall be valid or binding upon LYNX, if the authorizing representative of LYNX has exceeded the authority actually granted to such individual by the LYNX Governing Board.

19. MISCELLANEOUS.

(a) Governing Law. The parties mutually acknowledge and agree that this Contract shall be construed in accordance with the laws of the State of Florida, without regard to the internal law of Florida regarding conflicts of law.

(b) Attorney Fees. If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default, claim, or misrepresentation arising out of or in connection with any of the provisions of this Contract, the prevailing party or parties shall be entitled to recover its or their reasonable attorneys' fees (including paralegals' fees), court costs, expenses, and costs of experts and investigation, whether at trial, upon appeal, or during investigation by such prevailing party or parties in prosecuting or defending such legal action or other proceeding.

(c) Waiver Of Jury Trial. EACH PARTY HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE CONTRACT DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY EACH PARTY, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE.

(d) Assignment by DOUBLEMAP. LYNX has selected DOUBLEMAP to render the Services based in substantial part on the personal qualifications of DOUBLEMAP; as such, DOUBLEMAP may not assign or transfer any right or obligation of this Contract in whole or in part, without the prior written consent of LYNX, which consent may be granted or withheld in the sole discretion of LYNX. Notwithstanding the foregoing, DOUBLEMAP may, without the need to obtain LYNX's prior written consent, assign this Contract and delegate its obligations hereunder to any of its affiliates or to a successor by way of merger or consolidation or the acquisition of substantially all of the business relating to the subject matter of this Contract. DOUBLEMAP may utilize subcontractors as otherwise permitted and provided in the Contract Documents. Except as otherwise provided herein, any assignment or transfer of any obligation under this Contract without the prior written consent of LYNX shall be void, *ab initio*, and shall not release DOUBLEMAP from any liability or obligation under the Contract, or cause any such liability or obligation to be reduced to a secondary liability or obligation.

(e) ASSIGNMENT TO ADDITIONAL GOVERNMENTAL PURCHASERS. LYNX MAY ASSIGN THE RIGHT TO PURCHASE THE SERVICES UNDER THIS CONTRACT TO ANY STATE, COUNTY, MUNICIPAL OR LOCAL AGENCY OR OTHER GOVERNMENTAL BODY (COLLECTIVELY, "ADDITIONAL GOVERNMENTAL PURCHASERS"). THE CONTRACTOR AGREES TO EXTEND THE PRICES, TERMS, AND CONDITIONS FOR THE PROCUREMENT OF THE SERVICES AS PROVIDED FOR HEREIN TO ANY SUCH ADDITIONAL GOVERNMENTAL PURCHASERS. THIS PROVISION IS INTENDED TO COMPLY WITH THE REQUIREMENTS OF CHAPTER V, SECTION 7(A)(2) OF FTA CIRCULAR 4220.1F AND SHALL BE INTERPRETED CONSISTENT THEREWITH.

(f) Captions and Headings. The captions and headings provided herein are for convenience of reference only and are not intended to be used in construing the terms and provisions hereof.

(g) Number And Gender. Whenever herein the singular or plural is used the same shall include the other where appropriate. Words of any gender shall include other genders when the context so permits.

(h) Multiple Counterparts. This Contract may be executed in a number of identical counterparts each of which is an original and all of which constitute collectively one agreement. In making proof of this Contract in any legal action, it shall not be necessary to produce or account for more than one such counterpart.

(i) Survival. Should any provision of this Contract be determined to be illegal or in conflict with any law of the State of Florida, the validity of the remaining provisions shall not be impaired.

(j) No Third-Party Beneficiary. It is specifically agreed that this Contract is not intended by any of the provisions of any part of this Contract to establish in favor of any other party, the public or any member thereof, the rights of a third-party beneficiary hereunder, or to create or authorize any private right of action by any person or entity not a signatory to this Contract to enforce this Contract or any rights or liabilities arising out of the terms of this Contract.

20. AMENDMENT OF CONTRACT. This Contract may not be modified or amended without the prior written consent of the party to be charged by said amendment or modification. This provision may not itself be changed orally. DOUBLEMAP specifically is aware and understands that any material or substantial change to this Contract may require approval of LYNX's Governing Board for any such change to be valid.

21. LYNX APPROVAL. This Contract shall be effective upon its approval by the LYNX Governing Board.

22. ENTIRE CONTRACT. This Contract, including the Contract Documents referenced above, together with any Exhibits or attachments hereto constitutes the entire agreement between the parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the authorized signatories named below have executed this Contract on behalf of the parties as of the Effective Date.

"DOUBLEMAP" or "Contractor"

"LYNX"

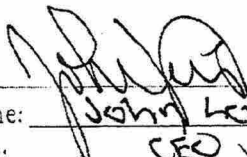
DOUBLEMAP, INC.

CENTRAL FLORIDA REGIONAL
TRANSPORTATION AUTHORITY

By: 

Name: Ilya Rekhter

Title: CEO

By: 
Name: John Lewis
Title: CEO

Approved as to Form:

This Contract is approved as to form only for execution by LYNX, and this approval is not to be relied upon by any other person or for any other purpose.

AKERMAN, LLP

By: 

Name: James Goldsmith

Title: Partner

CONFIDENTIAL – CONTAINS TRADE SECRET INFORMATION

Exhibit “A-1”

Scope of Services

[See attached]

SCOPE OF WORK

Please note that any skilled individual, firm or joint partnership is encouraged to respond even if they are not familiar or have ever worked with public transportation systems or transit-specific technologies. A solution to a technology challenge in a transit setting is being sought through this LOI.

Introduction

LYNX, along with the Cities of Altamonte Springs, Casselberry, Longwood, and Maitland are seeking a Contractor to develop, integrate, demonstrate, and deploy a technology solution to provide on demand transportation to transit riders in a point-to-point, shared-ride environment. The Contractor shall be responsible for providing the technology solution including all hardware and software, including the maintenance, updates, and technical support. The Contractor shall not be responsible for providing the operations including operations staffing, drivers, and vehicles as these will be procured under a separate solicitation.

The technology solution shall enable riders to request trips in an automated manner from a trip origin location to a trip destination location, both within a defined geographical location. The solution shall be designed to allow riders to reserve trips to be dispatched immediately pending available vehicle rider capacity. It shall also allow trip requests for a future time with the range of time extending from the current point in time to a system administrator determined future date. The successful solution shall provide the ability for riders to request a trip with a vehicle arrival at their travel origin location in the shortest time possible. The system will group similar travel requests based on requested times and travel patterns to provide efficient travel options in a shared ride environment, but shall also provide trips to the riders in an effective manner limiting the wait time for arrival of a vehicle to start the trip and limiting the on-board travel time. The system shall not be designed to provide each trip request in a single-ride, non-shared environment. The objective of this system is to generate a trip solution and facilitate service delivery in response to each rider's request in as short a period of time as practical relative to the vehicle rider capacity and competing rider requests in real-time.

General Information

The project known as "FlexBus" has been developed cooperatively by LYNX and the Cities of Altamonte Springs, Casselberry, Longwood, and Maitland. A shared-ride, point-to-point transit service shall be deployed in a service area overlapping the four cities and operated by a third-party contractor separately solicited and contracted through the cities. LYNX shall also use the solution on its NeighborLink shared-ride, address-to-address service as well as on other LYNX current or future transit services offered.

LYNX

LYNX provides public transit services in the Central Florida Counties of Orange, Osceola, and Seminole, with a service area of approximately 2,500 square miles with a resident population of more than 1.8 million people. Some services also extend into the neighboring Lake, Polk, and Volusia Counties. Fixed Route service is operated on seventy one (71) fixed routes, one (1) Bus Rapid Transit (BRT) route, and ten (10) public flex service routes (NeighborLink) in limited geographic areas. Paratransit services are provided throughout the service area by LYNX through a third-party contractor. LYNX also works with the Florida Department of Transportation (FDOT) rethink Commuter Services Program to provide van pool, car pool, and "Road Ranger" services.

City of Altamonte Springs

The City of Altamonte Springs holds a dynamic view of transportation by encouraging multimodal choice and facilitating innovation projects, such as FlexBus. With a population of forty-one thousand nine hundred and twenty (41,920), Altamonte Springs is located in southwest Seminole County, Florida. The City is approximately ten (10) square miles and is effectively divided into quadrants by Interstate 4 (I-4) which runs north and south and State Road 436 which runs east and west through the City. The intersection of the two roads generally marks the City's geographical center. The City is characterized by a combination of urban and suburban development pattern with a diversity of residential, commercial, and office uses. Key activity centers supporting businesses and employment in the City is the cornerstone to fostering multimodal choice. For the FlexBus Demonstration Project, Altamonte Springs has selected eleven stations in key activity centers within walking distance of employment, shopping and residential. The City's eleven stations were designed to tie into the other FlexBus stations supported by the other cities.

City of Casselberry

The City of Casselberry is a progressive community that embraces a multimodal approach to transportation. Located at the junction of two of Central Florida's major arterial roads, U.S. Highway 17-92 and State Road 436, Casselberry is ideally situated in Central Florida, offering both its own amenities as well as easy access to nearby art, culture, shopping, medical, and sports facilities. The City has over 26,000 residents and encompasses approximately seven and a half (7.5) square miles. For the FlexBus Demonstration Project, Casselberry has selected four stations that together offer easy walking distance access to nearly five thousand (5,000) residents, linking them to internal major shopping areas (e.g., Casselberry Commons) and the City's cultural center (City Hall/Lake Concord Park), as well as providing linkage to key locations in partner Cities. A system of bike trails and bike friendly streets, as well as collocated LYNX fixed route stops, further enhances station access.

City of Longwood

The City of Longwood, albeit the smallest of the partner cities six (6) square miles in size with a permanent population of fourteen thousand (14,000), swelling upwards to eighty thousand (80,000) people during the day acknowledges that for any future transportation system to be efficient and effective it must be comprehensive and multimodal. To that end the city has spent the last few years securing millions of dollars in funding for planning, design and the eventual construction of

improvements to the City's pedestrian and bicycle facilities. With bike and pedestrian facilities in the works, the City has turned its attention to filling gaps in the transit services not only within the city and to neighboring destinations, but as one of the stops on the Central Florida's new Sunrail Commuter Rail service. The City believes that the success of commuter rail will be predicated on having a system in place that helps to connect Sunrail passengers to their destination. To that end, the City joins the other cities and LYNX in pursuing the FlexBus demonstration project, not just for the creation of the on-demand technology but to prove that there is an efficient and effective mechanism to serve less dense areas with timely station to station non-fixed route bus service. For the demonstration project the City has selected four (4) strategically located stations: the Sunrail station, South Seminole Hospital, a centralized location on Florida Central Parkway (to serve our major employers) and the Winn Dixie Plaza on State Road 434 and Rangeline Road.

City of Maitland

The City of Maitland is located in Central Florida approximately 10 miles north of downtown Orlando along the I-4 corridor, the region's primary arterial transportation spine. The City is 6.4 square miles in area and has a population of about 16,000. Maitland is a desirable residential community but also hosts a major office park that is home to about 17,000 employees every day, a phenomenon which doubles its daytime population. Interstate 4 essentially bisects the City with mostly office parks on the west side and residential and strip commercial uses on the east. The City will also be home to one of the 17 planned commuter rail stations (known as SunRail) planned for the spring of 2014. The commuter rail station will be located on the west side of US 17-92, east of Robinhood Drive, and north of Sybelia Avenue, along the existing CSX railroad tracks. The planned commuter rail service presents an excellent opportunity for any of the approximately 17,000 daily commuters to Maitland to enter the city via alternative modes of transportation. However, once commuters reach the City's commuter rail station, they need to have access to a means of transport within the area to reach their final destination.

The City of Maitland plans to establish seven Flexbus Stations during year one of the demonstration phase. One station will be located at the planned SunRail station, with the remaining six to be located approximately three miles west within the City's major office park and employment activity centers. These seven stations shall be interconnected with the other 19 Flexbus stations within the larger sub-region of the project partnership of Altamonte Springs, Maitland's closest neighbor to the north, as well as Longwood and Casselberry. Assuming the demonstration is a success, there is a total of 126 FlexBus stations planned in the four-city area.

FlexBus Service

FlexBus is a proposed demand response service that will respond directly to rider requests. Service will be provided in a shared ride environment. Access is limited to trip origins and destinations at designated stations located within the Cities of Altamonte Springs, Casselberry, Longwood, and Maitland. The full service area will cover approximately twenty-five square miles planned to be served by up to twelve (12) vehicles providing service throughout the service day. Twenty-six locations have been identified for initial deployment, with additional stations identified for possible future expansion. Some stations are co-located with existing LYNX fixed route stops. Locations may include reservation

kiosks and real-time information displays installed as part of the project or may consist of a stop identified only by a static sign. The final design of each station will be at the discretion of the cities deploying the service.

Riders will be able to reserve trips with a request for pick-up as soon as possible or up to the end of the service day. Reservations will also be accepted for up to seven days in advance of the request for service. Trip fares can be paid electronically when the reservation is made or as the rider boards the vehicle with cash or electronic fare media.

Prior to the full initial deployment of the twenty-six station demonstration project, a proof-of-concept (detailed elsewhere) shall be required consisting of a sub-set of the twenty-six stations. The Contractor shall demonstrate the full functionality of the system, including the ability for the system administrator to configure the provision of service for either FlexBus service (station-to-station) or for NeighborLink service (address-to-address) at the user's discretion.

NeighborLink Service

NeighborLink is an existing service with ten (10) established demand response routes, each serving approximately five (5) square miles with one vehicle. Service is provided in a shared ride environment. Riders can reserve trips from any address to any address within the service area with as little as two (2) hours advance notice or up to seven (7) days in advance. Service is automatically scheduled to serve a shared stop with the LYNX fixed-route bus service at least once per hour to enable transfers. Riders call a rider service representative to reserve, cancel, or check on trips.

General Description of FlexBus Concept

Existing LYNX public flex services known as "NeighborLink" operate as curb-to-curb (any address to any address) shared ride service operated in a limited geographic area, typically limited to approximately five square miles. Riders are able to reserve a trip on the day of service with as little as two hour notice or as much as seven days in advance, with a vehicle providing service from origin to destination. Service is provided on medium sized vehicles with less than fifteen (15) seats. The vehicle may make stops to pick-up or drop-off other riders during the trip.

The FlexBus concept allows riders to use technology solutions to directly interact with the scheduling system to request trips from point to point (station-to-station), with arrival of the vehicle in the minimum amount of time possible. It is a goal, though not a service guarantee, that riders would be offered a trip solution that would deliver a vehicle within twelve minutes of their request and that once the rider boards, the trip would take no longer than twice the direct travel time in a private vehicle. If a solution cannot be found that meets this goal, then the system will offer the best solution to the rider's request. It is also envisioned that the solutions shall involve access through the internet, via rider provided personal wireless devices, kiosks at trip origin and destination locations, interactive voice response telephone, or through rider interaction with a rider service representative. Riders can make an advanced reservation or can request a trip with a vehicle immediately dispatched. The system shall automatically identify an available vehicle that can provide the trip as requested and confirms the trip

with the rider. The trip is automatically dispatched to the driver of the vehicle with the trip tracked through completion.

The system shall be open source and aggregate existing technologies as much as possible. All functions of the system relating to accepting and processing the rider request, scheduling, vehicle assignment, vehicle routing, dispatching the trip, tracking the trip and providing real-time updates to the rider upon request, integration of real-time traffic conditions including driver route deviation as appropriate, and tracking completion and fulfillment of the trip shall occur in an automated fashion without the requirement for human intervention in the "back-office" operations.

The FlexBus concept is intended to enable the provision of demand responsive transit trips that directly respond to rider demand in as close to "real-time" as possible by minimizing or removing need for riders call in advance of the need for service while providing a trip in a shared-ride transit environment that is as short possible. While it is envisioned that technology enables the FlexBus concept, the solution must be designed so that persons covered under the Americans with Disabilities Act (ADA), Title VI of the Civil Rights Act of 1964, and Environmental Justice guidelines and regulations receive the same level of service as all other system users.

The system shall schedule trips on multiple vehicles, adjust the number of vehicles in service configured by the system administrator, adjust the schedule and vehicle electronic manifests dynamically as trip reservations are received and confirmed and adjusted for delays. Riders shall be provided an estimated pick-up time at the trip origin location and an estimated trip drop-off time at the trip destination location. The rider shall also be presented with a unique trip identification number or other identifier for the trip upon booking confirmation. The system shall be designed to protect and honor all times already confirmed to riders when scheduling new travel requests. All requests shall be tracked in an automated fashion to ensure that all trips start and end as confirmed and scheduled with any exceptions due to uncontrollable anomalies automatically adjusted or escalated to a responsible individual for resolution.

The system shall be designed to operate in an automated manner to the greatest extent feasible. An interface shall be designed to allow a rider service representative to service riders; however, riders shall have the maximum ability to interact with the system through technology interfaces to self-reserve, self-cancel, and self-monitor trip requests.

The solution provided shall be designed to operate in a demand response shared-ride environment. Demand response means that the service responds directly to user requests and not according to a pre-determined schedule. Shared-ride means that multiple similar but unrelated trips shall be grouped on vehicles to provide a cost effective service by maximizing the use of the vehicle capacity. The system shall be configurable by the user without the need for Contractor customization as to the vehicles, service area boundaries and trip locations, days and times of service, number of drivers and driver assignments to vehicles, fares to be charged, and service parameters. The system administrator shall be able to define the vehicles available for service including the number of vehicles, the seating and wheelchair securement spaces for each vehicle, and whether a vehicle is available or unavailable for

service for a given date. The system administrator shall be able to define drivers, dates the driver is available or unavailable, and the start and end times of each drivers work periods. The system administrator shall be able to establish the time service will begin and will end for each day of the week, including the ability to custom assign different hours for any specific date in the future, such as a holiday, including the ability to choose a day of the week or a specific date as a day the system will not accept trips. Service boundaries shall be able to be geographically chosen and adjusted by the system administrator without customization by the Contractor. The system administrator shall be able to define trip origin and trip destination locations, which shall then be used for generating trip requests. The system administrator shall be able to assign start and end date ranges during which a location will be available for scheduling trip requests. This will allow future stations to be added once installation is complete, stations to be removed beginning at a published date, or the removal of a station for a temporary period due to unique circumstances.

The solution shall be designed to be replicable and scalable with minimal customization. Replicable means that the solution shall be designed to allow implementation in other stand-alone geographic areas within the four cities, the LYNX service area, and at other areas seeking to implement such a service. Scalable means that the system administrator shall be able to add or remove vehicles, trip locations, and geographic boundaries without Contractor customization. Replication and scaling of the deployment by the Cities of Altamonte Springs, Casselberry, Longwood, Maitland, or LYNX shall not result in the requirement to purchase additional software packages or license fees. The awarded Contractor shall be able to replicate and market the system to other entities as part of its business.

Intelligent Transportation Systems (ITS) Technologies

This procurement is intended to install and deploy the following types of ITS technologies to facilitate demand response, shared-ride, public transit services including FlexBus operations(and NeighborLink operations if applicable):

- Automated scheduling and dispatch software capable of providing trip assignments to vehicles in real-time, continuously optimizing trip and vehicle assignments to account for changes in vehicle location, existing trip assignments, traffic and other travel impedances, and new trip requests. This continuously updated scheduling and dispatching will include predictive algorithms that look forward in the schedule to account for changes in vehicle location during the process of scheduling and booking each new trip;
- Computer Aided Dispatch/Automatic Vehicle Location (CAD/AVL) installed by the vendor to support the automated dispatch of trips, vehicle location monitoring, trip monitoring and fulfillment, and data communications with the driver and vehicle;
- Automated Annunciation System (AAS) that provides audible information on-board vehicles and at stops equivalent to any electronic visible information provided to ensure that all individuals receive the same information regardless of ability to see or read the electronic signs;
- On-board validation of fare payment and fareboxes or other means of cash and pass fare collection;
- Interactive kiosks/TVMs with the capability to print "Boarding Passes" with unique written and encoded trip information;

- Dynamic Message Signs (DMS) at stations or an equivalent means of providing electronic information to riders concerning FlexBus operations and vehicle arrivals;
- Kiosks located at FlexBus stations and other locations (e.g., employment centers);
- Data management system that will support at a minimum the query of the data listed in the Reporting System View (see below);
- FlexBus Internet and mobile enabled websites;
- Smartphone FlexBus application all major personal device operating systems; and
- Integration built into the system to allow future integration with an Interactive Voice Response telephone system.

Functional Description of the FlexBus Concept

This section describes the FlexBus concept functionally from the view points of the rider, the vehicle operator, a rider service representative, and a system manager.

Rider View

The rider shall be able to request a trip on the same day of service, either as an advanced reservation or as a request for a trip to be provided in the shortest amount of time possible.

Riders shall be able to make the trip request directly using an internet accessible website available using any major web browser, through a personal wireless device using either a mobile device friendly internet web page or an application that is available for all major personal device operating systems, at a kiosk supplied at major trip origin locations as part of the project, or by a telephone call to a rider service representative possibly using one of the above listed interfaces. The system shall also have ability to interface with or provide Interactive Voice Response (IVR) phone interface, though the development of this system is not envisioned as a requirement for the initial deployment. All riders will have access to the same functions regardless of the interfaced used.

The rider shall have the option of choosing the date of service if the system administrator configures the system to accept reservations for a configurable number of days prior to the present date, currently planned for up to seven (7) days in advance. The rider shall be able to identify the total number of people to be transported under the reservation and if any require special accommodation, such as a wheelchair securement space, from a populated list of accommodations. The rider shall be provided a list of trip origin locations and shall choose from the list. The rider shall then be provided a list of trip destination locations, which does not include the trip origin location, and shall choose from this list. The rider shall then provide either a trip origin pick-up time or a trip destination drop-off time, with the rider choosing which to input. The system shall allow the rider the option to choose to input a return trip for the same day. The date for the return trip will be populated with the date of the original trip. The return trip original location shall be populated with the destination location of the original trip and the destination shall be populated with the origin of the original trip, though the rider may change either field. The return trip shall be required to start no earlier than the drop-off time of the origin trip. The system shall constrain all trip origin location pick-up times and destination drop-off times to dates and time ranges for each date during which the system administrator has determined that the service will be

operation. The rider shall be notified of any requests outside of these parameters and shall not be able to reserve a trip.

Once the rider has completed all of the information for a trip request, the system shall provide the rider with the trip solution that best meets their request, including estimated pick-up time at the trip origin location and drop-off at the trip destination. If a round trip has been requested, then the return trip estimated pick-up time at the trip origin location and the estimated drop-off time at the trip destination shall also be provided. The rider shall be able to choose a trip, decline the trip options offered and request the system reprocess the options, decline the trip options offered with option to return and alter the trip request, or to decline the trip options offered and cancel the request. If a round trip is offered the rider shall be able to decline the return trip options but accept the origin trip or to decline both the origin and the return trip together.

Once the rider has accepted trip options, the system shall provide the rider the option to pay for the trip using credit or debit card (processed by the system) or to pay on-board the vehicle using cash, or present a valid LYNX or SunRail pass or fare card as an accepted proof of payment. The rider shall be provided with the full fare at the time of the trip reservation. This fare shall include the full fare for all individuals under the reservation and shall note that the fare must be paid for each individual in accordance with the transit system's fare policy.

The rider shall be provided with a unique confirmation number for the reservation. If the rider is using the internet or a kiosk, the rider shall be able to request a printer-friendly single page receipt and a printer-friendly single page boarding pass. If the rider is using a personal wireless device, the rider shall be able to request a machine readable electronic boarding pass be loaded to the device. All riders shall be able to request a boarding pass at any stop with a kiosk, provide as part of the service.

Dynamic signage at the trip origin locations shall provide real-time updates on rider trips pending a vehicle arrival. This information shall be provided in a manner that protects individual privacy yet is easy for the individual to understand and identify the information that relates to their trip. Riders using personal wireless devices shall also be able to track pending vehicle arrival at the trip origin location in real-time. Rider Service Representatives shall be able to provide the estimated arrival time for vehicles at the trip origin, and the capability shall exist for the provision of the estimated vehicle arrive time for trip origin locations using Interactive Voice Response telephone.

The vehicle shall contain a means of unique identification that allows each individual confirmed reservation holder to easily identify the vehicle performing their trip while maintaining each individual's privacy. This must also be adjustable in real-time should the original vehicle assigned to the rider's trip be changed to another vehicle prior to the arrival, such as if the system recalculates and reallocates all trips. The rider shall board the vehicle and the vehicle driver shall verify that the correct rider has boarded corresponding to the trips assigned to the vehicle. The rider shall either present a machine readable confirmation of pre-payment of the fare or shall pay the fare due using cash, or present a valid LYNX or SunRail pass or fare card as an accepted proof of payment.

The trip shall be provided in a shared-ride environment, and may encounter other pick-ups and drop-offs en-route to the rider's confirmed trip destination location; however, the system shall schedule all trips to make trips efficient and to not exceed twice the direct driving time for any confirmed rider trip.

Upon arrival at the rider's confirmed trip destination location, a means of identification on-board the vehicle shall inform all riders scheduled for drop-off at the location that they have arrived. This means shall allow each individual to identify that they have arrived at their destination while maintaining each individual's privacy. The vehicle driver shall confirm that the rider has exited the vehicle and has completed their trip.

Driver View

The driver shall be assigned to a vehicle with a start of service day time and end of service day time. Trips shall be assigned to vehicles or to drivers and shall be constrained to no trip origin location pick-ups earlier than the driver or vehicle start of service time and no trip destination location drop-off times later than the driver or vehicle end of service day time.

The driver shall be provided with an electronic manifest on-board the vehicle, which includes the next event on the vehicle manifest (trip origin location pick-up or destination location drop-off) including the confirmed estimated times. The electronic manifest shall identify any special accommodations for the rider that are part of the confirmed trip reservation. The system shall limit the quantity of trip information provided to driver to allow the system to reallocate future trips dynamically. The driver shall be provided information on real-time traffic conditions to assist the driver in avoiding delays and providing the most efficient trip possible. The vehicle shall contain a means of unique identification that allows each individual confirmed reservation holder to easily identify the vehicle performing their trip while maintaining each individual's privacy. This must also be adjustable should the original vehicle assigned be changed to another vehicle prior to the arrival, such as if the system recalculates and reallocates all trips. Each trip shall be assigned a unique identification which shall be used to identify the vehicle and the rider. The driver shall confirm the boarding of the expected individuals according to the confirmed trip request by entering the information into the electronic manifest. The driver shall also have a means to mark the trip as a "no-show" should the individuals not be present for trip origin location pick-up or should the individuals refuse to board the vehicle.

The driver shall then proceed to the next manifest trip origin location pick-up or trip destination drop-off. Upon arrival at the rider's confirmed trip destination location, a means of identification on-board the vehicle shall inform all riders scheduled for drop-off at the location that they have arrived. This means shall allow each individual to identify that they have arrived at their destination while maintaining each individual's privacy. The vehicle driver shall confirm that the rider has exited the vehicle and has completed their trip.

The vehicle driver shall have the ability to request and schedule a break which shall be scheduled without affecting scheduled trips, either in a period without scheduled trips or by assigning trips not in progress to another available vehicle without changing the confirmed trip times.

Scheduling System View

The system shall be able to be configured by the system administrator for the hours of operation and shall track all vehicles providing service, including hours of service and break periods for each vehicle. The system shall accept configuration for different hours of operation for each day of the week, and shall allow for the identification of days to be considered holidays including unique hours of operation for the holiday. The system shall track capacity constraints of each vehicle, including wheelchair securement positions. Trips shall be dynamically scheduled and dispatched within the shortest period possible in response to rider requests. The intended goal is that the vehicle will arrive to pick up the rider in less than twelve (12) minutes of the rider's request for no less than ninety-five (95) percent of requests for immediate service. The system shall, however, present the rider with the most responsive service based on demand and capacity at the time of the request even if the response exceeds the goal. Riders shall be able to directly interact with the system through the use of any major brand internet browser, any personal wireless device using any major brand operating system, or through kiosks at trip origin locations provided as part of this project. The system shall also have functionality for riders to interact with the system through Interactive Voice Response (IVR) telephone in a future phase deployment. Customer Service Representatives shall also have access to the system to assist riders not able to or choosing not to use technology. The system shall provide full functionality and the same rider experience to all riders regardless of the means used to reserve the trip.

The system shall directly interact with rider requests without the requirement or need for a Rider Service Representative, Scheduler, Dispatcher, or any other back-office human intervention. The rider shall choose the trip origin location, trip destination location, the requested time for pick-up at the trip origin location or the time for drop-off at the trip destination location. The system shall ensure that the trip request is within the service hours set by the system administrator for the day of service. The system shall allow trips up to seven days per week, twenty-four hours per day. The rider shall also identify the number of people taking the trip and if special accommodations, such as a wheelchair, must be accommodated for any individual covered by the reservation.

The system shall be able to accept and process multiple requests occurring at the same time. It shall determine if spare capacity exists on an in service vehicle with the ability to schedule on multiple vehicles and if the trip can be accommodated without adversely affecting trips already confirmed or in process. The system shall build in time to accommodate future trips, shall group travel requests with similar times and travel patterns, and shall be able to re-schedule trips between vehicles to better serve the entire system. The system shall be able to accurately predict the travel time between locations as part of its scheduling algorithm. Rider trips shall be grouped in a multi-ride schedule to the degree possible while not scheduling individual trips with travel time in excess of twice the direct travel time between the origin and destination locations. The system shall balance the efficiency of the service from the standpoint of the system provider with the effectiveness of timely service from the standpoint of the rider. The system shall not provide all trips as individually scheduled and dispatched trips with one trip completing on a vehicle before the next trip can begin.

Once the best trip option has been calculated, the rider shall be presented the trip origin location pick-up time and the requested trip destination location drop-off time. The rider shall have the choice to accept the presented trip option, to decline trip option and change the request parameters to resubmit, or decline the option and cancel the trip. The rider shall be able to request a return trip. If a round trip is offered the rider shall be able to decline the return trip options but accept the origin trip or to decline both the origin and the return trip together.

Upon acceptance of the trip option by the rider, the rider shall be able to choose to electronically pay for the trip using a credit or debit card which shall be processed by the system or to pay upon boarding the vehicle by paying with cash or by providing a valid LYNX pass, LYNX transfer, or SunRail pass as proof of payment. The rider shall then be provide with a unique confirmation number, and if the rider has access to a printer the system shall allow the rider to print the boarding pass in human and machine format on a single page in a printer friendly format. The boarding pass shall serve as a trip receipt and shall reflect the trip origin location and estimated pick-up time, the trip destination location and estimated drop-off time, the trip identification, date, cost of the trip, and indication if the fare has been paid or is due on boarding. Trip reservations made at a system provided kiosk shall be provided with a printed boarding pass in human and machine readable formats. Riders shall have the ability to print a boarding pass at a kiosk for any already confirmed trip. Riders using a personal wireless device shall be able to choose to download a machine readable boarding pass to the device.

The system shall then update the electronic manifest on-board the vehicle, inserting the trip origin location, pick-up time, and number of passengers including any special accommodations. It shall also update the manifest on-board the relevant vehicle, inserting the trip destination location and the drop-off time. Trip pick-ups and drop-offs shall be displayed to the driver in chronological order while limiting the future trip information to allow the system to adjust and reschedule future trips between vehicles as needed to optimize the schedule. The trip origin pick-up times and trip destination drop-off times for different locations shall not overlap and shall allow enough time for the driver to travel from location to location.

The system shall track all trip pick-ups and drop-offs to ensure that each passenger trip is accommodated and completed and electronically record the time, date, and location for each completed event in real-time. All trips shall be accounted for by the system ensuring each is made according to the confirmed trip. Vehicle and schedule delays shall be identified with future trips rescheduled between vehicles to not affect already scheduled and confirmed trips to the maximum extent possible. Vehicle breakdowns shall be accommodated by the system including in process trips on the vehicle and future trips assigned to the vehicle. Any trips not fulfilled or delayed beyond a configurable period of time shall automatically generate a notification to the individual monitoring the system. This situation shall be considered as a failure if capacity exists but was not utilized in an automated manner by the system. Riders shall be notified via any personal contact information available to the system and via message displays installed as part of the system at origin locations should the trip become delayed.

Reporting System View

The system shall collect and retain data in a historical database for use by the system operator to plan and to assess the operational, financial, and system performance. Data shall also be accessible to address inquiries, conflicts, and related issues. The data storage capacity shall be large enough to retain at least six months of operational history. After six months of operational history, the operational and financial data shall be archived in a "non-live" and "read-only" database and will remain easily accessible if and when needed. Data access shall require the ability to query data in real-time, daily, monthly, and annual reporting. Authorized system users shall be able to query "ad hoc" by using standard reporting tools (e.g., Crystal Reports) and shall have the ability to export data into file formats that can be viewed and edited with standard Microsoft Office software (e.g., Microsoft Word and Excel).

The system shall produce reports, at a minimum, on a daily, weekly, and monthly basis for at a minimum the following:

- Trips completed;
- Vehicle mileage;
- Total FlexBus ridership;
- Passenger travel time per trip;
- Total number of trip cancellations;
- Total number of approved no-shows (trips in which the customer was not present for pick-up and the driver was authorized to proceed without making a pick-up);
- Total number of vehicle-hours and vehicle-miles;
- Total number of revenue-hours and revenue-miles;
- Total amount of fares paid;
- Scheduled vs. actual Pick up and drop off times for each trip;
- Delayed trips;
- Productivity across the FlexBus system;
- Activity (pick-ups and drop-offs) by station; and
- Total number and types of system failures.

The system shall have the capability to generate and print reports for a user-specified time and date period. It shall allow for the query of data by rider, by vehicle, by driver, and by day. The system shall have a capacity to search for a specific trip for a specific rider in real-time across all vehicles, such as to find a missing person.

Awarded Contractor Project Implementation

General

The Contractor shall, for all deliverables, include the filename in the document footer and include in the filename the file release date.

The Contractor shall prepare all deliverables in both Microsoft Office (Word, Excel or PowerPoint) and Adobe PDF formats, with LYNX granted full rights to reprint as needed. The Contractor shall provide additional copies of all documents to the Project Partners, the Florida Department of Transportation and the Federal Transit Administration, if requested by LYNX to do so.

Project Management

Project Status Tracking

The Contractor shall prepare a System Implementation Plan (SiP), including the detailed implementation activities/schedule, roles and responsibility of parties in the proposed project team, progress milestones/status and assigned staff.

The Contractor shall also include a Safety Management Plan in their SiP, which shall detail their responsibilities and procedures for safety during the different phases of the project, including (1) conducting pre-installation surveys to identify potential project safety hazards; (2) identifying project hazard control procedures, including occupational (worker) and public hazards; (3) providing project safety orientation and training to its subcontractors and the transit agency staff who will be involved in the project; and (4) furnishing procedures and training for project accident reporting and investigations.

The initial draft of the SiP shall be provided to LYNX within two weeks from Notice to Proceed (NTP).

The revised SiP, addressing comments from the first onsite meeting, shall be provided to LYNX within two weeks after this meeting.

The SiP shall be approved and accepted by LYNX before it can become effective.

An updated SiP shall be submitted to LYNX at the beginning of each month.

The Contractor shall maintain an Action Items List (AIL), indicating for each item the following: (1) item number; (2) date generated; (3) item priority; (4) brief item descriptive title; (5) assigned person with lead resolution responsibility; (6) date resolved; and (7) ongoing dated notes on resolution status.

The AIL shall be sorted, primarily by unresolved vs. resolved items, priority, and by the date the item was generated.

Bi-Weekly Conference Calls

The Contractor shall participate in bi-weekly conference calls with LYNX Project Manager, other LYNX staff and project partners and outside consultants as determined by LYNX Project Manager.

The agenda for these meetings will be to discuss the most current status of and plans related to all issues identified in the recent releases of the SIP and AIL.

LYNX reserves the right to identify for discussion any additional issues beyond those in the SIP and AIL.

A status report shall be issued to LYNX at least two days prior to each conference call, including (1) an agenda for the upcoming conference call highlighting key discussion items; and (2) an updated AIL with the updates incorporating the discussions of the previous bi-weekly conference call as well as other subsequent developments since the previous AIL release.

The Contractor shall be represented in these conference calls by at minimum their Project Manager, as well as any additional Contractor staff necessary to properly address the current issues and project status.

LYNX will be represented by their designated implementation management representatives.

Conference call facilities will be arranged and paid for by the Contractor.

The Contractor shall submit detailed meeting minutes within two days of each conference call. Minutes shall identify all participants, items discussed, decisions made, action items, and key items carried forward beyond the meeting.

Shipping

The Vendor is responsible for providing safe transportation and delivery of all material defined by this Request for Proposal (RFP) from the place of origin to the Vendor designated locations. No equipment shipments to LYNX owned, or leased locations, or to the locations of system participants shall be made without the approval of LYNX.

All packaging of material shall conform to good packing practices to protect against any possible shipping damages. The Vendor shall be responsible for verifying that all items shipped are delivered, complete, and undamaged.

The choice of the method of delivery shall be made by the Vendor to ensure that the system is installed to meet LYNX critical dates as defined in the final implementation schedule.

The Vendor shall advise the LYNX Project Manager how equipment or systems will be delivered, i.e. identify the carrier and destination. The Vendor shall provide the LYNX Project Manager 48 hour advanced notification of the delivery dates. LYNX's Project Manager shall be promptly provided confirmed notification of any changes in delivery dates that result from delays in transit.

Title to and ownership of the equipment for the entire system shall remain with the Vendor until the equipment is delivered, successfully installed, and operational at the radio site as characterized in the Acceptance Test Plan. The Vendor shall coordinate with the LYNX Property Officer to ensure that all equipment is entered into the LYNX inventory system as a condition of acceptance by LYNX. This may require adherence of a LYNX identification sticker or tag on components.

Charges for freight express, cartage, packing or crating, offloading, storage, or unpacking will not be allowed or paid by LYNX unless otherwise agreed in writing by LYNX.

Every package, bill of lading, shipping memorandum, and invoice shall be marked with the purchase order number issued by LYNX for this procurement.

An itemized delivery ticket, bearing the LYNX purchase order number shall be left with the goods to document their receipt by a designated LYNX representative. If a carrier makes delivery, an itemized delivery ticket shall be attached to the outside of the package.

Minimum Required Onsite Work

At the first onsite meeting, the Contractor shall be prepared to discuss LYNX feedback on the draft SIP and conduct a Requirements Review (RR).

At the second onsite meeting, the Contractor shall be prepared to discuss LYNX feedback on the draft Design Review documentation.

During the third and subsequent onsite efforts, the Contractor shall install the system and conduct acceptance testing. These onsite installation and testing efforts will occur over an extended period, and will likely involve several different onsite trips and a range of different Contractor staff.

System Design Reviews

The Contractor shall participate in the RR as part of the first onsite meeting. The RR will initialize the Requirements Matrix. The Contractor will use this Matrix to produce the draft Design Document for conducting the Design Review (DR) at the second on-site meeting. The RR meeting shall discuss, for each contract requirement, the following: (1) the LYNX design intent; (2) the intended Contractor design approach; and (3) the general Contractor approach to demonstration through the acceptance testing process.

A traceability matrix with finalized contract requirements will be prepared after the RR meeting and is referred to as the Requirements Matrix (RM) hereafter.

The Contractor shall submit a Design Document (DD) no later than four weeks after the RR meeting.

The DD shall include the following materials: (1) an overview of the equipment, system and configuration proposed for implementation; (2) detailed technical documentation for each equipment item; (3) detailed technical documentation on all software, addressing the functions of each module, the format of all user interface screens, the format of all reports, the data fields to be included in all data exchange interfaces and any other software aspects warranting advance agreement with LYNX prior to system customization/configuration; and (4) a table providing cross-references for each section of the DD to the appropriate element of the RM.

The Contractor shall conduct the DR no later than four weeks after the DD has been submitted to LYNX.

The RR and DR meetings shall include a review of the facility and available resources that may need to be updated to accommodate the added technologies. The Contractor shall determine and detail the exact demand of resources.

The Contractor shall update the DD in order to prepare and submit the Final Design Document (FDD) no later than four weeks after the DR meeting.

The FDD shall include the following materials: (1) updated DD incorporating LYNX feedback and comments; (2) final list of equipment to be procured; (3) final design and configurations of the system to be built including all customizations to be made to the system; and (4) an updated table providing cross-references between sections in the FDD and elements of the RM.

The DR is intended to reduce the chance of any misunderstandings on the design intent or interpretation of the contract requirements. DR shall not alter the need for the successful formal demonstration of each requirement through the Acceptance Testing process.

Acceptance Testing

The Contractor shall submit an Acceptance Test Procedures document (ATP), for LYNX approval prior to undertaking any testing.

The ATP shall clearly address: (1) how each testable specification requirement will be demonstrated, including the method for performing the test; (2) the results that will constitute success for each test; (3) responsibilities of both Contractor and LYNX's representatives during each test; and (4) a cross-reference to which contract requirements from the RM are being addressed by each test procedure.

The ATP shall include an updated RM from the vendor, to include the test stage at which each contract requirement will be demonstrated; and a cross-reference to the test procedure(s) that serve to address each contract requirement.

The ATP shall be submitted to LYNX at least three weeks in advance of any intended testing.

The ATP shall incorporate the following distinct testing stages for the proposed system: (1) Factory Acceptance Test (FAT); (2) Combined Pilot and System Testing (Pilot/ST); and (3) Burn-In Testing (BT).

FAT shall be completed before the equipment and software is shipped to LYNX for installation, and deficiencies shall be rectified before shipping to LYNX for installation.

FAT shall be witnessed by LYNX's representatives (LYNX staff and/or designated support consultants).

Pilot/ST testing shall be completed for all FlexBus revenue vehicles.

Pilot/ST shall be completed after the entire system has been installed.

The Pilot/ST shall be witnessed by LYNX representatives. Any deficiencies observed in a four-week period of regular vehicle operations following installation shall be rectified before the initiation of BT.

The Contractor shall initially configure and validate¹ various operational scenarios (e.g. selecting O-D pairs in the LYNX system) to ensure that the geographic parameters relevant to the system operation (e.g., station locations and trigger zones) have been accurately configured in the system database.

Pilot/ST shall include the testing of all spare components.

BT shall involve revenue service use of the system over a 30-day period after the completion of ST, and deficiencies shall be rectified before LYNX will grant Final System Acceptance (SA) for the system.

LYNX may authorize the Contractor to proceed to the next testing stage with certain deficiencies not yet resolved.

The Contractor shall provide written notice to LYNX at least five days in advance of any testing, indicating the specific tests to be completed as well as the date, time and location.

The Contractor shall be required to reschedule testing if LYNX witnessing representatives cannot be present or if other circumstances prevent testing from taking place.

The Contractor shall provide written Test Results Documentation (TRD) within one week of completing each stage of testing.

The TRD shall document the results of each ATP procedure and provide an updated RM that indicates which contract requirements have been demonstrated.

The TRD shall be approved before LYNX will grant SA the system.

SA will not be granted for the system until all contract requirements have formally demonstrated through BT.

¹ Route validation will require the Contractor to "drive" a set of test manifests serving all FlexBus stations.

The RM shall be used as a "punch list" to track which requirements have not yet been demonstrated at each stage of testing.

A requirement classified as having been "demonstrated" during a certain AT stage can be subsequently redefined as having been "not demonstrated" if compliance issues emerge prior to SA.

Documentation and Training

The Contractor shall prepare all deliverables in both Microsoft Office (e.g., Word, Excel or PowerPoint) and Adobe PDF formats, with LYNX granted full rights to reprint as needed.

The Contractor shall for all deliverables include the filename in the document footer and include in the filename the file release date.

All documentation and training shall be completed before LYNX will allow equipment installation.

As-Built Documentation

The Contractor shall provide an As-Built Document (ABD) to LYNX for approval.

The ABD shall include: (1) an inventory of all components supplied including supplier, model number, serial number and installation location; (2) an inventory of all spare parts supplied including supplier, model number, serial number and storage location; (3) all reference and user manuals (UM) for system components, including those components supplied by third parties; (4) all warranties documentation, including that for components supplied by third parties; (5) a diagram indicating the as-built interconnections between components; and (6) the version number of all software, including that supplied by third parties.

Training

The Contractor shall provide training courses for at least:

- Three trainers for FlexBus vehicle operators and eight vehicle maintenance personnel (mechanics and maintenance supervisors);

- Six users of the FlexBus scheduling/dispatch software (includes operations supervisors and street supervisors);
- Six users of the CAD/AVL software (includes operations supervisors and street supervisors);
- Three customer service staff;
- One system administrator; and
- Three LYNX management staff and four management staff at contracted operations sites.

The Proposer shall indicate the number of hours that will be required for training of personnel mentioned above. The Contractor shall be responsible for developing all training in an appropriate format and an appropriate technical level for the audience. The Contractor shall develop a post training evaluation to ensure that the training is effective and understood. If the evaluation indicates that the training was not effective and understood the Contractor shall be responsible to update the training and re-train until the training is successful.

The Contractor shall provide all training materials in both Microsoft Office and Adobe PDF formats on compact disc (CD) and digital videodiscs (DVD) with a permission to reproduce copies later on.

The Training Plan (TP), including the training schedule and course outlines, shall be provided to LYNX for review at least three weeks in advance of the start of training.

The TP shall be approved by LYNX before the start of any training.

The Contractor shall furnish all special tools, equipment, training aids, and any other materials required to train course participants, for use during training courses only.

The instructors shall demonstrate a thorough knowledge of the material covered in the courses, familiarity with the training materials used in the courses, and the ability to effectively lead students in a classroom setting. The Contractor shall refrain from using highly technical personnel to train if the Contractor cannot ensure the trainer's ability to train at the lowest technical level necessary for the subject matter.

If any instructor is considered unsuitable by LYNX, either before or during the training, the Contractor shall provide a suitable replacement within five business days of receiving such notice from LYNX.

The Contractor shall provide brief refresher versions of each training course to the original trainees between three to six months after SA for the system at no additional cost.

The Contractor shall provide additional training to the original trainees after SA for the system at no additional cost if major modifications are made to the system after the initial training due to system upgrades or changes made under warranty; and/or SA occurs at least three months after the completion of training, due to delays for which the Contractor is responsible.

Training Manuals

The Contractor shall provide Maintenance Manuals (MM) documenting (1) how the system components were installed; (2) how to install and configure spare components; and (3) the schedule/procedures for preventative maintenance, inspection, fault diagnosis, component replacement and warranty administration on each system component.

The Contractor shall provide User Manuals (UM) for the FlexBus dispatchers, documenting use of all functions of the software.

The Contractor shall provide vehicle Operator Manuals (OM) documenting use of the MDTs and on-board equipment.

The Contractor shall provide a Systems Manuals (SM), documenting (1) the configuration and topology of central systems hardware and software; (2) central systems software functions and operations; (3) scheduled maintenance required for the central systems; and (4) database structure and data dictionary.

The Contractor shall provide disaster recovery documentation highlighting how system can function and prevent any data loss in the event of a natural disaster or other unexpected events.

Warranty and Spares

General

The warranty period for the system shall run concurrently for all system components, through to one year from the date of SA. The warranty period for the system shall not begin until the date of the SA.

The Contractor shall offer an option to extend the warranty period the system for one, two or three additional years. The Contractor shall document any differences in the warranty terms for these option years in their proposal.

The Contractor shall warrant that it has reviewed and evaluated all information furnished by LYNX and has made all inquiries necessary such that the Contractor is fully aware of LYNX's business requirements and intended uses of system, as set forth or referenced in the Request for Proposals and any Addenda, Amendments or Final Proposal Requests, as well as in discussions during the Pre-proposal Conference.

The Contractor shall warrant that the system satisfies the foregoing requirements in all material respects and will be fit for such intended uses.

The Contractor shall warrant that the design, materials, construction, software and workmanship of the equipment shall reflect the intended use of the equipment as a component of the overall transit management system in LYNX environment.

The Contractor shall warrant that equipment and software, including the initial supply of spare components, (1) is free from defects in design, material and workmanship, and shall remain in good working order, and (2) function properly and in conformity with this Contract.

The Contractor shall warrant that the documentation provided shall completely and accurately reflect the operation and maintenance of the equipment and software, and provide LYNX with all information necessary to maintain the system.

If there is a change in the production configuration of any equipment or software being installed prior to SA, LYNX may require that all previously installed equipment and software be upgraded to match the updated configuration.

The Contractor shall warrant compliance with all applicable laws and regulations relating to the project.

The Contractor shall warrant that its employees, agents and Subcontractors assigned to perform services under this contract shall have the proper skill, training and background to perform in a competent and professional manner and that all work will be so performed. LYNX reserves the right to remove any subcontractors if their work is deemed incompetent or unprofessional.

During the warranty period, the Contractor shall, at no cost to LYNX, furnish such materials, labor, equipment, software, documentation, services and incidentals as are necessary to maintain the system in accordance with the warranty.

The Contractor shall provide any software updates and patches for the current software version at no cost to LYNX during the warranty period.

In addition to the foregoing warranties, the Contractor shall assign to LYNX, and LYNX shall have the benefit of, any and all Subcontractors', Suppliers', and Vendors' warranties and representations with respect to the deliverables provided.

In its agreements with Subcontractors, Suppliers and Vendors, the Contractor shall require that such parties (1) consent to the assignment of such warranties and representations to LYNX; (2) agree that such warranties and representations shall be enforceable by LYNX in its own name; and (3) furnish documentation on the applicable warranties to LYNX.

The Contractor shall provide a single point of contact for all warranty administration during the warranty period.

The Contractor shall warrant that LYNX shall acquire permanent title to all equipment and non-proprietary software provided under the Contract, free and clear of all liens and encumbrances.

Repair or Replacement of Faulty Components

During the warranty period, the Contractor shall repair or replace any faulty components, with the cost included in the warranty price. LYNX or operations/service contractor will ship each faulty component to the Contractor, who shall return a new or repaired component within one week of originally receiving it. LYNX or operations/service contractor reserves the right to require the Contractor to perform replacement of parts or components during the warranty period. The Contractor shall identify that trained LYNX or operations/service contractor Maintenance Personnel shall be able to connect, disconnect, maintain, and replace parts without voiding the warranty.

If the Contractor determines that a returned component is not faulty, LYNX or operations/service contractor shall receive the original component back in working order within two days of the Contractor originally receiving the returned component.

All components received back at LYNX from the Contractor will be tested in accordance with the original ATP, and returned to the Contractor if faulty accompanied by a certification.

The Contractor shall pay all shipping charges to and from LYNX or operations/service contractor, and any duties associated with the repair or replacement of faulty units.

Returned or replaced spare components shall be packaged, organized and labeled in the same manner as the original supply of spare components. The Contractor shall work with the LYNX or operations/service contractor Property Officer to properly reflect any parts replaced in the LYNX inventory system during the warranty period.

System-wide Replacement

If at least 25% of a given component requires repair or replacement within the one-year warranty period, the component shall be deemed to warrant system-wide replacement.

System-wide replacement shall require the Contractor to replace all units of the suspect component throughout the system, whether or not they have exhibited any fault.

Even if the system-wide replacement activity extends beyond the end of the two-year warranty period, the Contractor shall be obligated to complete it if the need was documented before the end of the warranty period.

Spare Components

The Contractor shall provide an initial supply of spare components to LYNX for all installed hardware (e.g., MDT and data modem), with a quantity of at least 10% of the installed quantity (with a minimum quantity of 1).

The proposal shall include a list of the spare components and quantities to be provided, including manufacturer, model numbers and unit prices. At any time during the warranty period, LYNX shall have the option to purchase additional spare components at the stated unit price.

Spare components shall be delivered to LYNX already organized and labeled such that they can be readily identified and found. The organization and labeling shall be approved by LYNX's Project Manager.

Spare components shall be packaged to protect their reliability, including providing for them to be identified, inspected, stored for long periods, and endure multiple inventories without damage or degradation. Packaging shall protect components from intrusion of dust, humidity, or static electrical charges that could cause damage.

Additional spare components purchased during the warranty period shall be packaged, organized and labeled in the same manner as the original supply of spare components, although additional storage provisions will not need to be provided.

Technical Support

Software support during the warranty period shall include technical support without access charges to LYNX for all hardware and software, with a 24x7 support line, as well as providing, licensing, installing and integrating all released software patches and updates.

The Contractor shall provide the ability for remote access to the central software using a VPN connection or an approved alternate secured remote access method approved by LYNX.

The Contractor shall provide one day of onsite follow-up analysis, including a written report on the findings of this analysis, on how the system is being used and training. This follow-up support effort shall be completed no earlier than 9 months but no later than two years after the system acceptance.

The Contractor shall arrange for support from one or more qualified firms to be available on a four-hour response basis, when needed by LYNX or operations/service contractor to assist with fault diagnosis or component replacement.

The proposal shall include a list of the support firms, their support responsibilities and the response arrangements.

If a support firm does not respond within the agreed response timeframe, or when a support firm is not able to provide the needed support, the Contractor shall provide during the warranty period supplementary support in accordance with an agreed escalation procedure. The escalation procedure can initially involve telephone support, but shall culminate in the Contractor providing on-site support if needed. The proposal shall define the proposed support escalation procedure.

ACRONYMS AND ABBREVIATIONS

ABD	As-Built Document
ADA	Americans with Disabilities Act
ADAAG	Americans with Disabilities Act Accessibility Guidelines
AIL	Action Items List
AAS	Automated Annunciation System
APC	Automatic Passenger Counting
ASAP	As-Soon-as-Possible
ATMS	Advanced Traffic Management System
ATP	Acceptance Test Procedures
AVL	Automatic Vehicle Location
BT	Burn-In Testing
BRT	Bus Rapid Transit
CAD	Computer Aided Dispatch
CD	Compact Disc
COTS	Commercial-off-the-shelf
DD	Design Document
DMS	Dynamic Message Signs
DR	Design Review
DVD	Digital Videodiscs
DVR	Digital Video Recorder
FDD	Final Design Document
FAT	Factory Acceptance Testing
FCC	Federal Communications Commission

FDOT	Florida Department of Transportation
FMS	Financial Management System
FTA	Federal Transit Administration
GIS	Geographic Information System
GPS	Global Positioning System
HVAC	Heating, Ventilation and Air-conditioning
ICA	Independent Computing Architecture
ICD	Interface Control Document
ID	Identification Number
IDD	Installation Design Documentation
IEEE	Institute of Electrical and Electronics Engineers
IP	Internet Protocol
IT	Information Technology
ITS	Intelligent Transportation Systems
IVR	Interactive Voice Response
LAN	Local Area Network
LCD	Liquid Crystal Display
LED	Light Emitting Diode
LYNX	Central Florida Regional Transportation Authority
MDT	Mobile Data Terminal
MID	Message ID
MM	Maintenance Manuals
NEMA	National Electrical Manufacturers Association
NTAIS	Next Trip Arrival Information Software
NTCIP	National Transportation Communications Interface Protocols

NTD	National Transit Database
NTP	Notice To Proceed
ODBC	Open Database Connectivity
OM	Operator Manuals
PA	Public Address
PCA	Personal Care Attendant
PID	Parameter ID
PRTT	Priority Request To Talk
QR Code	Quick Response Code
RDP	Remote Desktop Protocol
RFP	Request For Proposal
RM	Requirements Matrix
RR	Requirements Review
RTT	Request To Talk
SA	System Acceptance
SAE	Society of Automotive Engineers
SIP	System Implementation Plan
SM	Systems Manuals
SSID	Service Set Identifier
ST	System Testing
TCIP	Transit Communications Interface Profiles
TCP	Transfer Connection Protection
TVM	Ticket Vending Machine
TP	Training Plan
TRD	Test Results Documentation

UM	User Manuals
USB	Universal Serial Bus
VAN	Vehicle Area Network
VCM	Vehicle Component monitoring
VLU	Vehicle Logic Unit
VoIP	Voice over Internet Protocol
VPN	Virtual Private Network
WAAS	Wide Area Augmentation System
WAN	Wide Area Network
WLAN	Wireless Local Area Network
WPA2	Wireless Protected Access 2

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Exhibit "A-2"

Amended Scope of Services

[See attached]



NeighborLink Product Proposal

DoubleMap Inc.





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Fixed Route Stop
Address to address pick-up/drop-off
ETA's
Multiple Zones
Stop scheduling
Hardware
Annual Software Maintenance
Cost Summary (Table 1)
Installation
Payment Schedule

NeighborLink Concept

NeighborLink is an existing service with ten (10) established demand response routes, each serving approximately five (5) square miles with one vehicle. Service is provided in a shared ride environment. Riders can reserve trips from any address to any address within the service area with as little as two (2) hours advance notice or up to seven (7) days in advance. Service is automatically scheduled to serve a shared stop with the LYNX fixed-route bus service at least once per hour to enable transfers. Riders call a rider service representative to reserve, cancel, or check on trips.

Automatic Dispatch

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Auto-Assignment

The system will reassign the vehicle in the NeighborLink area and assign the call to that vehicle.

The NeighborLink dispatcher dashboard will provide administrators a suite of tools to manage their fleet of vehicles - all of which are password-protected, and signed an SSL certificate to ensuring security. These tools provide an eagle-eye vantage point of all vehicle locations, management capabilities for real-time issue resolutions, and proactive alerts.

Real-Time Administrative Display

DoubleMap will design the NeighborLink administrator platform to work on any office computer and display seamless vehicle locations on a map interface in real time. The dashboard will allow for unlimited users (licenses), unlimited edits/changes, and unlimited stop additions. This is intended to empower administrators to monitor multiple variables simultaneously; including: bus locations, driver assignment, and heading (among many others) every 1-2 seconds.

DoubleMap will design the NeighborLink administrator platform to utilize live mapping technology. Each individual module will give instant access and control over the entire fleet.

Diligent Pick-up

The system will recognize that we do not want requestors to wait more than 15 minutes for their pick up given they give at least a 2 hours due notice before requesting the ride.

For drivers, NeighborLink will use colored ribbons to represent how long a ride has been in the queue so the drivers are always aware of the riders who have been waiting the longest. Additionally,

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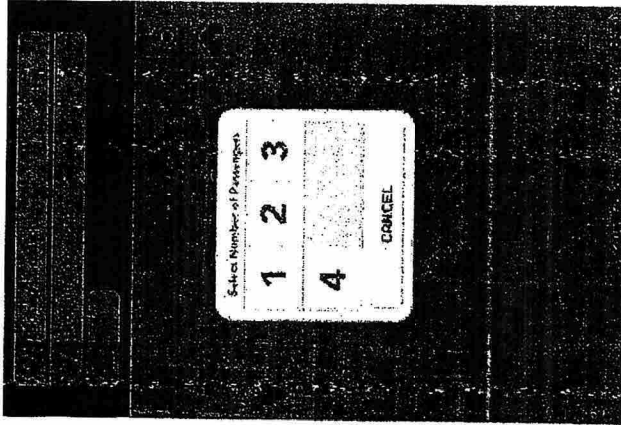
NeighborLink will automatically sort the queue to have the longest waiting riders placed first in the queue, and the newest riders last.

Passenger Capacity

The system will recognize the passenger capacity and any special modifications the vehicle has, such as bike rack or wheelchair lift, and assign calls to vehicles with matching specifications

NeighborLink riders will be able to enter the number of passengers that will be joining them while requesting a ride. A screenshot of the display that NeighborLink users will utilize to select passenger number is included below:

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Scheduled Stops

The NeighborLink will stop every hour on one pre-selected fixed route stop in the NeighborLink area.

Initially, the fixed route concept was discussed in the scope of work. However, incorporating this

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feature into the NeighborLink product will increase complications, development time, and cost for the project. Additionally, DoubleMap has concerns of ridership resulting from a mandatory hourly fixed route stop. However, DoubleMap will work with Lynx to create an ideal solution.

Requester Interface

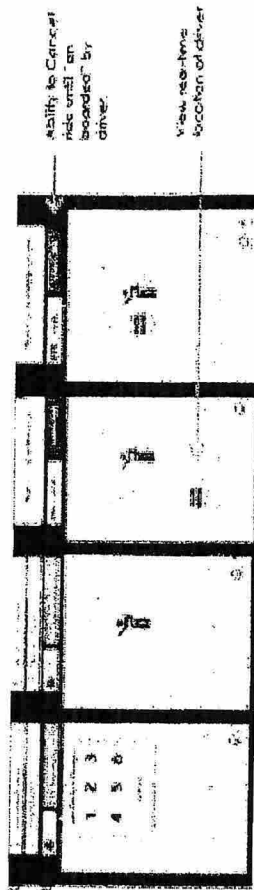
Smartphone Application

Requestor will have multiple ways to request a ride, at minimum phone and smart phone application. Smart phone app should be customized with LYNX branding.

NeighborLink will offer native solutions for iPhone and Android phones in order to meet the listed request.

These apps will allow to simply open the app into a map-based interface to request their ride. Riders can then select their pickup and dropoff locations, list the number of riders they are traveling with (including wheelchair options), and request a ride.

At this juncture, NeighborLink will use an algorithm to determine which drive is the most logical to receive the assignment (distance vs number



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of upcoming trips, etc). An estimated time of arrival (ETA) will be generated once the ride request has been successfully assigned, at which point the rider will be able to view the ETA within the smartphone app.

User experience is positioned as the foremost concern during development, so that each update provides intuitive, fluid, and robust features as opposed to routine "spit and polish". This approach is based largely on DoubleMap's developer's previous experience working at Google and adopting their design simplicity.

Geolocation

NeighborLink will provide riders with a geolocation button within its mobile applications, which will help them locate their location on the map and automatically bring nearby locations to the top of the pickup list.

White-Label Applications

NeighborLink may additionally offer the option to add custom LYNX logos, branding, and coloring to its mobile app, but is also able to create a custom white-label app if LYNX determines that producing this type of app is necessary.

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Modified Vehicles

Requestor can request vehicle with modifications, such as wheelchair or bike racks.

NeighborLink will be designed to provide riders with the option of entering handicap or wheelchair requirements in their ride request. Additional modifications - such as bike racks or other distinctions - can easily be added upon discussion with LYNX.

Passenger Limiting Capacity

Requestor can enter the amount of people, max: 6.

NeighborLink will be designed to meet this request. Please refer to above section *Passenger Capacity*.

Ride Cancellation

Requestor will cancel ride via same avenue used to request ride.

NeighborLink will be designed to meet this request. For more information, please refer to above section *Smartphone Application*.

Requestor Pick-up Notification

Requestor will be notified of ETA for pick up.

Estimated Time of Arrival Calculation

DoubleMap's current predictive arrival algorithm uses any available schedule data as a basis for

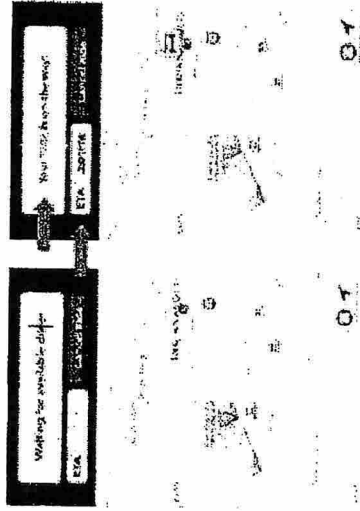
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estimations, and weighs in the current situation into near-term predictions, along with historical data. Historical data is collected for each individual trip in order to collect an aggregate to compensate for variations in traffic conditions.

This ETA algorithm will need to be replaced in the NeighborLink solution due to the nature of on-demand requests. The ultimate solution may go through iterations and will be made available within 60 days of signing the contract. DoubleMap will work with Lynx representatives to find an ideal solution.

Estimated Time of Arrival Usability

NeighborLink will be designed to alert all nearby drivers once a ride request has been submitted. The smartphone app will display a "Waiting for available drivers" notification until a driver is assigned to the ride request. At this juncture, the app will provide an alert that a ride is on its way through a push notification and within the app itself. The driver will also provide you with an estimated time of arrival for planning purposes. Although Lynx may be more interested in auto-routing, the current ETA capability is based on the prototype built for the FlexRide solution. DoubleMap will work with Lynx to incorporate an auto-routing feature into NeighborLink.



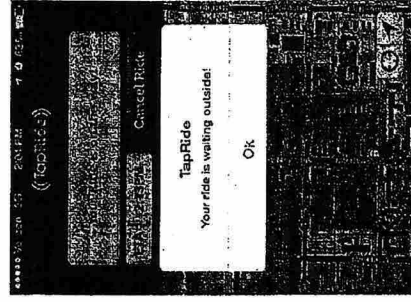
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A yellow vehicle icon will appear on the map to signify that the ride is en route, which can be followed in real-time as it makes its way to your pickup location. The driver may press a digital "Honk" button on their interface if they are nearby or unable to locate you, which will send a notification to your phone.

Requestor Arrival Notification

Requestor is notified the driver has arrived.

NeighborLink will have a notification functionality similar to our TapRide solution through a feature called "honk". Honk works in two ways: 1) by sending a proactive notification to riders smartphones once their requested ride has arrived and 2) by allowing drivers to press a digital button labeled 'honk' in order to send additional notifications to riders.



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Driver Interface

Driver will be able to acknowledge / confirm receipt of a call.

NeighborLink will be designed to meet this request; the image on the right shows the colored ribbon of response time, as well as the queue of assignments for drivers.

Driver Arrival Notification

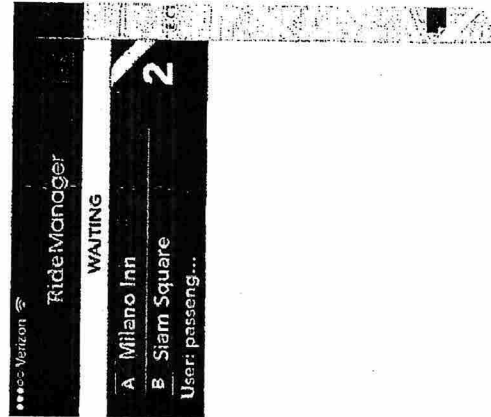
Driver will be able to notify requestor when he is at pick up location.

NeighborLink will be designed to meet this request. Please refer to above section *Requestor Arrival Notification*.

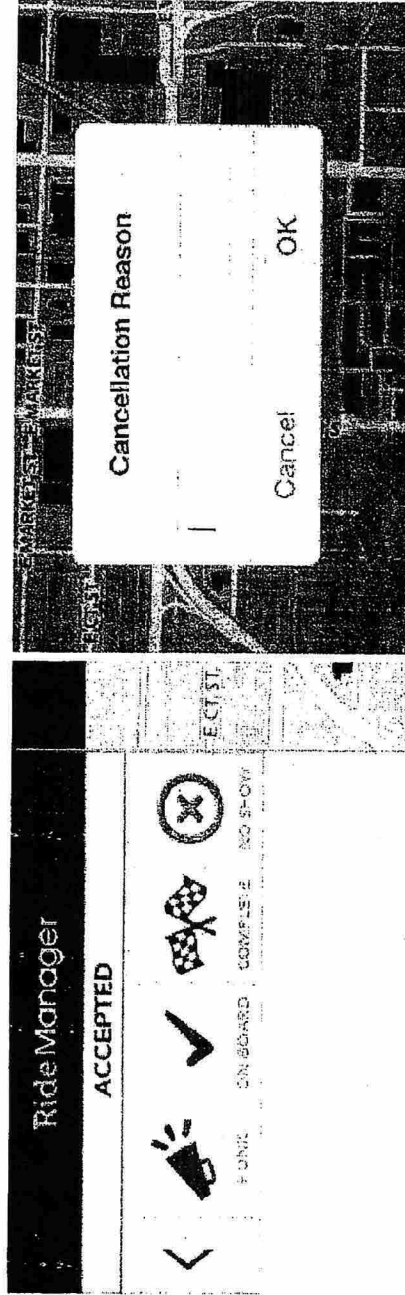
Driver Call Rejection

Driver can reject call and note reason of rejection.

NeighborLink will be designed to meet this request through the "No Show" button in the application. The driver, using the button, is able to cancel a ride and given a reason why. Please refer to images below for additional detail.



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Driver Log-out

Driver can log out of the system for break periods.

NeighborLink will be designed to meet this request by using DoubleMap's Single-Sign On (SSO)
Drivers are able to log in and out using their login information.

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No-Show Notification

Driver can notify the system that a requester was not at the location when he arrived.

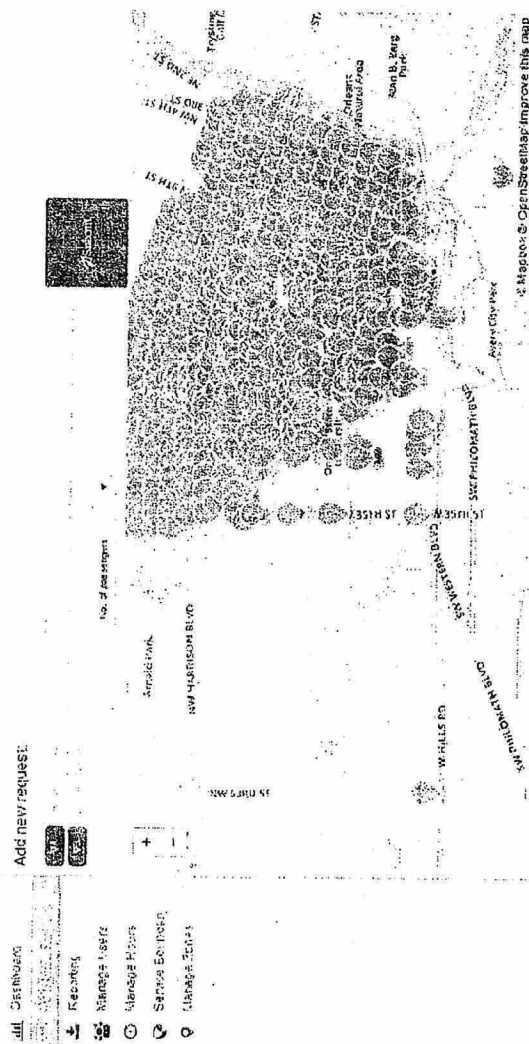
NeighborLink will be designed to meet this request. Please refer to above section *Driver Call Rejection*.

Back Office Interface

Manual Ride Insert

Back office will be able to enter rides manually into system.

NeighborLink will be designed to meet this request. Please refer to section *Auto Assignment* for more information. Additionally, please see below screenshot for further details.



Back office can control the system is available. For example, they would be able to change our opening or closing hours which would prevent requests from being made during those closed periods.

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Dashboard

Add Request

Reporting

Manage Users

Manage Hours

Service Boundary

Manage Zones

Manage hours:

Open?	Day	Start time	End time
<input checked="" type="checkbox"/>	Sunday	18:00	02:45
<input checked="" type="checkbox"/>	Monday	18:00	02:45
<input checked="" type="checkbox"/>	Tuesday	18:00	02:45
<input checked="" type="checkbox"/>	Wednesday	18:00	02:45
<input checked="" type="checkbox"/>	Thursday	18:00	02:45
<input checked="" type="checkbox"/>	Friday	18:00	02:45
<input checked="" type="checkbox"/>	Saturday	18:00	02:45

Save Changes

Reporting

Access to reports which would include driver performance and operation performance (aka breakdown, # of calls, # of calls where requester was not at the location, etc).

NeighborLink will be designed to meet this request by providing an extensive reporting suite for all vehicles. Please refer to both screenshots below for further details.

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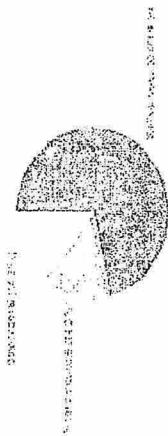
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Conversion report

Start Date: 12/02/2014 End Date: 12/02/2014 00:00 : 00:00



Cancellations



Rides by Hour



Pick-up Wait Time



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iDdoubleMAP

Geofencing

System allows us to create multiple geofences around areas which would identify our boundaries and create zones where we would not accept calls.

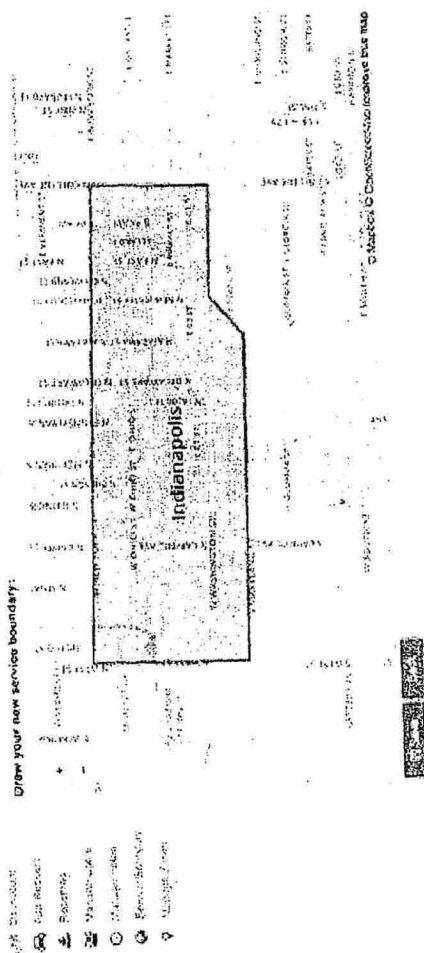
NeighborLink will be designed to offer the ability to limit the geographic area(s) where ride requests can be made from. Part of the implementation methodology will provide LYNX administrators with the ability to identify areas where rides can be requested from in order to mitigate against erroneous requests. Additionally, NeighborLink's web portal will allow administrators to create and edit geofences to best accommodate LYNX's needs. Two different screenshots - one of the geofence, and one of an administrator-created service boundary, are included below.

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Addendum

Introduction

This addendum discusses the additional customizations required to adapt FlexRide to the NeighborLink concept. The cost of each feature will also be discussed in addition to the total estimated cost of the project to facilitate LYNX budget appropriately for this project.

Software Customizations

1) Fixed Route Stop

LYNX has requested a fixed route stop each hour in the NeighborLink zone. Currently, LYNX wants the walk-on customers from the fixed route to be able to board the bus and dropped off after all reserved trips have been completed. In the original RFP, the fixed route concept for NeighborLink was not discussed. To incorporate the fixed route stop to the existing FlexRide solution, additional software work will be required.

Price: \$96,450

2) Address to address pick-up/drop-off

LYNX has requested an address to address pick up/drop off solution for NeighborLink. In the existing FlexRide solution, predefined, finite FlexRide stops have already been entered into the system. Whereas,

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Neighborlink requires rider ability to select any address in the Neighborlink range, resulting in an infinite number of stops. To incorporate this address to address service, additional software work will be required.

Price: \$65,750

3) ETA's

LYNX has requested incorporating ETA's in the Neighborlink solution. As a result of address to address pick-up/drop-off as opposed to FlexRide's predefined stops, calculating ETA's will require additional software work.

Price: \$34,320

4) Multiple Zones

LYNX has requested the Neighborlink solution to be deployed in 13 different Neighborlink zones so far. The original FlexRide software solution was designed for just one FlexRide zone. Therefore, in order to adapt the existing FlexRide solution to account for 13 separate Neighborlink zones, additional software work will be required.

Price: \$57,550

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5) Stop scheduling

LYNX has requested the NeighborLink driver interface to allow the driver to see NeighborLink stops in order. This is different from the FlexRide driver interface as FlexRide showed a finite number of predefined FlexRide stops. However, for NeighborLink, the routing algorithm will have to account for an infinite number of stops and order them properly as any stop can be selected by the rider within the NeighborLink range.

Price: \$38,990

6) Announcements Tab

LYNX has requested adding an "announcements tab" which would allow dispatchers to post static text general information, such as notice of road closures, detours, upcoming holidays affecting service, or such. This would allow them to post information that would remain on the "tab" until edited with the same information available to each customer who chooses the tab. In order to incorporate this feature to the existing FlexRide solution, additional software work will be required.

Price: \$4500

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Hardware

For NeighborLink, only Mobile Data Terminal (MDT) will be required for Hardware. The MDT type has not been decided yet but will most likely be Android Tablets. (additional vehicle means 14th tablet/hardware 7/1)

Price: \$2,450.00 per vehicle installation (This includes everything from the cost of the MDT to the installation of the MDT in the NeighborLink vehicle)

Annual Software Maintenance

Annual Software Maintenance for NeighborLink will be required to ensure quality is maintained.

Price: Included in the original cost of software for the first 12 months. After that, there will be a \$23,040 annual recurring charge for maintaining the current 13 NeighborLink vehicles. To support any NeighborLink vehicle beyond the planned 13 vehicles will be an additional \$2500 annual recurring charge per vehicle. Please note that this additional recurring charge (\$2500) is for software support, and any additional hardware or cellular data required from DoubleMap for the additional vehicle, such as MDT will be charged separately. (additional vehicle means 14th software support charge). Software maintenance includes software maintenance and support for any original or replacement MDT units for all NeighborLink vehicles covered by this contract for the duration of the initial contract.

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Cost Summary (Table 1)

Items		Cost
Original Cost (Allocated for FlexRide software development in RFP)		\$403,060.00
Software Customizations		
Fixed Route Stop	\$96,450.00	
Address to address pick-up/drop-off	\$65,750.00	
ETA's	\$34,320.00	
Multiple Zones	\$57,550.00	
Stop Scheduling	\$38,990.00	
Announcements Tab	\$4,500.00	
Total Software Customization		\$297,560.00

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Software Maintenance		
Year Two (14 vehicles)	\$25,540.00	
Year Three (14 vehicles)	\$25,540.00	
Total Software Maintenance		\$51,080.00
Hardware		
MDT and installation for 14 vehicles (\$2,450.00 per vehicle)		\$34,300
Project Implementation		
90 days		\$73,500.00
DoubleMap Installation Representative (2 weeks)		\$29,000.00
Total Cost		\$888,500.00

Installation

DoubleMap will send a representative to facilitate the NeighborLink installation process for up to two weeks. There will be a charge of \$14,500 per week of services of the DoubleMap installation representative. Any additional requests for services will incur a charge of \$14,500 per week.

Payment Schedule

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DoubleMap will invoice LYNX for the project in the following manner. LYNX will have up to 30 days to fully pay the invoiced amount as of the date the invoice is sent to LYNX.

*In reference to previously approved software by Lynx Board of Directors during demonstration period.

Period	Invoice (%)
* Completion of Software Related to the Demonstration	55%
Installation Date	35%
Live phase Date	10%

Exhibit "B"

General Provisions

[See attached]

EXHIBIT B
LYNX GENERAL PROVISIONS

6.01 PROVISIONS APPLICABLE TO ALL CONTRACTS

6.01.01. Accident Prevention. The Contractor shall provide and maintain Work environments and procedures, which will safeguard the public and LYNX personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities; avoid interruptions of LYNX operations and delays in project completion dates; and control costs in the performance of the Contract. Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or LYNX personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the Contract price or extension of the performance schedule on any stop work order issued under this clause. The Contractor shall insert this clause with appropriate changes in the designation of the parties, in subcontracts.

6.01.02. Americans with Disabilities Act. All design and construction must be accessible to individuals with disabilities pursuant to Titles II and III of the Americans with Disabilities Act.

6.01.03. Application Of Federal Laws Clause. Contractor understands that Federal, state and local laws, regulations, policies, and related administrative practices ("Laws") applicable to the Contract on the date the Contract was executed (the "Execution Date") may be modified from time to time, or new Laws may be established after the Execution Date. Contractor agrees that the most recent of such Laws will govern the administration of the Contract at any particular time, unless there is sufficient evidence in the Contract of a contrary intent. Such contrary intent might be evidenced by express language in the Contract, or a letter signed by the Federal Transit Administrator, the language of which modifies or otherwise conditions the text of a particular provision of the Contract.

6.01.04. Audits and Inspection. The Contractor shall maintain books, records, documents, and other evidence directly pertinent to performance of the Work under the Contract in accordance with generally accepted accounting principles and practices consistently applied and Federal Acquisition Regulation Parts 30 and 31 (48 C.F.R. 30 and 31). The Contractor shall also maintain the financial information and data used by the Contractor in the preparation or support of the cost submissions required for the Contract, or any Change Order or claim, and a copy of the cost summary submitted to LYNX. LYNX, the U.S. Government, and the State Government or their authorized representatives shall have access, at all times during normal business hours, to such books, records, documents, and other evidence for the purpose of inspection, audit, and copying. The Contractor will provide proper facilities for such access and inspection. The rights granted LYNX and the government under this provision shall remain in full force and effect for the longer of: (a) three (3) years after termination of the Contract for whatever reason, or (b) the date on which all litigation, appeals, claims or exceptions related to any litigation or settlement of claims arising from the performance of the Contract are resolved or otherwise terminated. The foregoing record keeping obligations shall extend to any subcontractor performing Work valued in excess of ten thousand dollars (\$10,000.00). In addition, with respect to major capital projects, Contractor agrees to provide access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. §5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

6.01.05. Civil Rights. The Contractor 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 accordance with the following Federal statutes and regulations, and any other implementing regulations issued pursuant to the: Civil Rights Act as amended, Titles VI (42 U.S.C. Sec. 2000d) and VII (42 U.S.C. Sec. 2000e); Age Discrimination Act of 1975, as amended, Sec. 303 (42 U.S.C. 6102); Age Discrimination Act of 1967 as amended, Sec. 4 (29 U.S.C. Sec 623); Americans with Disabilities Act of 1990, as amended, Sec. 202 (42 U.S.C. 12132), and Sec. 102 (42 U.S.C. Sec. 12112) and implementing regulations (29 C.F.R. Part 1630), Federal transit law (49 U.S.C. Sec. 5332); Executive Order 11246, as amended by Executive Order 11375 42 U.S.C. Sec. 2000e note) and implementing regulations (41 C.F.R. Parts 60 et seq.). The Contractor also agrees to

include these requirements in each subcontract financed in whole or in part with Federal assistance provided by the Federal Transit Administration.

6.01.06. Compliance With Law. Contractor shall perform all Work hereunder in compliance with all applicable federal, state and local laws and regulations, including, but not limited to, any applicable licensing or permitting laws. The Contractor shall use only licensed personnel to perform Work required by law to be performed by such personnel and shall bear the costs of obtaining all necessary licenses and permits.

6.01.07. Composition Of Contractor. If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and several hereunder.

6.01.08. Contracts Involving Federal Privacy Act Requirements. The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any Contract:

(a) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Contract.

(b) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

6.01.09. Disadvantaged Business Enterprise. Contractor will conform to 49 C.F.R. Part 26.

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

6.01.11. Federal Assistance and Incorporation of Federal Transit Administration (FTA) Terms. The procurements under the Contract may be supported in part by Federal assistance under grants made by the Department of Transportation, Federal Transit Administration, pursuant to the Federal Transit Laws, and the then current FTA Master Agreement. When so funded, the Contract shall be subject to all rules and regulations promulgated pursuant thereto, as they may be amended from time to time during the course of the Contract. The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the Contract. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, as the same may be amended or superseded from time to time, 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 the Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any LYNX requests which would cause LYNX to be in violation of the FTA terms and conditions.

6.01.12. Federal Changes. Contractor 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 then current FTA Master Agreement (which may be obtained at: <http://www.fta.dot.gov/grants/15072.html>) between Owner and FTA, as they may be amended or promulgated from time to time during the term of the Contract. Contractor's failure to so comply shall constitute a material breach of the Contract.

6.01.13. Federal, State And Local Taxes. The Contract price includes all applicable federal, state, and local taxes and duties. LYNX is exempt from state and local sales and use taxes. In addition, any such taxes included on any invoice or voucher received by LYNX shall be deducted from the amount of the invoice or voucher for purposes of payment.

6.01.14. Fly America Requirements. The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients

and subrecipients 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 Contractor 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 Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

6.01.15. Indemnification. The Contractor shall indemnify and hold harmless LYNX as well as its officers and employees from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Contract.

6.01.16. Independent Contractor. The Contractor at all times shall be an independent contractor. The Contractor shall be fully responsible for all acts and omissions of its employees, subcontractors, and their suppliers, and shall be specifically responsible for sufficient supervision and inspection to ensure compliance in every respect with the Contract requirements. There shall be no contractual relationship between any subcontractor and supplier of the Contractor and LYNX by virtue of the Contract. No provision of the Contract shall be for the benefit of any party other than LYNX and the Contractor.

6.01.17. Interest Of Public Officials. Contractor represents and warrants that no employee, official, or member of the board of LYNX, during his or her tenure or two years thereafter, is or will have a pecuniary interest or benefit directly or indirectly from the Contract or the proceeds thereof. Contractor further represents and warrants that it has not offered or given gratuities (in the form of entertainment, gifts, or otherwise) to any employee, official, or member of the Board of LYNX. For breach of any representation or warranty in this clause, LYNX shall have the right to annul the Contract without liability and/or have recourse to any other remedy it may have at law.

6.01.18. Material and Workmanship. All equipment, material, and articles incorporated into the Work covered by the Contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in the Contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor at its option, may use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in the Contract.

6.01.19. No Obligation by the Federal Government. Contractor and LYNX 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 of the Federal Government, the Federal Government is not a party to the Contract and shall not be subject to any obligations or liabilities to LYNX, the Contractor or any other party pertaining to any matter resulting from the underlying Contract. Contractor further agrees to include this clause, without modification, in any subcontract issued hereunder.

6.01.20. Organization And Direction Of The Work. When the Contract is executed, the Contractor shall, at the request of the Project Manager, submit to the Project Manager a chart showing the general executive and administrative organization, the personnel to be employed concerning the Work under the Contract, and their respective duties. The Contractor shall keep the data furnished current by supplementing it, as additional information becomes available. Work performance under the Contract shall be under the full-time resident direction of:

- (a) The Contractor, if the Contractor is an individual;
- (b) One or more principal partners, if the Contractor is a partnership; or

(c) One or more senior officers, if Contractor is a corporation, association, or similar legal entity. However, if the Contracting Officer approves, a specific person may represent the Contractor in the direction of the Work or persons holding positions other than those identified in this paragraph.

6.01.21. **Publicity Releases.** All publicity releases or releases of reports, papers, article, maps or other documents in any way concerning the Contract or the Work hereunder which the Contractor or any of its subcontractor desires to make for purposes of publication in whole or in part, shall be subject to approval by the Contracting Officer prior to release.

6.01.22. **Prohibition Against Contingent Fees.** Contractor warrants that Contractor has not employed or retained any company or person, other than a bona fide employee working solely for Contractor to solicit or secure the Contract and that Contractor has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Contractor any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of the Contract. For the breach or violation of this provision, the Executive Director shall have the right to terminate the Contract without liability and, at its discretion, to deduct from the Contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

6.01.23. **Program Fraud and False or Fraudulent Statements or Related Acts.** Contractor agrees that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Sec. 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31 apply to its actions pertaining to the Contract. Upon execution of the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it makes, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which the Contract Work is being performed. In addition to other penalties that may be applicable, the Contractor 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 Contractor to the extent the Federal Government deems appropriate. The Contractor 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 the 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 Contractor, to the extent the Federal Government deems appropriate. Contractor further agrees to include this clause, without modification, in any subcontract issued hereunder.

6.01.24. **Program Funding.** LYNX's performance and obligations to pay under the Contract are contingent upon the availability of various Federal, State and local funding.

6.01.25. **Subcontractors and Outside Consultants.** Any subcontractors and outside associates or consultants required by the Contractor concerning the services covered by the Contract will be limited to such individuals or firms as were specifically identified and agreed to by LYNX concerning the award of the Contract. Any substitution in such subcontracts, associates, or consultants will be subject to the prior approval of the Contracting Officer.

6.01.26. **Termination.**

(a) **Termination For Convenience.** LYNX may terminate the Contract, in whole or in part, at any time and for any reason by written notice to the Contractor when it is in the best interest of LYNX. The Contractor shall be paid its costs, including Contract close-out costs, and profit on Work performed up to the time of termination. The Contractor shall promptly submit its termination claim to LYNX to be paid the Contractor. If the Contractor has any property in its possession belonging to LYNX, the Contractor will account for the same, and dispose of it in the manner LYNX directs.

(b) **Termination for Default.** If the Contractor fails to make delivery of the goods or to perform the services within the time specified herein or any extension thereof; or if the Contractor fails to perform any of the other provisions of the Contract, or so fails to make progress as to endanger performance of the Contract in accordance with its terms and, in either of these two circumstances, does not cure such failure within a period of ten (10) days after receiving such notice from LYNX, thereafter, LYNX may terminate the Contract for default and have the Work completed and the Contractor shall be liable for any resulting cost to LYNX. In the event of termination for default, the Contractor will only be paid the Contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the Contract. If, after termination for failure to fulfill Contract obligations, it is determined that the Contractor

was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of LYNX.

(c) **Termination Due to Insufficient Funds.** If at any time during the term of the Contract the LYNX Governing Board makes a determination that LYNX has insufficient funds with which to carry out its performance and obligations under the Contract, then LYNX may terminate the Contract by delivering a notice of termination to the Contractor. The effective date of any termination shall be the date which is thirty (30) days following the delivery of the notice of termination or such later date, if any, specified in the notice of termination. The Contractor shall be paid its costs, including Contract closeout costs, and profit on Work performed up to the time of termination. The Contractor shall promptly submit its claim for final payment to LYNX.

(d) **Termination Due to Failure to Receive a Grant or other Funding Device.** If at any time during the term of the Contract LYNX ceases to receive a grant or other funding device from a third party with which it intended to pay for the goods or services Contracted for, then, unless otherwise directed by the LYNX Governing Board, LYNX may terminate the Contract by delivering a notice of termination to the Contractor. The effective date of any termination shall be the date which is thirty (30) days following the delivery of the notice of termination or such later date, if any, specified in the notice of termination. The Contractor shall be paid its costs, including Contract closeout costs, and profit on Work performed up to the time of termination. The Contractor shall promptly submit its claim for final payment to LYNX.

(e) **Damages Upon Termination.** Any damages to be assessed to the Contractor as a result of a default termination or any claim by Contractor for costs resulting from a termination for convenience by LYNX, a termination due to insufficient funds by LYNX, or a termination due to a failure to receive a grant or other funding device by LYNX will be computed and allowable in accordance with federal regulations in effect at the time of termination.

6.01.27. **Truth in Negotiation.** Contractor agrees to execute a Truth-in-Negotiation Certificate in accordance with Florida Statutes §287.055 stating that the wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting.

6.01.28. **Insurance.** For any Contractor that is coming onto LYNX property to provide services such Contractor agrees to maintain insurance as set forth in Section 6.02.05 unless such services consist solely of delivering supplies or materials.

6.02 PROVISIONS APPLICABLE ONLY TO CONTRACTS EXCEEDING TEN THOUSAND DOLLARS (\$10,000)

6.02.01. **Recovered Materials.** With respect to contracts for items designated by the Environmental Protection Agency, when LYNX procures at least Ten Thousand Dollars (\$10,000) of such materials per year, the Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

6.02.02. **Approval of Materials.** When required by the Contract or by the Contracting Officer, the Contractor shall obtain the Contracting Officer's approval of the material or articles, which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer full information concerning the material or articles, including, but not limited to the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When directed to do so by the Contracting Officer, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection. All Work under the Contract shall be performed in a skillful and workmanlike manner, unless a higher standard of care is specified. The Contracting Officer may require, in writing, that the Contractor removes from the Work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

6.02.03. Changes.

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the Work within the general scope of the Contract, including changes:

- (i) In the specifications (including drawings and designs);
- (ii) In the method or manner of performance of the work;
- (iii) In the Government-furnished facilities, equipment, materials, services, or site; or
- (iv) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause, provided, that the Contractor gives the Contracting Officer written notice stating:

- (i) The date, circumstances, and source of the order; and
- (ii) That the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the Work under the Contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the Contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than twenty (20) days before the Contractor gives written notice as required.

(e) In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(f) The Contractor must assert its right to an adjustment under this clause within thirty (30) days after:

- (i) Receipt of a written change order under paragraph (a) of this clause or
- (ii) The furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.

(g) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under the Contract.

6.02.04. Errors And Omissions. Notwithstanding the provision of data supplied by LYNX, the Contractor shall have the responsibility of supplying all details required to make the product or service complete and ready for use although such details may not be specifically mentioned in the specifications. The Contractor shall take no advantage of any apparent error or omission, which he might discover in the plans or specifications, but shall forthwith notify the Contracting Officer of such discovery, who will then make such corrections and interpretations as he deems necessary for reflecting the actual spirit and intent of the plans and specifications.

6.02.05. **Insurance.** The Contractor shall, at all times during the term of the Contract and extended terms thereof, provide and maintain the following types of insurance protecting the interests of LYNX and the Contractor with limits of liability not less than those specified below.

(a) **Worker's Compensation Insurance:** Providing statutory benefits as provided under the Workers' Compensation Act of the State of Florida and/or any other state or Federal law or laws applicable to the Contractor's employees performing Work under the Contract.

(b) **Employers' Liability Insurance:** With limits of liability of not less than \$100,000 each accident, \$100,000 each employee for disease, and \$500,000 policy limit for disease. This insurance must be endorsed with a Waiver of Subrogation Endorsement, waiving the carrier's right of recovery under subrogation or otherwise from LYNX.

(c) **Commercial General Liability:** In the following amounts: Bodily Injury and Property Damage \$100,000 each occurrence/\$300,000 general aggregate; \$100,000 products/completed operations aggregate. Effective October 1, 2011, the foregoing amounts shall be as follows: Bodily Injury and Property Damage \$200,000 each occurrence/\$300,000 general aggregate; \$200,000 products/completed operations aggregate. There shall not be any policy exclusions or limitations for the following coverages: Contractual Liability covering the Contractor's obligations herein; Personal Injury - Medical Payments; Broad Form - Property Damage; Fire Damage; Legal Liability; Liability for Independent Contractors.

(d) **Comprehensive Automobile Liability:** Insurance covering all owned or hired and non-owned vehicles used concerning the Work performed under the Contract with limits of liability not less than \$200,000 each person and \$300,000 each accident for bodily injury and \$200,000 each occurrence for property damage or a combined single limit for bodily injury and property damage liability of not less than \$500,000.

(e) **Certificates of Insurance:** Before commencing prosecution of the Contract, Contractor shall mail to LYNX Certificates of Insurance satisfactory to LYNX from each insurance company evidencing the insurance as required above is in force, stating policy number(s), dates of expiration and limits of liability thereunder. All copies of policies and Certificates of Insurance submitted to LYNX shall be in form and content acceptable to LYNX.

(f) **Approval of Forms and Companies:** An insurance company or companies satisfactory to the Contracting Officer and licensed to do business in Florida shall write all insurance described in the Contract. Insurance shall be in form and content satisfactory to the Contracting Officer. No party subject to the provisions of the Contract shall violate or knowingly permit to be violated any of the provisions of the policies of insurance described herein. Except as may otherwise specifically be provided herein to the contrary, all policies of insurance which are in any way related to the Work required by the Contract shall be endorsed to LYNX waiving the issuing insurance company's rights of recovery against LYNX whether by way of subrogation or otherwise. All insurance should be provided by insurance companies with a Best's Rating of B+ or better.

(g) **Additional Insured Endorsement:** The policy or policies providing Commercial General Liability, Automobile Liability and as required above shall be endorsed to name LYNX, its officers, directors, employees and assigns as Additional Insured with respect to all matters performed by or on behalf of the Contractor in connection with the Contract.

(h) **Notice of Cancellation or Material Change:** Policies and/or certificates shall specifically provide a thirty- (30) day notice of cancellation, non-renewal, or material change to be sent to LYNX.

(i) **Subcontractors:** If any part of the Work is sublet, the Contractor shall require any and all subcontractors performing Work under the Contract to carry insurance of the type and limits of liability as the Contractor shall deem appropriate and adequate. In the event, a subcontractor is unable to furnish adequate insurance as provided above, the Contractor shall endorse the subcontractor as an Additional Insured. The Contractor shall obtain and furnish to LYNX certificates of insurance evidencing subcontractors' insurance coverage.

(j) **Multiple Policies:** A single policy of insurance or a combination of primary, excess or umbrella liability policies as required above may provide the limits of liability. Nevertheless, in no event shall the total limit of liability for any one occurrence or accident be less than the amount shown above.

(k) **Deductibles:** Companies issuing the insurance policies and the Contractor shall have no recourse against LYNX for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of the Contractor.

6.02.06. Notice Of Labor Disputes.

(a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Contract, the Contractor immediately shall give notice, including all relevant information, to the Contracting Officer.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract under which a labor dispute may delay the timely performance of the Contract, except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute the subcontractor shall immediately notify the next higher tier subcontractor or the Contractor, as the case may be, of all relevant information concerning the dispute.

6.03 PROVISIONS APPLICABLE ONLY TO CONTRACTS EXCEEDING TWENTY FIVE THOUSAND DOLLARS

6.03.01. Suspension and Debarment. The contract that ultimately results from this solicitation is a "covered transaction" as defined by 2 CFR Part 180. Each Bidder must certify at the time it submits its bid that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction. The bidder with the successful bid further agrees to comply with 2 CFR Part 1200 and 2 CFR Part 180, Subpart C by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction".

(a) The certification in this clause is a material representation of fact relied upon by LYNX.

(b) If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to LYNX, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(c) The Contractor agrees to comply with the requirements of 49 C.F.R. 29, Subpart C while its offer is valid and throughout the period of any contract that may arise from its offer.

(d) The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

6.04 PROVISIONS APPLICABLE ONLY TO CONTRACTS EXCEEDING ONE HUNDRED THOUSAND DOLLARS

6.04.01. Claims for Damages. Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

6.04.02. Clean Air and Clean Water. The Contractor 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. and the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to LYNX and understands and agrees that LYNX will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

6.04.03. Contract Work Hours and Safety Standards. The following provisions shall apply with respect to all U.S. federal government financed contracts and subcontracts in excess of \$100,000, involving employment of laborers or mechanics, including watchmen and guards, provided, however, that these provisions shall not apply to contracts for

transportation by land, air, or water, or for the transmission of intelligence, or for the purchase of supplies or materials or articles ordinarily available in the open market.

(a) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the Contract Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such Work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (a) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States 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 paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

(c) **Withholding for unpaid wages and liquidated damages.** LYNX 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 moneys payable on account of Work performed by the Contractor or subcontractor under any such Contract 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 paragraph (b) of this section.

(d) **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (a) through (d) of this section and also a clause requiring the 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 paragraphs (a) through (d) of this section.

6.04.04. Record Keeping Requirements. 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 three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. 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 paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of LYNX and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job. **Lobbying.** Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 C.F.R. 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 LYNX. **Performance During Dispute** Unless otherwise directed by LYNX, Contractor shall continue performance under the Contract while matters in dispute are being resolved. **PROVISIONS RELATING TO ARCHITECTURAL AND ENGINEERING SERVICES CONTRACTS**

6.05.01. Seismic Safety. Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all Work performed under the Contract including Work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

6.05.02. Special Termination Provisions. LYNX may terminate the Contract in whole or in part, for the convenience of LYNX or because of the failure of the Contractor to fulfill the Contract obligations. LYNX shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing the Contract, whether completed or in process. If the termination is for the convenience of LYNX, the Contracting Officer shall make an equitable adjustment in the Contract price but shall allow no anticipated profit on unperformed services. If the termination is for failure of the Contractor to fulfill the Contract obligations, LYNX may complete the Work by Contract or otherwise and the Contractor shall be liable for any additional cost incurred by LYNX. If, after termination for failure to fulfill Contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of LYNX.

6.06 PROVISIONS RELATING TO CONSTRUCTION CONTRACTS

6.06.01. Buy America. The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Contractor must submit to LYNX a Buy America certification with respect to all FTA-funded contracts, except those subject to a general waiver.

6.06.02. Cargo Preference - Use of United States-Flag Vessels. Contractor agrees:

- (a) To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- (b) To furnish within twenty (20) business days following the date of loading for shipments originating within the United States or within thirty (30) business days following the date of loading for shipments originating outside 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 the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to LYNX (through the Contractor in the case of a subcontractor's bill-of-lading); and
- (c) To include these requirements in all subcontracts issued pursuant to the Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

6.06.03. Cleaning Up. The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the Work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of LYNX. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

6.06.04. Continuing The Work. The Contractor shall carry on the Work and maintain the progress schedule during all disputes or disagreements with LYNX. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the Contractor and LYNX may otherwise agree in writing. Suspension of the Work by the Contractor during any dispute or disagreement with LYNX shall entitle LYNX to terminate the Contract for cause, except as otherwise provided in the General Provisions. This section supersedes other sections concerning continuing work.

6.06.05. Cooperation Of Contractor. The Contractor will be supplied with three (3) copies each of the plans and specifications. Contractor shall have available on the work site at all times one copy each of the plans and specifications. The Contractor, for the cost of reproduction, may obtain additional copies of plans and specifications. The Contractor shall give constant attention to the Work to facilitate the progress thereof, and he shall cooperate with the Project Manager and any inspectors and with other contractors in every way possible. The Project Manager shall allocate the Work and designate

the sequence of construction in case of controversy between contractors. The Contractor shall have a competent superintendent on the work site at all times who is fully authorized as his agent. The superintendent shall be capable of reading and thoroughly understanding the plans and specifications and shall receive and fulfill instructions from the Project Manager or his authorized representative.

6.06.06. Davis-Bacon and Copeland Anti-Kickback Acts. With respect to all construction contracts and subcontracts over two thousand dollars (\$2,000) at least partly financed by a loan or grant from the Federal Government, and including contracts for actual construction, alteration and/or repair, including painting and decorating, the following provisions shall apply.

(a) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (a)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 C.F.R. 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 C.F.R. 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(ii)(B) or (C) of this section, shall be paid to all workers performing Work in the classification under the Contract from the first day on which Work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v) (A) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The Work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(v)(B) or (C) of this section, shall be paid to all workers performing Work in the classification under the Contract from the first day on which Work is performed in the classification.

(b) **Withholding.** LYNX 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 the Contractor under the Contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, LYNX may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(c) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the Work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the Work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The Contractor shall submit weekly for each week in which any Contract Work is performed a copy of all payrolls to LYNX for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of Work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (c)(i)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. 5.12.

(d) Apprentices and trainees

(i) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the Work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire Work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any apprentice performing Work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid

fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the Work performed until an acceptable program is approved.

(ii) *Trainees.* Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the Work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of Work actually performed. In addition, any trainee performing Work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the Work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the Work performed until an acceptable program is approved.

(iii) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. part 30.

(e) *Compliance with Copeland Act requirements.* The Contractor shall comply with the requirements of 29 C.F.R. part 3, which are incorporated by reference in the Contract.

(f) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 C.F.R. 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the Contract clauses in 29 C.F.R. 5.5.

(g) *Contract termination: debarment.* A breach of the Contract clauses in 29 C.F.R. 5.5 may be grounds for termination of the Contract, and for debarment as a Contractor and a subcontractor as provided in 29 C.F.R. 5.12.

(h) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. parts 1, 3, and 5 are herein incorporated by reference in the Contract.

(i) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of the Contract shall not be subject to the general disputes clause of the Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the Contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(j) *Certification of eligibility.*

- (i) By entering into the Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government Contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).
- (ii) No part of the Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

6.06.07. Differing Site Conditions.

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of: (1) Subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract; or (2) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in Work of the character provided for in the Contract. The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work under the Contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract modified in writing accordingly.

(b) No request by the Contractor for an equitable adjustment to the Contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in paragraph (a) of this clause for giving written notice may be extended by the Contracting Officer. No request by the Contractor for an equitable adjustment to the Contract for differing site conditions shall be allowed if made after final payment under the Contract.

6.06.08. Layout Of Work. The Contractor shall lay out its Work from base lines and benchmarks indicated on the drawings, and shall be responsible for all measurements concerning the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the Work to the lines and grades that may be established or indicated by the Project Manager. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Project Manager until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Project Manager may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

6.06.09. Maintenance During Construction. The Contractor shall maintain the Work during construction and until the Work is accepted. This maintenance shall constitute continuous and effective Work prosecuted day by day, with adequate equipment and forces so that the Work is maintained in satisfactory condition at all times. All costs of maintenance Work during construction and before the project is accepted shall be included in the unit prices bid on the various Contract items, and the Contractor will not be paid an additional amount for such work. Should the Contractor at any time fail to maintain the work, the Project Manager shall immediately notify the Contractor of such noncompliance. Such notification shall specify a reasonable time within which the Contractor shall be required to remedy such unsatisfactory maintenance condition. The time specified will give due consideration to the exigency that exists. Should the Contractor fail to respond to the Project Manager's notification, the Project Manager may suspend any Work necessary for LYNX to correct such unsatisfactory maintenance condition, depending on the exigency that exists. Any maintenance cost incurred by LYNX shall be deducted from monies due or to become due to the Contractor.

6.06.10. Occupational Safety and Health ("OSHA"). Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable Department of Labor regulations, "Safety and Health Regulations for Construction" 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(a) The Contractor also agrees to include the requirements of this section in each subcontract. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of

a Contract for construction, alteration or repair. A person who undertakes to perform a portion of a Contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the Work in question involves the performance of construction Work and is to be performed:

- (i) directly on or near the construction site, or
- (ii) for the specific project on a customized basis.

Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the Work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor" for the purposes of this section. The requirements of this section do not apply to Contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

6.06.11. Operations And Storage Areas. (a) The Contractor shall confine all operations (including storage of materials) on LYNX premises to areas authorized or approved by the Project Manager. The Contractor shall hold and save LYNX, its officers, agents, free, and harmless from liability of any nature occasioned by the Contractor's performance.

(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the prior written approval of the Project Manager and shall be built with labor and materials furnished by the Contractor without expense to LYNX. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor upon completion of the work. With the written consent of the Project Manager, the buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Project Manager, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Project Manager. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

6.06.12. Protection Of Vegetation, Structures, Equipment & Utilities. The Contractor shall preserve and protect all existing structures, equipment, and vegetation (such as trees, shrubs, and grass), on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the Work required under the Contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during Contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Project Manager. The Contractor shall protect from damage all existing improvements and utilities at or near the work site, and on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of the Contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Project Manager may have the necessary Work performed and charge the cost to the Contractor.

6.06.13. Safety. Contractor agrees to provide appropriate safety barricades, signs, and signal lights; comply with the standards issued by the Secretary of Labor at 29 C.F.R. Part 1926 and 29 C.F.R. Part 1910; and ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

6.06.14. Schedules For Construction Contracts. (a) The Contractor shall, within five days after the Work commences on the Contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work. The Contractor will supply the dates on which the Contractor contemplates starting and completing the several salient features of the Work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of Work scheduled for completion by any

given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to LYNX. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause, shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of the Contract.

6.06.15. Seismic Safety. Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all Work performed under the Contract including Work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

6.06.16. Special Termination for Default Provisions. If the Contractor refuses or fails to prosecute the Work or any separable part, with the diligence that will ensure its completion within the time specified in the Contract or any extension or fails to complete the Work within this time, or if the Contractor fails to comply with any other provisions of the Contract, LYNX may terminate the Contract for default. LYNX shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, LYNX may take over the Work and complete it by Contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to LYNX resulting from the Contractor's refusal or failure to complete the Work within specified time, whether or not the Contractor's right to proceed with the Work is terminated. This liability includes any increased costs incurred by LYNX in completing the work. The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if:

(a) The delay in completing the Work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of LYNX, acts of another Contractor in the performance of a Contract with LYNX, epidemics, quarantine restrictions, strikes, freight embargoes; and

(b) The Contractor, within ten (10) days from the beginning of any delay, notifies LYNX in writing of the causes of delay. If in the judgment of LYNX, the delay is excusable, the time for completing the Work shall be extended. The judgment of LYNX shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses, if applicable.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

6.06.17. Specifications And Drawings. (a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Project Manager access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a

determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly, the words "approved", "acceptable", "satisfactory", or words of like import shall mean "Approved by," or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown," "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying the Contract unless stated otherwise. The word "provided" as used herein shall be understood to mean, "provide complete in place," that is "furnished and installed".

(d) "Shop drawings" means drawings, submitted to LYNX by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction Contract, showing in detail the proposed fabrication and assembly of structural elements, and the installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the Work required by the Contract. LYNX may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under the Contract.

(e) If the Contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with Contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate LYNX's reasons therefor. Any Work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of the Contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the Contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate Contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The Contractor shall submit to the Contracting Officer for approval four (4) copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three (3) sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor. Upon completing the Work under the Contract, the Contractor shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the equipment is completed and accepted.

6.06.18. Suspension Of Work.

(a) The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the Work of the Contract for the period of time that the Contracting Officer determines appropriate for the convenience of LYNX.

(b) If the performance of all or any part of the Work is, for an unreasonable period of time, suspended, delayed, or interrupted:

(i) By an act of the Contracting Officer in the administration of the Contract, or

(ii) By the Contracting Officer's failure to act within the time specified in the Contract (or within a reasonable time if not specified),

an adjustment shall be made for any increase in the cost of performance of the Contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of the Contract.

(c) A claim under this clause shall not be allowed for any costs incurred more than twenty (20) days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved. Nevertheless, this requirement shall not apply as to a claim resulting from a suspension order unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the Contract.

6.06.19. Use And Possession Prior To Completion. (a) LYNX shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of Work remaining to be performed or corrected on those portions of the Work that LYNX intends to take possession of or use. However, failure of the Contracting Officer to list any item of Work shall not relieve the Contractor's responsibility for complying with the Contract terms. The Government's possession or use shall not be deemed an acceptance of any Work under the Contract.

(b) While LYNX has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the Work resulting from LYNX's possession or use. If prior possession or use by LYNX delays the progress of the Work or causes additional expense to the Contractor an equitable adjustment shall be made in the Contract price or the time of completion, and the Contract shall be modified in writing accordingly.

6.06.20. Utilities. Contractor shall be responsible for all utilities that are necessary to perform the Work required by the Contract.

6.06.21. Department of Labor Equal Opportunity Employment.

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY
(EXECUTIVE ORDER 11246)
MUST BE INCLUDED IN CONSTRUCTION CONTRACTS AND SUBCONTRACTS THAT EXCEED \$10,000**

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Time- tables	Goals for minority participation for each trade	Goals for female participation in each trade
	Insert goals for each year	Insert goals for each year.

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any).

**STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS
(EXECUTIVE ORDER 11246)**

MUST BE INCLUDED IN CONSTRUCTION CONTRACTS AND SUBCONTRACTS THAT EXCEED \$10,000

1. As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the FEDERAL REGISTER in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by

any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(b) The notice set forth in 41 CFR 60-4.2 and the specifications set forth in 41 CFR 60-4.3 replace the New Form for Federal Equal Employment Opportunity Bid Conditions for Federal and Federally Assisted Construction published at 41 FR 32482 and commonly known as the Model Federal EEO Bid Conditions, and the New Form shall not be used after the regulations in 41 CFR part 60-4 become effective.

[43 FR 49254, Oct. 20, 1978; 43 FR 51401, Nov. 3, 1978, as amended at 45 FR 65978, Oct. 3, 1980]

6.07 PROVISIONS RELATING TO INTELLIGENT TRANSPORTATION SYSTEMS PROJECTS

6.07.01. **Conformance with ITS National Architecture.** With respect to all Contracts involving the provision of Intelligent Transportation Systems ("ITS"), Contractor agrees to conform to the ITS National Architecture, as promulgated by the United States Department of Transportation, Intelligent Transportation Systems, Joint Program Office.

6.08 PROVISIONS RELATING TO MATERIALS AND SUPPLIES CONTRACTS

6.08.01. **Buy America.** The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Contractor must submit to LYNX a Buy America certification on FTA-funded contracts, except those subject to a general waiver.

6.08.02. **Cargo Preference - Use of United States-Flag Vessels.** Contractor agrees:

(a) To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

(b) To furnish within twenty (20) business days following the date of loading for shipments originating within the United States or within thirty (30) business days following the date of loading for shipments originating outside 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 the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to LYNX (through the Contractor in the case of a subcontractor's bill-of-lading); and

(c) To include these requirements in all subcontracts issued pursuant to the Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

6.08.03. **Certificate Of Conformance.** (a) When authorized in writing by the Contracting Officer, the Contractor shall ship any supplies for which the Contract would otherwise require inspection at source with a Certificate of Conformance certifying that the supplies or services are of the quality specified and conform in all respects with the Contract requirements, including specifications, drawings, preservation, packaging, packing, marking requirements, and

physical item identification (part number), and certifying the quantity provided. Shipments of such supplies will not be made under the Contract until use of the Certificate of Conformance has been authorized in writing by the Contracting Officer or inspection and acceptance have occurred.

(b) The executed Certificate of Conformance shall be attached to or included on the top copy of the inspection or receiving report distributed to the payment office. In addition, a copy of the executed Certificate of Conformance shall also be attached to or entered on copies of the inspection or receiving report accompanying the shipment.

(c) LYNX has the right to inspect supplies even though a Certificate of Conformance has been provided and to reject defective supplies or services within a reasonable time after delivery by written notification to the Contractor. The Contractor shall in such event promptly replace, correct, or repair the rejected supplies or services at the Contractor's expense.

6.09 PROVISIONS RELATING TO OPERATIONS/ MANAGEMENT CONTRACTS

6.09.01. Charter Service Operations. The Contractor agrees to comply with 49 U.S.C. 5323(d) and 49 C.F.R. Part 604, which provides that recipients and sub-recipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 C.F.R. 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation. Contractor agrees to include provisions to this effect in to include these requirements in all subcontracts issued pursuant to the Contract when the subcontract may involve charter service operations.

6.09.02. Drug and Alcohol Testing. The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Florida, or LYNX, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. Parts 653 and 654 and review the testing process. The Contractor agrees further to certify annually its compliance with Parts 653 and 654 before October 31st of each year and to submit the Management Information System (MIS) reports before January 1st of each year to LYNX Director of Risk Management, 445 W. Avelia Street, Suite 800, Orlando, FL 32801. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

6.09.03. School Bus Operations. Contractor agrees to comply with 49 U.S.C. 5323(f) and 49 C.F.R. Part 605, which provide that recipients and sub-recipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, Contractor agrees not to use federally funded equipment, vehicles, or facilities. Contractor agrees to include provisions to this effect in to include these requirements in all subcontracts issued pursuant to the Contract when the subcontract may involve school bus operations.

6.09.04. Transit Employee Protective Provisions. With respect to Contracts for "transit operations" as classified by the FTA, and performed by employees of a Contractor recognized by FTA to be a transit operator, the Contractor agrees to the comply with applicable transit employee protective requirements as follows:

(a) **General Transit Employee Protective Requirements.** To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations Work on the underlying Contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under the Contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. Department of Labor guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. Department Of Labor to FTA applicable to LYNX's project from which Federal assistance is provided to support Work on the underlying Contract. The Contractor agrees to carry out that Work in compliance with the conditions stated in that U.S. Department Of Labor letter. The requirements of this subsection (a), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for

nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this Section.

(b) **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities.** If the Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for LYNX, the Contractor agrees to carry out the Work in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. Department of Labor guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. Department of Labor's letter of certification to FTA, the date of which is set forth in the Grant Agreement or Cooperative Agreement with LYNX. The Contractor agrees to perform transit operations in connection with the underlying Contract in compliance with the conditions stated in that U.S. Department of Labor letter, *Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas*. If the Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. Department of Labor or any revision thereto.

(c) **Requirements Apply to Subcontracts.** The Contractor agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with assistance provided by FTA.

6.10 PROVISIONS RELATING TO RESEARCH AND DEVELOPMENT CONTRACTS

6.10.01. **Patent Rights.** The following requirements apply to each contract involving experimental, developmental, or research work:

(a) **General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the Contract to which this Section applies and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, LYNX and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(b) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), LYNX and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(c) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research Work financed in whole or in part with Federal assistance provided by FTA.

6.10.02. **Rights in Data.** The following requirements apply to each Contract involving experimental, developmental or research work:

(a) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(b) The following restrictions apply to all subject data first produced in the performance of the Contract to which this Section applies:

(i) Except for its own internal use, LYNX or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may LYNX or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(ii) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (b)(ii)(A) and (b)(ii)(B) of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

(A) Any subject data developed under that contract, whether or not a copyright has been obtained; and

(B) Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(iii) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the Work to participants in that work. Therefore, unless FTA determines otherwise, LYNX and the Contractor performing experimental, developmental, or research Work required by the underlying Contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying Contract, is not completed for any reason whatsoever, all data developed under that Contract shall become subject data as defined in subsection (i) of this clause and shall be delivered as the Federal Government may direct. This subsection (iii), however, does not apply to adaptations of automatic data processing equipment or programs for LYNX or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(iv) Unless prohibited by state law, upon request by the Federal Government, LYNX and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by LYNX or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that Contract. Neither LYNX nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(v) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(vi) Data developed by LYNX or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into Work required by the underlying Contract to which this Section applies is exempt from the requirements of subsections (ii), (iii), and (iv) of this clause, provided that LYNX or Contractor identifies that data in writing at the time of delivery of the Contract work.

(vii) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research Work financed in whole or in part with Federal assistance provided by FTA.

(c) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), LYNX and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(d) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research Work financed in whole or in part with Federal assistance provided by FTA.

6.11 PROVISIONS RELATING TO ROLLING STOCK PURCHASE CONTRACTS

6.11.01. Bus Testing. Contractor agrees to comply with 49 U.S.C. 5323(c) and FTA's implementing regulation at 49 C.F.R. Part 665 and shall perform the following:

(a) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to LYNX at a point in the procurement process specified by LYNX, which will be before LYNX's final acceptance of the first vehicle.

(b) A manufacturer who releases a report under paragraph (a) above shall provide notice to the operator of the testing facility that the report is available to the public.

(c) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report. This must be provided to LYNX before LYNX's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

(d) If the manufacturer represents that the vehicle is "grandfathered" (used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

(e) Contractor shall provide a certification of compliance with FTA bus testing requirements on such form as may be required by LYNX.

6.11.02. Buy America. Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content. Contractor agrees to submit to LYNX a Buy America certification on FTA-funded contracts, except those subject to a general waiver.

6.11.03. Cargo Preference - Use of United States-Flag Vessels. Contractor agrees:

(a) To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

(b) To furnish within twenty (20) business days following the date of loading for shipments originating within the United States or within thirty (30) business days following the date of loading for shipments originating outside 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 the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to LYNX (through the Contractor in the case of a subcontractor's bill-of-lading); and

(c) To include these requirements in all subcontracts issued pursuant to the Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

6.11.04. Pre-Award and Post Delivery Audit Requirements. Contractor agrees to comply with 49 U.S.C. 5323(1) and FTA's implementation regulation at 49 C.F.R. Part 663 and to submit the following certifications:

(a) **Buy America Requirements.** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with the Buy America requirements. If the Contractor certifies compliance with the Buy America requirements, it shall submit documentation which lists (i) component and subcomponent parts of the rolling stock to be purchased, identified by manufacturer of the parts, their country of origin and costs; and (ii) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(b) **Solicitation Specification Requirements.** The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

(c) **Federal Motor Vehicle Safety Standards ("FMVSS").** The Contractor shall submit (i) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or (ii) manufacturer's certified statement that the Contracted buses will not be subject to FMVSS regulations.

6.12 DEFINITIONS.

Except as otherwise expressly provided, the terms defined in this section have the meanings assigned to them in this section and the words "herein," "hereof," and "hereunder," and similar words refer to the Contract Documents as a whole and not to any particular document.

(a) "Contract" means the Contract for goods and services between LYNX and the Contractor, of which these General Provisions are incorporated.

(b) "Contractor" means such party as designated in the Contract.

(c) "Contract Documents" means, collectively, the Contract for goods and services between LYNX and the Contractor, these General Provisions, the solicitation by LYNX, the response by the Contractor, and all other documents, instruments and agreements ancillary to and contemplated by these documents.

(d) "Contracting Officer" means such party as designated by LYNX in the Contract.

(e) "FTA" means the Federal Transit Administration.

(f) "LYNX" means the Central Florida Regional Transportation Authority d/b/a LYNX, a body politic and corporate, created by Part II, Chapter 343, Florida Statutes.

(g) "Project Manager" means such party as designated by LYNX in the Contract.

(h) "Work" means the goods and/or services to be provided pursuant to the Contract.

Exhibit "C"

DBE ADDENDUM

N/A

Cobb County Department of Transportation

Agreement between Cobb County and Clever Devices, Ltd. to provide the
Equipment and Installation of Bus Automatic Vehicle Location (AVL) System
For Cobb Community Transit

Item 5

**AGREEMENT BETWEEN COBB COUNTY, GEORGIA AND
CLEVER DEVICES, LTD. TO PROVIDE THE EQUIPMENT AND
INSTALLATION OF BUS AUTOMATIC VEHICLE LOCATION (AVL)
SYSTEM FOR COBB COMMUNITY TRANSIT**

THIS AGREEMENT entered into this 23rd day of June, 2015, by and between **Cobb County, Georgia**, a political subdivision of the State of Georgia (hereinafter called the "County") with its principal place of business located at 100 Cherokee Street, Marietta, Georgia 30090 and **Clever Devices LTD.** with its principal place of business located at 300 Crossways Park Drive, Woodbury, NY 11797(hereinafter called "Contractor").

WHEREAS, the County operates Cobb Community Transit (hereinafter "CCT") which include operating buses on behalf of the Georgia Regional Transportation Authority (hereinafter "GRTA") to provide transportation services for the benefit of Cobb County residents and visitors;

WHEREAS, Contractor has previously installed technology equipment and software to on CCT's fleet that now needs to be upgraded and deployed on new buses coming into the fleet; and

WHEREAS, the Contractor is willing and able to perform such work and furnish materials upon the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the mutual covenants herein contained for the total amount not to exceed Two Million Eight Hundred Twenty-Five Thousand Nine Hundred Sixty-Two Dollars (\$2,825,962.00). This total amount includes the purchase equipment and services on for GRTA-owned buses operated by CCT. GRTA, in its sole discretion, may elect to purchase all or some of the equipment and services at the price set forth herein of not to exceed \$630,562.00. The County and the Contractor agree as follows:

1. **STATEMENT OF WORK.** The Contractor will upgrade equipment, provide new equipment, installation and support services of AVL system as set forth in the attached Exhibit A, attached to this Agreement and incorporated as if fully set forth herein. The proposal provides for pricing by bus unit and the County may order bus units as needed at the specified pricing in Exhibit A during the five year term of this Agreement. The Contractor will work under the direction of the Cobb Community Transit Manager or his/her designated agent and will obtain the prior approval for all work to be performed. It is so stated that Contractor's proposal is 100% compliant with the Conformed Specifications as currently written and as mutually understood.

2. **COMPENSATION.** The Contractor's compensation will be in accordance with the Purchase Price and Terms set forth Exhibit A. The County's obligation to pay the

Reference No. 15659

Scanned Date: _____

Contractor for such work and materials will be subject to the County's written approval of the work to be performed and as invoiced. Therefore, the Contractor's invoices to the County will be in such form as will enable the County to make payment for work approved and performed.

3. PERIOD OF PERFORMANCE. The Agreement Term shall be for five years from the effective date of this Agreement as first written above. This period will include the procurement, delivery, and installation of AVL System equipment and hosting services. The Contractor will commence work on the effective date.

4. INDEPENDENT CONTRACTOR. Under the Agreement, the Contractor shall be an independent Contractor and not an agent of the County or the Board of Commissioners. The Contractor shall be fully responsible for all acts and omissions of its employees, subcontractors and their suppliers, and specifically shall be responsible for sufficient supervision and inspection to ensure compliance in every respect with the Agreement requirements. There shall be no contractual relationship between any subcontractor or supplier and the County by virtue of the Agreement with the Contractor. No provision of this Agreement shall be for the benefit of any party other than the County and the Contractor.

5. PERMITS AND LICENSES. The Vendor is solely responsible for obtaining any license or other authorization required by law to perform the services required in this Agreement.

Contractors who have an office or place of business within Cobb County shall provide the County, on the proper form, proof of being licensed to do business within Cobb County, Georgia. Contractors who do not have an office or place of business within Cobb County do not have to obtain a Cobb County business license, but must provide proof of being licensed to do business within the State of Georgia. Proof of proper business licenses shall also be provided by the Contractor for any and all Subcontractors coming under the jurisdiction of this contract. An out-of-state Contractor shall secure the proper permits and licenses required by the State of Georgia to perform work within Georgia.

6. INSURANCE AND BONDING. The Contractor shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with performance of the work hereunder by the Contractor, his agents, representatives, employees or Subcontractors.

A. MINIMUM LIMITS OF INSURANCE

The Contractor shall maintain general and automobile liability and Workers' Compensation and Employers Liability insurance limits of no less than:

1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage including products/completed operations coverage.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage, when applicable.
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of Georgia and Employers Liability limits of \$100,000 per accident.

B. DEDUCTIBLES AND SELF-INSURED RETENTION

Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials and employees; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

C. OTHER INSURANCE PROVISIONS

1. General Liability and Automobile Coverage
 - a. The County, its officers, officials, employees, and volunteers are to be covered as insured's as respects: Liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the County or, its officers, officials, employees or volunteers.
 - b. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or, its officers, officials, employees or volunteers.

- d. 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.

2. Workers' Compensation and Employers Liability Coverage

The insurer shall agree to waive all rights of subrogation against the County, its officers, officials, employees and volunteers for losses arising from the work performed by the Contractor for the County.

3. All Coverage

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given the County. Each insurance policy required by this clause will include a provision showing Cobb County, Georgia as an additional insured.

- a. All insurance is to be placed with insurers with a Best's rating of no less than A in order to be acceptable to the County.
- b. The Contractor shall furnish the County with certification of insurance prior to the execution of any or the performance of any work.
- c. The Contractor shall include all Subcontractors as insured under its policy or shall require all Subcontractors to maintain in accordance with the requirements listed above.

7. INDEMNITY AND WAIVER OF BENEFITS. The parties shall at all times comply with all laws, ordinances, and rules, and regulations of state and federal governmental authorities regarding development and installation of the Bus AVL System described Exhibit A. To the extent allowed by law, the Contractor agrees to defend and save harmless the County, its officers, agents, and employees against all claims, demands, payments, suits, actions, recovery, and judgments of every kind and description out of the performance of this Agreement, for personal injury or property damage brought or recovered against it by reason of any negligent action or omission of the Contractor, its agents, or employees and with respect to the degree to which the County is free from negligence on the part of itself, its employees, and agents. Neither party shall be liable to the other for punitive, consequential, indirect or incidental damages, including, but not limited to, loss of tax revenue or claims related to valuation of property, whether based in contract, negligence, and strict liability or otherwise.

8. ENTIRE AGREEMENT. This signed Agreement, which includes the Contractor's complete Proposal and all appendices, exhibits, attachments, and documents

incorporated herein by reference, constitutes the entire Agreement between the parties and supersedes all prior offers, negotiations, exceptions and understandings, whether oral or written, between the parties. Every provision of law and every contract clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as through they were included. This Agreement may not be amended, altered or modified except in a written document signed by the parties.

9. FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS. The Contractor agrees to comply with all applicable Federal Transit Administration requirements contained in Exhibit B, incorporated herein as if fully set forth.

10. CHANGES. Changes in the Work and changes in the Contract can only be made by written amendments signed by both the Contractor and CCT, prior to implementation of such changes. Any part of the Contract that is not specially mentioned in an amendment or set of amendments shall not be changed. No implied changes are acceptable to either party to the Contract. The Contractor shall be liable for all costs resulting from, and for satisfactorily correcting, any change not properly ordered by written amendment to the Contract and signed by the both parties.

11. TERMINATION. In addition to other termination provisions of this Agreement, this Agreement may be terminated in the event the Contractor shall fail to substantially perform any obligation under this Agreement and shall not cure such failure within thirty (30) days after the County has given written notice thereof, or in the case of failure that cannot be reasonable cured within thirty (30) days, shall fail to begin to cure within such time and diligently to prosecute such cure to completion within a reasonable time thereafter.

12. ASSIGNMENT. Neither this Agreement nor any interest herein nor any claim hereunder may be assigned or subcontracted by the Contractor without the prior written consent of the County and any attempt to do so will constitute a breach of this Agreement.

13. NOTICES. In the event any circumstances under this Agreement calls for notice to a party, such notice must be in writing and will be effective when delivered to the recipient's address set forth at the beginning of this Agreement. Either party, by written notice to the other party, may change the address for notices to be sent to it.

14. MEASUREMENT AND PAYMENT. Payment shall be based on Contractor's successful completion of the work as requested in writing and invoicing.

15. FTA CLAUSES:

The selected firm will be required to enter into a Contract with Cobb County for the provision of services hereby contemplated.

The project is subject to financial assistance through grants with the Federal Transit Administration and the State of Georgia. Accordingly, the Contractor will be required to comply with all applicable provisions of the laws and regulations required by the Federal Transit Administration, and the State of Georgia, as well as those required by Cobb County.

CCT has an overall annual Disadvantaged Business Enterprise goal of 5% percent and DBE reporting on this contract will count towards the CCT cumulative attainment of that goal.

Certain clauses and certifications including, but not limited to, the following will be required in the Contract:

- Access to Third Party Contract Records
- No Obligation by the Federal Government
- Program Fraud and False or Fraudulent Statements or Related Acts
- Disadvantage Business Enterprises
- Equal Opportunity (EEO) Provision
- Buy America
- Fly America
- Changes to Federal Requirements
- Clean Air
- Terminations
- Government Debarment and Suspension (executed certification required)
- Lobbying
- Clean Water
- Energy Conservation
- Recycled Products
- Recovered Materials
- Cargo Preference
- Contract Work Hours and Safety Standards Act
- Patent and Rights In Data
- Resolution of Disputes, Breaches, or Other Litigation
- ADA Access
- Assignably
- Seismic Safety Requirements
- Incorporation of FTA terms
- Civil Rights
- Lobbying disclosure (executed certification required)

IN WITNESS WHEREOF, the County and Contractor have caused this Agreement to be executed by their duly authorized officers.

Executed this 30th day of July, 2015.

COBB COUNTY, GEORGIA

By: Tim D. Lee

Tim D. Lee, Chairman,



ATTEST:

Angela Cunningham
County Clerk's Office
Deputy County Clerk

Approved as to form:

John K. 2
County Attorney's Office

APPROVED
PER MINUTES OF
COBB COUNTY
BOARD OF COMMISSIONERS

5/12/15

(Seal)

ATTEST:

CONTRACTOR

By: Fran Johnson

Title: President

Victoria Frederickson
Secretary

J. R. R.
Witness

(Seal)

EXHIBIT A
FTA FEDERAL CLAUSES

No Obligation by the Federal Government

(1) The Purchaser and Contractor 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 the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor 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.

Program Fraud and False or Fraudulent Statements or Related Acts

(1) The Contractor 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 Project. Upon execution of the underlying contract, the Contractor 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 Contractor 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 Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor 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 the 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 Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor 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.

Access to Third Party Contract Records

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, 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 Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49

U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three 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 Contractor agrees to maintain same until the Purchaser, 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).

7. FTA does not require the inclusion of these requirements in subcontracts.

Changes to Federal Requirements

Contractor 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 and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

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 Contractor 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 Contractor 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 Contractor 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 Project. The Contractor 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 Contractor 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 Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor 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 Contractor 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 Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor 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.

Disadvantaged Business Enterprises

a. 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*. The County's overall goal for DBE participation is 5%..

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor 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 County deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the County. In addition, the contractor may not hold retainage from its subcontractors. It is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed. It is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the County and contractor's receipt of the partial retainage payment related to the subcontractor's work.

e. The contractor must promptly notify County 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 contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of County.

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 Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any County requests which would cause County to be in violation of the FTA terms and conditions.

Terminations

Termination for Convenience

a. The County may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to County to be paid the Contractor. If the Contractor has any property in its possession belonging to the County, the Contractor will account for the same, and dispose of it in the manner the County directs.

b. Termination for Default

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the County may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

c. Opportunity to Cure

The County in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 30 days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If the Contractor fails to remedy to the County's Satisfaction, the breach or default or any terms, covenants, or conditions of the Contract within (10) days after receipt by Contractor or written notice from the County setting forth the nature of said breach, the County shall have the right to terminate the Contract without any further obligation to the Vendor. Any such termination for default shall not in any way operate to preclude the County from pursuing all available remedies against the Contractor and its sureties for said breach or default.

Equal Opportunity (EEO) Provision

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) the contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor 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 vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(b) *Federally assisted construction contracts.* (1) Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41

CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work; *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(c) *Subcontracts.* Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d) *Incorporation by reference.* The equal opportunity clause may be incorporated by reference in all Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts and subcontracts as the Deputy Assistant Secretary may designate.

(e) *Incorporation by operation of the order.* By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written.

(f) *Adaptation of language.* Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

Debarment and Suspension

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, 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 contractor 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 bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by County. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to County the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Buy America

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

Resolution of Disputes, Breaches, or Other Litigation

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of County's Division Transit Manager. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Division Transit Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Division Transit Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by County, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the County and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the County is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the County, Engineer, or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Lobbying

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors 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 County.

Clean Air

The Contractor 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 Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

Clean Water

The Contractor 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 Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

Cargo Preference

To the extent applicable, the Recipient agrees to comply with 46 U.S.C. § 55305 and U.S. Maritime Administration regulations, "Cargo Preference - U.S.-Flag Vessels," 46 C.F.R. Part 381.

Fly America Requirements

The Contractor 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 subrecipients 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 Contractor 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 Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

Contract Work Hours and Safety Standards Act

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States 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 paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - The County 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 moneys payable on account of work performed by the contractor or subcontractor under any such contract 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 paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the 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 paragraphs (1) through (4) of this section.

Patent and Rights in Data

The FTA patent clause is substantially similar to the text of 49 C.F.R. Part 19, Appendix A, Section 5, but the rights in data clause reflects FTA objectives. For patent rights, FTA is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This model clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. **Rights in Data** - The following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes

graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - This following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

Energy Conservation

The contractor 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.

Recycled Products

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

Recovered Materials

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

ADA Access

The Recipient agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
 - (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
 - (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
 - (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
 - (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
 - (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
 - (7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
 - (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;
 - (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
 - (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
 - (11) Federal civil rights and nondiscrimination directives implementing those Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.
- h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. To the extent applicable, the Recipient agrees to comply with the confidentiality and civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.*, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et*

seq., and the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

i. Access to Services for Persons with Limited English Proficiency. The Recipient agrees to facilitate compliance with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and follow applicable provisions of U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 *Fed. Reg.* 74087, December 14, 2005, except to the extent that FTA determines otherwise in writing.

j. Environmental Justice. The Recipient agrees to facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note; and DOT Order 5620.3, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 *Fed. Reg.* 18377 *et seq.*, April 15, 1997, except to the extent that the Federal Government determines otherwise in writing.

k. Other Nondiscrimination Laws. The Recipient agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable Federal directives prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

Assignably

The covenants contained herein shall, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.

Connecticut Department of Transportation

Information Technology Procurements Contractual Requirements

Item 6

INFORMATION TECHNOLOGY PROCUREMENTS CONTRACTUAL REQUIREMENTS

State Comptroller Specifications. In accordance with Conn. Gen. Stat. § 4d-31, this Agreement is deemed to have incorporated within it, and the Contractor shall deliver the Goods and Services in compliance with, all specifications established by the State Comptroller to ensure that all policies, procedures, processes and control systems, including hardware, software and protocols, which are established or provided by the Contractor or Contractor Parties, are compatible with and support the State's core financial systems, including but not limited to, accounting, payroll, time and attendance, and retirement systems.

CIO Subcontract Approval. In accordance with Conn. Gen. Stat. § 4d-32, the Contractor shall not award a subcontract for work under this Agreement without having first obtained the written approval of the Chief Information Officer of the Department of Information Technology or their designee of the selection of the subcontractor and of the provisions of the subcontract. The Contractor shall deliver a copy of each executed subcontract or amendment to the subcontract to the Chief Information Officer, who shall maintain the subcontract or amendment as a public record, as defined in Conn. Gen. Stat. § 1-200.

Rights to and Integrity of Public Records. In accordance with Conn. Gen. Stat. § 4d-34, (a) neither the Contractor nor Contractor Parties shall have any Title in or to (1) any public records which the Contractor or Contractor Parties possess, modify or create pursuant to a contract, subcontract or amendment to a contract or subcontract, or (2) any modifications by such contractor, subcontractor, employee or agent to such public records; (b) neither the Contractor nor Contractor Parties shall impair the integrity of any public records which they possess or create; and (c) public records which the Contractor or Contractor Parties possess, modify or create pursuant to this Agreement or other contract, subcontract or amendment to a contract or subcontract shall at all times and for all purposes remain the property of the State. For purposes of this section, "public records" shall have the meaning set forth in Conn. Gen. Stat. § 4-33, as it may be modified from time to time.

Public Records and FOIA. In accordance with Conn. Gen. Stat. § 4d-35, any public record which a state agency provides to the Contractor or Contractor Parties shall remain a public record for the purposes of subsection (a) of section 1-210 and as to such public records, the State, the Contractor and Contractor Parties shall have a joint and several obligation to comply with the obligations of the state agency under the Freedom of Information Act, as defined in section 1-200, provided that the determination of whether or not to disclose a particular record or type of record shall be made by such state agency.

Disclosure of Public Records. In accordance with Conn. Gen. Stat. § 4d-36, neither the Contractor nor Contractor Parties shall disclose to the public any public records (a) which they possess, modify or create pursuant to this Agreement or any contract, subcontract or amendment to a contract or subcontract and (b) which a state agency (1) is prohibited from disclosing pursuant to state or federal law in all cases, (2) may disclose pursuant to state or federal law only to certain entities or individuals or under certain conditions or (3) may withhold from disclosure pursuant to state or federal law. This provision shall not be construed to prohibit the Contractor from disclosing such public records to any Contractor Parties to carry out the purposes of its subcontract. For purposes of this section, "public records" shall have the meaning set forth in Conn. Gen. Stat. § 1-200, as it may be modified from time to time.

INFORMATION TECHNOLOGY PROCUREMENTS
CONTRACTUAL REQUIREMENTS

Profiting from Public Records. In accordance with Conn. Gen. Stat. § 4d-37, neither the Contractor nor Contractor Parties shall sell, market or otherwise profit from the disclosure or use of any public records which are in their possession pursuant to this Agreement or any contract, subcontract or amendment to a contract or subcontract, except as authorized in this Agreement. For purposes of this section, "public records" shall have the meaning set forth in Conn. Gen. Stat. § 1-200, as it may be modified from time to time.

Contractor's Obligation to Notify DOIT Concerning Public Records. In accordance with Conn. Gen. Stat. § 4d-38, if the Contractor or Contractor Parties learn of any violation of the provisions of Conn. Gen. Stat. §§ 4d-36 or 4d-37 they shall, no later than seven calendar days after learning of such violation, notify the Chief Information Officer of such violation.

General Assembly Access to Records. In accordance with Conn. Gen. Stat. § 4d-40, the Joint Committee on Legislative Management and each nonpartisan office of the General Assembly shall continue to have access to DOIT records that is not less than the access that said committee and such offices have on July 1, 1997.

Continuity of Systems. This Section is intended to comply with Conn. Gen. Stat. §4d-44.

- (a) The Contractor acknowledges that the Systems and associated services are important to the function of State government and that they must continue without interruption. Pursuant to Conn. Gen. Stat. §4d-44, if the work under the Contract, any subcontract, or amendment to either, is transferred back to the State or to another contractor at any time for any reason, then the Contractor shall cooperate fully with the State, and do and perform all acts and things that DOIT deems to be necessary or appropriate, to ensure continuity of state agency information system and telecommunication system facilities, equipment and services so that there is no disruption or interruption in performance as required or permitted in the Contract. The Contractor shall not enter into any subcontract for any part of the performance under the Contract without approval of such subcontract by DOIT, as required by Conn. Gen. Stat. §4d-32, and without such subcontract including a provision that obligates the subcontractor to comply fully with Conn. Gen. Stat. §4d-44 as if the subcontractor were in fact the Contractor. The Contractor shall make a full and complete disclosure of and delivery to DOIT or its representatives of all Records and "Public Records," as that term is defined in Conn. Gen. Stat. §4d-33, as it may be amended, in whatever form they exist or are stored and maintained and wherever located, directly or indirectly concerning the Contract.
- (b) The parties shall follow the following applicable and respective procedures in order to ensure the orderly transfer to the State of:
- (1) such facilities and equipment: _____;
 - (2) all software created or modified pursuant to the Contract, subcontract or amendment: _____; and
 - (3) all public records, as defined in Conn. Gen. Stat. §4d-33, which the Contractor or Contractor Parties possess or create pursuant to the Contract, subcontract or amendment:
- (c) If the Contractor employs former State employees, the Contractor shall facilitate the exercising of any reemployment rights that such State employees may have with the State, including, but not limited to, affording them all reasonable opportunities during the workday to interview for State jobs. The Contractor shall include language similar to this section in all of its contracts with its subcontractors and applicable Contractor Parties so that they are similarly obligated.

Golden Empire Transit

Agreement between Golden Empire Transit and Connexionz Limited, January 2,
2013, for Automated Vehicle Location and Passenger Information System

Item 7

AGREEMENT

This Agreement is made on the 2nd day of January, 201³7, between the GOLDEN EMPIRE TRANSIT ("District"), with a principal place of business at 1830 Golden State Avenue, Bakersfield, California 93301, and CONNEXIONZ LIMITED, a limited liability company registered in the State of Virginia as a Foreign Corporation ("Contractor"), with a principal place of business at 1 Show Place, Addington, Christchurch, New Zealand 8024.

For the consideration stated below, the District and Contractor agree as follows:

Article I. Term of Agreement:

1. Term: This Agreement will become effective on the date above and will continue in effect until all services have been performed by the Contractor, or until terminated as provided in this Agreement.

2. Timing for Performance: Contractor agrees to complete this Project within fifteen (15) months after the initial Notice to Proceed on the Proof of Concept. The term for the Full System Deployment will be twelve (12) months from completion and written acceptance of the Proof of Concept and subsequent Notice to Proceed. Completion shall mean formal written acceptance by the District.

It is agreed by the parties to this Agreement that in case all construction/services called for under the Contract Documents are not completed within fifteen (15) months after the initial Notice to Proceed, as extended by delays approved in accordance with this Agreement and the Contract Documents, damages will be sustained by the District and that it is, and will be, impracticable or extremely difficult to ascertain and determine the actual damages the District will sustain in the event of, and by reason of such delay. It is, therefore, agreed that such damages shall be presumed to be the amount referenced in the Request for Proposal or One Hundred Dollars (\$100.00) per day. District may waive damages, if Contractor can demonstrate conditions which caused unavoidable delay to complete project within fifteen (15) months, to the extent such damages may be waived under the Contract Documents.

Article II. Type of Contract

1. Fixed Price Contract: This Agreement shall be a fixed price contract in the amount of Two Million Seven Hundred Eighty-Five Thousand Eight Hundred and Nine Dollars (\$2,785,809.00) ("Contract Amount"), United States Dollars. Contractor shall not incur obligations or expend monies in excess of the stated amount of this Agreement, for which the Contractor shall seek to hold the District responsible.

Article III. Scope of Work

1. Services to be Performed: Contractor shall perform everything required to be performed, and shall provide and furnish all the labor, materials, necessary tools, expendable equipment, and all utility and transportation services required for the Automated Vehicle Location and Passenger Information System ("Project") as defined in the District's Request for Proposal G035, ("RFP") and "Contract Documents".

2. Contract Documents: All work to be performed and materials furnished shall be in strict accordance with the "Contract Documents," which shall consist of the following documents:

a) Request for Proposal RFP G035 Automated Vehicle Location (AVL) & Passenger Information System (PIS) dated January 3, 2012 including:

RFP G035 Addendums which are attached hereto and incorporated herein as Exhibit "A":

Addendum 1: Extension of RFP Due Date dated January 19, 2012;

Addendum 2: Questions with District Responses dated February 15, 2012;

Addendum 3: Vendor Questions with District Response dated February 17, 2012;

Addendum 4: Vendor Question with District Response dated February 20, 2012;

Addendum 5: Questions with District Responses dated February 27, 2012;

Addendum 6: Question with District Response dated February 27, 2012;

Addendum 7: Extension of RFP Due Date dated February 28, 2012; AND

Addendum 8: Extension of RFP Due Date dated March 8, 2012.

Request for Proposal RFP G035 Automated Vehicle Location (AVL) & Passenger Information System (PIS) dated January 3, 2012 and Addendums No.'s 1 through 8 are collectively referred to herein as "RFP".

b) Connexionz Submission in Response to District Request for Proposals No. RFP G035 Automated Vehicle Location and Passenger Information System dated March 8, 2012 including:

Proposal Clarifications-Connexionz RFP Review which is attached hereto and incorporated herein as Exhibit "B".

c) Contractor's revised Table of Compliance which is attached hereto and incorporated herein as Exhibit "C";

d) Email Correspondence between Contractor and District dated August 1, 2012 and continuing through and including August 26, 2102 which are attached hereto and incorporated herein by reference as Exhibit "D"; and

e) This Agreement.

The Contract Documents as defined above are incorporated into this Agreement by reference herein.

3. Independent Contractor: Contractor enters into this Agreement, and will remain throughout the term of the Agreement, an independent contractor. Contractor agrees that Contractor is not and will not become an employee, partner, agent, or principal of the District while the Agreement is in effect. Contractor agrees that Contractor is not entitled to the rights or benefits afforded to the District's employees, including disability or unemployment insurance, worker's compensation, medical insurance, sick leave or any other employment benefit. Contractor is responsible for providing, at Contractor's own expense, the necessary and required

wages, disability, unemployment and other insurance, worker's compensation, training permits and licenses for Contractor and for Contractor's employees and subcontractors.

4. Key Personnel: Contractor agrees and designates the following Project team members as "Key Personnel:

- a) Key Account Manager and Director of Sales – Rhod Pickavance;
- b) Project and Research & Development Manager – Michael Stocks;
- c) Project Architect – Robert Burling;
- d) Project Engineer – Database Developer – Neil Riley;
- e) Customer Service Manager – Cliff Hairston; and
- f) Service Manager – Tom Duggan.

Contractor agrees that said Key Personnel will be able to dedicate 100% of their time to the Project, as needed, for the successful and timely completion of the Project.

5. Sub-Contractors: Contractor agrees to use the following Sub-Contractors as identified and specified in the Contract Documents:

- a) B&C Transit Inc.;
- b) Hesser Technical Services; and
- c) Lighting Contract Service Inc. (LCS).

Contractor may, at the Contractor's own expense, use any employees or subcontractors as Contractor deems necessary to perform the services required of Contractor by this Agreement, subject to the Contract Documents. The District shall not and may not control, direct or supervise Contractor's employees or subcontractors in the performance of those services necessary to complete the Project.

6. Ownership of Work Product: Contractor agrees that all designs, plans, reports, specifications, drawings, processes, and other information or items produced by Contractor while performing services under this Agreement will be assigned to District as the sole and exclusive property of District and District's assignees, nominees, and successors. This includes all data (routes, latitudes/longitudes, stop locations, bus schedules, operator bids, etc.), reports, technical specifications, design documents, custom software source and compiled code, user manuals, technical reports and studies, and any other documents, materials, data and products ("Work Products") prepared or assembled by Contractor or obtained from others ("Sub-Contractors") by Contractor in connection with the services under this Agreement shall be the property of the District and copies shall be delivered to the District promptly upon the completion of the work or upon an earlier termination of this Agreement. Contractor shall be responsible for the preservation of any and all Work Products prior to transmittal to the District; and Contractor shall replace any such Work Products as are lost, destroyed or damaged while in its possession without additional cost to the District.

7. Software/Database License: Pursuant to this Agreement, Contractor may propose and procure one or more software products, including the TransitManager application and supportable databases to fully meet the system implementation and integration requirements of the Project. On or before the delivery date, Contractor shall transfer the license rights to the District and deliver the correct number of complete copies of the software to the applicable

installation site or any other locations established by the parties. The parties agree to execute the TransitManager Software License Agreement attached hereto and incorporated herein by reference as Exhibit "E".

8. Implementation and Integration Services: Contractor will coordinate all activities, including but not limited to implementation and integration services, inspection, field testing of equipment, monitoring and reporting Contractor's progress with and to the District. Contractor will cooperate with and advise the District of Contractor's progress and timing schedules for the Project and shall provide the District access to Contractor's equipment and facilities for the District's inspection of this Project. The District shall have the authority to cause Contractor's work to be stopped if such work is not in accordance with the Contract Documents. District shall designate a representative (the "District Representative") who shall have authority to take all actions on behalf of the District. Contractor shall direct all notices and other correspondence to the District Representative, in accordance with Article VIII, Section 2. Any notices or approvals from District that are not sent by the District Representative shall be subsequently confirmed by the District Representative.

9. Extra Work: In the event Contractor requests a Change Order for extra work required as a result of conditions which are significantly different from those reasonably anticipated when this Agreement was executed, such request shall be submitted to the District in writing and shall be accompanied by the following declaration, signed by Contractor:

I, _____, (name of Contractor's authorized representative) being the _____ (title of Contractor's authorized representative) of _____ (Contractor's name) ("Contractor"), declare under penalty of perjury under the laws of the State of California, and do personally certify and attest that: I have thoroughly reviewed the attached claim for additional compensation and/or extension of time, know its contents, and know said claim is made in good faith; the supporting data is truthful and accurate; the amount requested accurately reflects the contract adjustment for which Contractor believes the Owner is liable. I am familiar with California Penal Code Section 72 and California Government Code Sections 12560 et seq., pertaining to false claims, and I know and understand that submission or certification of a false claim may lead to fines, imprisonment, and/or other severe legal consequences.

Signature

Title

Date

Submission of a claim, properly certified, with all required supporting documentation, and written rejection or denial of all or part of the claim by Owner, is a condition precedent to any action, proceeding, litigation, suit, or demand for arbitration by Contractor.

Contractor's disagreement over the amount to be paid for extra work shall not relieve Contractor of the obligation to continue to perform all Work on the Project as required by the Contract Documents.

10. Shareholder Approval: This Agreement, and the rights and obligations of the District and Contractor under it, are in all respects conditional upon the passing at a general meeting of Contractor of a special resolution of its shareholders for the purposes of section 129 of the New Zealand Companies Act 1993 approving entry into this Agreement and any related documents. Contractor shall have until January 1, 2013 to obtain shareholder approval as described herein or District shall have the right, in its sole discretion, to terminate this Agreement and all Contract Documents and contract with a different contractor to complete the Project.

Article IV. Proof of Concept

1. Purpose: Contractor will conduct a Proof of Concept (POC) to demonstrate the solutions, capabilities, accuracy, reliability and ease of use of the Contractor's System.

2. Term: The term for the POC will be ninety (90) days. The 90-day POC period will commence upon District issuance of the initial Notice to Proceed (NTP). The sixty (60) day POC operational period will commence within thirty (30) days after the POC period commences. Contractor will not perform any work under this Agreement until the District gives Contractor a written NTP.

3. Scope of Services: Contractor will assume responsibility for complete delivery, setup, configuration, installation of software and hardware, testing, training and evaluation for two (2) fixed route buses and two (2) GET-A-Lift demand response vehicles. Additional information regarding the Scope of Services for the POC is contained in the Contract Documents.

4. System Go-Live Acceptance Testing: On-site system Go-Live testing shall include Contractor and District staff, and will occur per the testing plan timetable as specified by the Contractor in its System Go-Live Acceptance Testing Timetable attached hereto and incorporated herein by reference as Exhibit "F". System Go-Live acceptance tests will exercise all system components according to an acceptance test plan developed by the Contractor and approved by the District.

Tests conducted by the Contractor may not prevent the ongoing operation of the District unless previously approved by the District. The Contractor shall maintain and submit complete records of all test results.

If the POC is not deemed successful, the District at its sole discretion and based on the pre-identified acceptance criteria, may terminate the Agreement with the Contractor. If the Agreement is terminated, the District's sole obligation will be to pay the Contractor for work completed to date in an amount not to exceed Fifty Nine Thousand One Hundred Seventy Nine Dollars and no cents (\$59,179.00).

5. Final Acceptance of POC: The District shall give a separate and distinct written acceptance for the Proof of Concept with a subsequent Notice to Proceed for the Full System Deployment.

6. Final Acceptance of Full System Deployment: Final Acceptance for the Full System Deployment ("Final Acceptance") will be granted after thirty (30) calendar days of continuous achievement of the acceptance metrics and error-free production operation of the System from the System Go-Live date.

Article V. Consideration

In consideration for the services to be performed by the Contractor and the payments to be made by District, the parties agree as follows:

1. Payments: District shall make all payments to Contractor as specified in the Progress Payment Schedule attached hereto and incorporated herein by reference as Exhibit "G". Contractor shall submit to the District approved progress invoices after completion of each Task, and subject to District written acceptance and approval of each Task. Progress invoices shall contain supporting documentation evidencing Contractor's completion of each Task identified in the Progress Payment Schedule, as normally required by the District. All progress invoices shall be subject to written approval by the District prior to District payment. District agrees to pay the progress invoice amounts to Contractor within thirty days of receipt of the progress invoice, excluding items that are disputed.

2. Retention by District: In addition to any amounts that may be withheld pursuant to this Agreement, District shall retain an amount equal to ten percent (10%) of each Progress Payment until District's Final Acceptance of the Project.

3. Performance Bond: At the time of the issuance of the written acceptance of the Proof of Concept and subsequent Notice to Proceed, Contractor shall furnish a Performance Bond in an amount not less than the Contract Amount and in a form consistent with industry standards by the United States Treasury and in a form acceptable to District.

4. Payment Bond: At the time of the issuance of the written acceptance of the Proof of Concept and subsequent Notice to Proceed, Contractor shall furnish a Payment Bond in an amount not less than the Contract Amount and in a form consistent with industry standards by the United States Treasury and in a form acceptable to District.

Article VI. Obligations of the Contractor

1. Acknowledgement: Contractor acknowledges, warrants and represents that he has thoroughly investigated the scope of services to be provided by Contractor and has examined all of the Contract Documents, and all available and referenced reports, and has visited and examined the delivery route(s) and the installation site for equipment and/or materials which he has agreed to supply herein and is familiar with local conditions which may affect his manufacture and delivery of said equipment and that except as provided for herein, he will make no claims for additional compensation over and above as set forth in bidding documents and Contract Documents.

2. Qualifications: Contractor represents that Contractor has the qualifications and skills necessary to perform the services under this Agreement in a competent, professional manner, without the advice or direction of District. This means Contractor is able to fulfill the requirements of this Agreement. Failure to perform all the services required under this Agreement constitutes a material breach of the Agreement. Contractor has complete and sole discretion for the manner in which the work under this Agreement will be performed.

3. Labor and Materials: Contractor shall provide and furnish all the labor, materials, necessary tools, expendable equipment, and all utility related to construction, implementation and integration services, and transportation services required to complete the Project.

4. Component Price/Labor Protection: Contractor shall guarantee price protection and Contractor hourly labor rates for three (3) years after Final Acceptance of the Project as specified in the Bond and Price Summary Form and Contractor Hourly Labor Rates attached hereto and incorporated herein by reference as Exhibit "H". Price Protection represents a do-not-exceed amount as prices for products and components and hourly rates may be reduced during the three (3) year period. The Price Protection excludes products and components supplied by third parties.

5. Quality: All materials furnished by the Contractor shall be new and of the agreed quality for their particular use hereunder and shall be in accordance with the Contract Documents. Work shall be performed by skilled workmen fully qualified for their trade, and shall be subject to the approval of the District. Such approval shall not be unreasonably withheld or delayed.

6. Progress: Contractor shall comply with all orders of the District in regard to maintaining adequate progress, but neither the making of such demands nor the failure of the District to make such demands shall relieve the Contractor of his obligation to secure the quality of equipment and/or performance of work and completion of work as required in the Contract Documents, and the Contractor alone will be responsible for the safety, efficiency, and adequacy of his plant, equipment, appliances, and methods used in completing the Project and for any direct damage which may result from their failure or their improper construction, installation, maintenance, or operation of the Project.

7. Warranty: Contractor warrants to District that the components, software and services furnished by it and/or used by it shall be free from defects in material, workmanship, and design under normal uses and services for a period of twenty four (24) months from date of Final Acceptance. Nothing contained in this Agreement, is intended to effect or limit District's ability to pursue the manufacturer for any breach of warranty for goods and products distributed to District by Contractor and/or used by Contractor in the fabrication of the equipment for District described in the Contract Documents.

As prime Contractor for the System Implementation and Integration Services to be furnished under this Agreement, Contractor shall function as the first line of support for such Implementation and Integration Services during the twenty-four (24) month warranty period following Final Acceptance. Contractor shall provide the District with a telephone number to report problems twenty-four (24) hours per day, seven (7) days per week. If the problem as characterized by the District is sufficiently severe that the System is wholly or substantially inoperable, Contractor shall respond to notice of the problem within four (4) hours of

notification. Such response shall be made by a knowledgeable technician familiar with the System and, at a minimum, shall acknowledge receipt of the District's notification and inform the District of the steps Contractor intends to take to resolve problem.

8. In-Sourcing: In lieu of a software escrow account and as a way to further protect the District, upon the District's written notice and during the Agreement period, the Contractor shall furnish transition services from the Hosting provider to the District. The purpose of this In-sourcing (Path-Back) is to give the District the ability and the means to transition the Hosted services back to the District or to another Hosting provider. This includes, but is not limited to, software, databases, processes, services, hardware, communications, and data and records.

9. Site Security: Contractor shall comply with all District requests regarding site security and access requirements.

10. Prevailing Wage: If required by applicable state law, including, without limitation Labor Code §§ 1720 (as amended by AB 975 (2001)), 1771, 1774, 1775, and 1776, Contractor must pay its workers prevailing wages. It is Contractor's responsibility to interpret and implement any prevailing wage requirements and Contractor agrees to pay any penalty or civil damages resulting from a violation of the prevailing Wage laws. In accordance with Labor Code § 1773.2, copies of the prevailing rate of per diem wages are available the website for State of California Prevailing wage determination at <http://www.dir.ca.gov/DLSIUPWD>.

11. Immigration and Nationality Act: The District actively supports the Immigration and Nationality Act (INA) which includes addressing employment eligibility, employment verification, and non-discrimination. Under, the INA, employers may hire only persons who may legally "work-in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). Contractor shall establish appropriate procedures and controls so no services or products under the Agreement documents will be performed or manufactured by any worker who is not legally eligible to perform such services or employment.

12. Risk of Loss: Contractor shall bear the risk of loss or injury or damage to his work until such time as the District has, by written formal acceptance, accepted said work. For the purposes of this section, the work does not include any existing property of the District, unless said existing property is modified by the Project. District's acceptance shall occur when the Project has successfully tested and complies with the requirements contained in the Contract Documents. A form of the Certificate of Acceptance is attached as Exhibit "H". During the time period which Contractor must bear the risk of loss, Contractor shall rebuild, repair, restore, and replace and make good all injuries or damage to such work, and shall bear the expenses thereof, except for such injuries or damages as are occasioned by acts of the federal government or public entity, and only to the extent of five percent (5%) of the contract amount where such injuries or damages are proximately caused by an act of God within the meaning of California Code Section 7106.

13. Taxes: Contractor is responsible for paying, when due, all income taxes, including estimated taxes, incurred as result of the compensation paid by District to Contractor for services under this Agreement. Contractor shall also pay applicable California sales and use taxes. If Contractor is not sales tax qualified, then the District will deduct said sales and use

taxes from the Contract Price and pay directly to the State of California. Upon request, Contractor will provide the District with proof of timely payments made herein. Contractor agrees to indemnify District for claims, costs, losses, fees, penalties, interest or damages suffered by District resulting from Contractor's failure to comply with Article III, paragraph 3 and this Article VI, Section 13 herein.

14. Insurance: Contractor shall not commence work under this Contract until it has secured all specified and required insurance. Also, Contractor shall not allow any Sub-Contractor to commence work on any subcontract until the Sub-Contractor has secured similar insurance, as appropriate to the subcontract work, with limits no less than those specified for Contractor. Contractor shall be responsible for the type and form of all Sub-Contractor's insurance for the benefit of Contractor and District. Further, Contractor shall be responsible to District for any deficiencies in Sub-Contractor's insurance.

If required by Section 3700 of California Labor Code, Contractor shall, at its expense, (a) maintain adequate Workers' Compensation Insurance under the laws of the State of California, or (b) secure from the Director of Industrial Relations a certificate to self-insure such labor, when such labor comes within the protection of such Workers' Compensation Insurance Laws. Contractor will obtain Certificates of Coverage from all Sub-Contractors evidencing adequate Workers' Compensation Insurance under the laws of the State of California for all labor employed by any Sub-Contractor. In addition, Contractor shall, at its expense, maintain Employer's Liability Insurance with limits of \$1,000,000 each for bodily injury by accident (each accident), bodily injury by disease (policy limit), and bodily injury by disease (each employee).

In addition to Workers' Compensation and Employer's Liability Insurance, Contractor shall, at its expense, maintain in effect at all times during the performance of the Agreement at least the following, or equivalent, insurances and limits, unless otherwise specified in the Contract Documents.

- A. Business or commercial automobile liability, with a combined single limit of \$1,000,000 per accident for bodily injury and property damage, covering all vehicles used/rented by or for the benefit of Contractor. Contractor will obtain Certificates of Coverage from all Sub-Contractors evidencing adequate insurance consistent with this requirement for all vehicles used by any Sub-Contractor.
- B. Commercial or comprehensive general liability, with an occurrence limit of \$1,000,000 and a general aggregate limit of \$1,000,000 for bodily injury, personal injury, and property damage, covering premises and operations, products and completed operations, blanket contractual (oral and written), independent contractors, owners and contractors protective, and, if applicable to the Work, collapse, explosion, and underground hazards.

Both the occurrence and general aggregate limits shall apply on a project basis.

- C. Excess or umbrella liability with coverage for automobile and general liability at limits sufficient to meet the specified insurance requirements set forth in the Contract Documents.
- D. Course of construction, or alternatively, installation floater where permitted by Owner, with limits of liability equal to the full Contract amount. Course of construction insurance shall, at a minimum, cover perils of fire and lightning, extended coverage, vandalism and malicious mischief. It shall also cover perils of theft of installed and uninstalled materials and other perils if additionally specified in the Contract Certificate of Insurance and the Contract Insurance Endorsement.

15. Additional Insured: With respect to the automobile, general, and excess liability insurance specified above, District, its officials, officers, managers, agents, engineers, employees, and volunteers shall be covered as additional insureds, but only while acting in their capacities as such, for liability arising from or in connection with the performance of the Agreement by Contractor, its agents, associates, representatives, employees, and Sub-Contractors of every tier. With respect to course of construction or installation floater insurance, District shall be covered as additional insured. Contractor's insurer(s) shall waive rights of subrogation against additional insureds.

16. Primary Insurance: Contractor's insurance shall be primary for all additional insureds with respect to the performance of Contractor, those associated therewith, and those working thereunder, and any like insurance of said additional insureds shall be excess and not contributing insurance with respect to insured claims under Contractor's policies. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought.

17. Scope of Insurance: Contractor's insurance shall not be cancelled, reduced in scope, suspended, terminated, or voided in coverage, nor shall the limits of liability be reduced [except for reductions in the general aggregate caused by claim(s), in which case insurer shall immediately notify District of reduction in general aggregate limits resulting from such claim(s)] unless thirty (30) days prior notice, by certified mail return receipt requested, has been given to District. Any failure to comply with reporting provisions of policies, including breaches of warranties, shall not affect coverage provided to additional insureds.

18. Certificates of Insurance: Promptly upon execution of the Contract and prior to commencement of any work, Contractor shall furnish Owner with certificates of insurance for all applicable policies required hereunder, or alternatively, on an ACORD certificate form issued by the insurer(s) provided it contains the same information and statements, by notations thereon or addenda thereto. The certificates shall be signed on behalf of the insurer(s) by an authorized representative thereof.

19. Endorsements: In addition, Contractor shall promptly furnish Owner with insurance endorsements for all applicable policies to reflect the additional insured, primary and not contributing insurance, and waiver of subrogation requirements specified herein, as well as any coverage necessary to augment insurance policies to meet requirements specified herein, on the Contract Insurance Endorsement form, or alternatively, on standard insurance endorsement forms provided they contain the same information and statements or are amended to satisfy the

same requirements as set forth in the Contract Insurance Endorsement form. The endorsements shall be signed on behalf of the insurer(s) by an authorized representative thereof.

Contractor agrees, upon written request, to furnish Owner with certified copies of policies and/or endorsements executed by authorized representative(s) of the insurer(s).

20. Best's Rating: All insurance issued under the provisions of this section shall be issued in forms consistent with industry standards and by insurers having a Best's Rating of at least "A(VII)", all as approved by District, prior to commencement of the Work hereunder.

21. Indemnity: Contractor shall indemnify, defend, and hold harmless District, its directors, officers, employees, agents and consultants against any and all liability, claims, actions, causes of action or demands whatsoever against them, arising from Contractor's negligence, fraud, willful misconduct, criminal conduct, errors and omissions or breaches of contract, or any of them, before administrative or judicial tribunals of any kind whatsoever, arising out of, connected with, or caused by Contractor, Contractor's employees, agents, independent contractors, companies, or Sub-Contractors in the performance of, or in any way arising from, the terms and provisions of this Agreement whether or not caused in part by a party indemnified hereunder, except for District's sole active negligence or willful misconduct.

Contractor shall further indemnify, defend, and hold harmless District, its directors, officers, employees, agents and consultants against any and all liability, claims, actions, causes of action or demands whatsoever against them, arising from claims that the Project, or any part thereof, or the operation or use of the Project or any part thereof, constitutes infringement of any United States patent or copyright, including, but not limited to, Arrival Star and Melvino claims of infringement. District shall give prompt written notice to Contractor of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Contractor shall indemnify and hold harmless District from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against District or Contractor in any such action or proceeding. Contractor agrees to keep District informed of all developments in the defense of such actions.

If District is enjoined from the operation or use of the Project, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Contractor shall at its sole expense take reasonable steps to procure the right to operate or use the Project. If Contractor cannot so procure such right within a reasonable time, Contractor shall promptly meet and confer with District and Contractor and District shall mutually agree to, (i) modify the Project so as to avoid infringement of any such patent or copyright or (ii) replace said Project with a Project that does not infringe or violate any such patent or copyright. Said modification and/or replacement described herein shall be done at the Contractor's sole cost.

22. Confidential and Privileged: All data, reports, technical specifications, design documents, manuals, technical reports and studies, and any other documents, materials, data and products ("Work Products") prepared or assembled by Contractor or obtained from others ("Sub-Contractors") by Contractor in connection with the services under this Agreement shall be treated as confidential by Contractor. Contractor may disclose confidential information to its employees who have a need to know. At no time shall Contractor use or disclose or make available, other than in the performance of Contractor's services for the District, such confidential information, nor shall Contractor permit such use or disclosure, without prior written

approval by the District. It is the intention of the District to preserve and make use of all applicable legal privileges, and Contractor shall make all reasonable efforts to cooperate with the District in this regard.

23. Professional Responsibility: Notwithstanding any other provision in this Agreement, the review and/or approval by the District, or any of its directors, officers, employees or agents, of any Proof of Concept, technical specifications, design documents and all other work products or project communications prepared by Contractor or any of its Sub-Contractor's, or of any acts or failures to act by Contractor or any of its Sub-Contractor's, shall not relieve Contractor or any of its Sub-Contractors of any professional responsibility for the services performed.

24. Laws, Ordinances and/or Regulations: Contractor shall keep himself informed of all applicable laws, ordinances and regulations in any manner affecting those engaged or employed on the Project, or the materials used in the Project, or affecting the conduct of the Project and all orders and decrees of bodies or tribunals having any jurisdiction or authority over the Project. If any discrepancy or inconsistency should be discovered in this Agreement or the Contract Documents, or in the specifications, or drawings relating thereto, Contractor shall forthwith report the same, in writing to the District. Contractor shall at all times observe and comply with any and all such laws, ordinances, and regulations.

25. Drug Free Work Place: Contractor acknowledges that District has adopted a policy of maintaining a drug free work place and Contractor agrees to abide by the provisions of the District's substance abuse policy provided to Contractor under separate cover. Violation of this provision may result in immediate termination of this Agreement.

26. No Assignability: Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Contractor without the prior written consent of District which shall not be unreasonably withheld or delayed.

Article VII. Obligations of District

1. Contractor Requests: District agrees to comply with all reasonable requests of the Contractor necessary to the performance of Contractor's duties under this Agreement.

2. District Space: District agrees to furnish reasonable space, if needed, on District's premises for use by Contractor while performing the above-described services.

3. No Assignability: Neither this Agreement, nor any duties or obligations under this Agreement may be assigned by District without the prior written consent of Contractor which shall not be unreasonably withheld or delayed.

Article VIII. Termination of Agreement

1. Project Completion: Unless otherwise terminated as herein provided, this Agreement will continue in effect until such time as Contractor performs and completes the Project and all requirements specified in the Contract Documents.

2. District Options: This Agreement will terminate at the option of the District on the occurrence of any of the following events:

- (a) Bankruptcy or insolvency of Contractor;
- (b) Sale of the business of Contractor; or
- (c) Death of Contractor.

3. Default/Material Breach: If either party defaults in the performance of this Agreement or materially breaches any of its provisions, the non-breaching party may terminate this Agreement by giving written notification to the breaching party. Termination will take effect immediately on receipt of notice by the breaching party or five (5) days after mailing of notice, whichever occurs first. For purposes of this paragraph, material breach of this Agreement includes, but is not limited to, the following:

- (a) District's failure to pay Contractor any undisputed compensation due within thirty (30) days after written demand for payment;
- (b) Contractor's failure to complete the Project;
- (c) Contractor's material breach of any representation or agreement contained herein, and failure to commence actions to correct such breach within thirty (30) days of written notice by District; or
- (d) District's material breach of any representation or agreement contained in this Agreement, and failure to commence actions to correct such breach within thirty (30) days of written notice by the Contractor.

4. Return of District Property: Upon termination of this Agreement, Contractor shall immediately return to District any and all plans, drawings, specifications, other documents, or materials belonging to the District and used by Contractor in performance of the services described herein.

5. Reasonable Value of Services: In the event of termination prior to the Contractor's complete performance, Contractor shall be entitled to the reasonable value of services actually performed by Contractor, not to exceed the Contract Amount, and not to include lost profit.

Article IX. General Provisions

1. Notices: All notices and demands of any kind that either party may be required or desire to serve upon the other party shall be in writing and shall be served upon such other party by personal service, by facsimile transmission followed by mail delivery of the original of such notice, or by mailing a copy thereof, certified or registered mail, postage prepaid, addressed as follows:

District: Attn: Steven Woods, CFO
Golden Empire Transit District
1830 Golden State Avenue
Bakersfield, California 93301
Facsimile: (661) 399-1735

Contractor: Attn: Roger Carruthers CEO
Connexionz Limited, LLC
P.O. Box 36 248
Merivale,
Christchurch, New Zealand 8024
Facsimile:

Service by mail shall be deemed complete on the date of actual delivery as shown on the addressee's return receipt. Service by facsimile transmission shall be deemed served upon receipt of the facsimile transmission, if followed by mail delivery of the original. The addresses to which notices and demands shall be delivered or sent may be changed from time to time by notice to the other party.

2. Taxpayer Identification Number: Contractor's Taxpayer identification Number is 98-0441396.

3. Binding Effect: This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and permitted assigns.

4. Time is of the Essence: Time is of the essence in this Agreement.

5. Severability: If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect. However, unless such stricken term, provision, covenant or condition goes to the essence of the consideration bargained for by a party, the remaining terms, provisions, covenants and conditions of this Agreement shall continue in full force and effect, and to the extent required, shall be modified to preserve their validity.

6. Entire Agreement: This Agreement constitutes the sole and only agreement between the parties concerning the Project and their rights and duties in connection with the Project. Any prior or other agreements or representations between the parties regarding such matters shall be null and void, unless otherwise expressly set forth in this Agreement.

7. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any suit brought hereon shall be brought in Kern County.

8. Counterparts: This Agreement may be executed and delivered (including by facsimile transmission) in counterparts and all counterparts so executed shall constitute one agreement binding on all parties hereto. It shall not be necessary for each party to execute the same counterpart hereof.

9. Attorneys' Fees: If any action is filed by any of the parties hereto to enforce and/or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs from the non-prevailing party.

10. Force Majeure: Should performance of this Agreement be prevented due to fire, flood, explosion, war, terrorist act, embargo, government action, civil or military authority, the

natural elements, or other similar causes, beyond, the control of the parties, then the Agreement will immediately terminate without obligation to the other.

GOLDEN EMPIRE TRANSIT DISTRICT

By: Loren H. Ling
Chief Executive Officer

CONTRACTOR

By: R.W. CARRUTHERS C.E.O.
Contractor

F160704-5
Contractor's License Number

Go Transit

Professional Services Agreement – Automatic Passenger Counters between City
of Oshkosh and Infodev Ed, Inc., August 5, 2014

Item 8

PROFESSIONAL SERVICES AGREEMENT-AUTOMATIC PASSENGER COUNTERS

THIS AGREEMENT, made on the 5TH day of AUGUST, 2014 by and between the CITY OF OSHKOSH, party of the first part, hereinafter referred to as CITY, and INFODEV ED INC, 1995 FRANK CARREL, SUITE 202, QUEBEC G1N 4H9 CANADA, hereinafter referred to as the CONSULTANT,

WITNESSETH:

That the CITY and the CONSULTANT, for the consideration hereinafter named, agree as follows: (Note: If anything in the Proposal conflicts with the Request for Proposals or this document, the provisions in the Request for Proposals and this document shall govern.)

ARTICLE I. PROJECT MANAGER

A. Assignment of Project Manager. The CONSULTANT shall assign the following individual to manage the project described in this contract:

(SANDRA HOWLETT, TRANSIT SALES, INFODEV EDI INC.)

B. Changes in Project Manager. The CITY shall have the right to approve or disapprove of any proposed change from the individual named above as Project Manager. The CITY shall be provided with a resume or other information for any proposed substitute and shall be given the opportunity to interview that person prior to any proposed change.

ARTICLE II. CITY REPRESENTATIVE

The CITY shall assign the following individual to manage the project described in this contract:

(DAVID VICKMAN, TRANSIT OPERATIONS MANAGER – GO-TRANSIT)

ARTICLE III. SCOPE OF WORK

The CONSULTANT shall provide the services described in the CITY'S Request for Proposals and Proposal of the CONSULTANT. The CONSULTANT proposal is attached as **Exhibit A**, and is incorporated into this agreement to the extent it does not conflict with the CITY'S Request for Proposals, or this agreement.

The CONSULTANT shall provide the services described in its proposal attached

hereto and incorporated herein by reference.

The CONSULTANT may provide additional products and/or services if such products/services are requested in writing by the Authorized Representative of the CITY.

ARTICLE IV. CITY RESPONSIBILITIES

The CITY shall furnish, at the CONSULTANT'S request, such information as is needed by the CONSULTANT to aid in the progress of the project, providing it is reasonably obtainable from CITY records.

To prevent any unreasonable delay in the CONSULTANT'S work the CITY will examine all reports and other documents and will make any authorizations necessary to proceed with work within a reasonable time period.

ARTICLE V. TIME OF COMPLETION

All work to be performed under this contract shall be completed on or before **DECEMBER 15, 2014** unless the parties agree in writing to extend this date.

ARTICLE III. PAYMENT

A. The Contract Sum.

The CITY shall pay to the CONSULTANT for the performance of the contract the total sum of **\$46,655.00** for **AUTOMATIC PASSENGER COUNTERS**, adjusted by any changes as provided in the proposal, or any changes hereafter mutually agreed upon in writing by the parties hereto.

B. Method of Payment. The CONSULTANT shall submit itemized monthly statements for services. The CITY shall pay the CONSULTANT within 30 calendar days after receipt of such statement. If any statement amount is disputed, the CITY may withhold payment of such amount and shall provide to CONSULTANT a statement as to the reason(s) for withholding payment.

C. Additional Costs. Costs for additional services shall be negotiated and set forth in a written amendment to this agreement executed by both parties prior to proceeding with the work covered under the subject amendment.

ARTICLE IV. CONSULTANT TO HOLD CITY HARMLESS

The CONSULTANT covenants and agrees to protect and hold the CITY harmless against all actions, claims and demands of any kind or character whatsoever which may in any way be caused by or result from the intentional or negligent acts of the CONSULTANT, his agents or assigns, his employees or his subcontractors related however remotely to the performance of this Contract or be caused or result from any

violation of any law or administrative regulation, and shall indemnify or refund to the CITY all sums including court costs, attorney fees and punitive damages which the CITY may be obliged or adjudged to pay on any such claims or demands within thirty (30) days of the date of the CITY'S written demand for indemnification or refund.

ARTICLE V. INSURANCE

The CONSULTANT shall provide insurance for this project that includes the CITY as an additional insured. The specific coverage required for this project are identified on a separate document.

ARTICLE VI. TERMINATION

A. For Cause.

If the CONSULTANT shall fail to fulfill in timely and proper manner any of the obligations under this Agreement, the CITY shall have the right to terminate this Agreement by written notice to the CONSULTANT. In this event, the CONSULTANT shall be entitled to compensation for any satisfactory, usable work completed.

B. For Convenience.

The CITY may terminate this contract at any time by giving written notice to the CONSULTANT no later than 10 calendar days before the termination date. If the CITY terminates under this paragraph, then the CONSULTANT shall be entitled to compensation for any satisfactory work performed to the date of termination.

This document and any specified attachments contain all terms and conditions of the Agreement and any alteration thereto shall be invalid unless made in writing, signed by both parties and incorporated as an amendment to this Agreement.

In the Presence of:

CONSULTANT

Sandra Howlett

By: Pam Delamaria

(Seal of Contractor
if a Corporation.)

CEO
(Specify Title)

By: _____

(Specify Title)



M

Kathy Fredrick
(Witness)

Kathy Fredrick
(Witness)

APPROVED:

[Signature]
City Attorney

CITY OF OSHKOSH

By: [Signature]
Mark A. Rohloff, City Manager

And: [Signature]
Pamela R. Ubrig, City Clerk

I hereby certify that the necessary provisions
have been made to pay the liability which will
accrue under this contract.

[Signature]
City Comptroller

PS

EXHIBIT A

PROPOSAL
AUTOMATIC PASSENGER COUNTERS
FOR THE CITY OF OSHKOSH GO TRANSIT

Cost Proposal Form

Please provide prices below. If there is no charge for a specific item, indicate "N/C" or "No Charge."

Item	Total Cost for Fleet (not unit price)
Hardware	\$ 35,055.00
Installation & Training	\$ 9,650.00
Other costs (attach breakdown of any additional costs not included above)	\$ 1,950.00
Grand Total Installed System Cost for Fleet (sum 3 rows above)	\$ 46,655.00

Prices shall be firm for acceptance 35 calendar days from date of opening, or as stated in the special conditions of the RFP.

The undersigned hereby offers and agrees to furnish the material or service in compliance with all terms, scope of work, conditions, specifications, and amendments in the Request for Proposals.

The undersigned hereby states, under penalty of perjury, that all information provided is true, accurate, and complete and states that he/she has authority to submit this proposal, which will result in a binding contract.

The undersigned certifies to have not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit a bid; that this bid has been independently arrived at without collusion with any other proposer, competitor, or potential competitor; that this bid has not been knowingly disclosed prior to the opening of bids of any other proposer or competitor; that the above statement is accurate under penalty of perjury.

INFODEV EDI INC

Name of Authorized Individual, Partner, or Corporation

1995 FRANK CARREL SUITE 202 QUEBEC

Address

QUEBEC G1N 4H9, CANADA

CITY OF OSHKOSH, WISCONSIN

REQUEST FOR PROPOSALS
FOR
AUTOMATIC PASSENGER COUNTERS

June 10, 2014



GO Transit
926 Dempsey Trail
Oshkosh, Wisconsin 54902
www.rideGOtransit.com

Proposals due by Tuesday July 8, 2014 at 10:00 a.m. CST

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PART A – NOTICE TO VENDORS
CITY OF OSHKOSH PURCHASING DIVISION

1. NOTICE IS HEREBY GIVEN that sealed bids will be received in the City Clerk's office, Room 104, City Hall, Oshkosh, Wisconsin, for: **"GO TRANSIT AUTOMATIC PASSENGER COUNTERS" FOR THE CITY OF OSHKOSH GO TRANSIT DEPARTMENT, DUE NO LATER THAN 10:00 AM CST, TUESDAY JULY 8, 2014** at which time all bids will be publicly opened and read in room 404.
2. It is the bidder's sole responsibility to insure that the bid is timely and physically received by the City Clerk's office prior to the deadline set forth in this notice. Receipt of a bid/proposal by the mail system or other City departments does not constitute receipt of a bid/proposal by the City Clerk's office.
3. All bids must be submitted in an envelope sealed by the bidder or designated representative. All bids should be addressed to the City Manager, c/o City Clerk's Office, City Hall, 215 Church Avenue, P.O. Box 1130, Oshkosh, WI 54903-1130. On the outside of the envelope, the bidder should distinctly indicate the name and address of the bidder and in the lower left corner should clearly indicate the envelope contains a sealed bid for: **"GO TRANSIT AUTOMATIC PASSENGER COUNTERS."** Any bids not complying with these instructions will not be considered submitted to the City, and shall be returned to the bidder unopened and unread.
4. Submission of bid documents by facsimile equipment or electronic mail (email) will not be accepted.
5. This notice establishes a time by which sealed bids must be physically received by the City Clerk's office. No bids will be accepted after that deadline. Under no circumstances will bids be accepted and read when submitted at the place of bid opening even if presented before that deadline.
6. The City is not responsible for bids submitted in any other way except those submitted in strict conformance with these instructions.
7. A written request for the withdrawal of a bid or any part thereof may be granted if the request is received by the City prior to the specified time of opening.
8. All formal bids submitted shall be binding for thirty-five (35) calendar days following the bid opening date, unless the bidder(s), upon request of the General Services Manager, agrees to an extension.
9. If applicable, bidder must comply with all necessary insurance requirements, bid bond and/or performance bond as required of the project and as noted in the City of Oshkosh Insurance Requirements.
10. If the bid is accepted, the bidder must execute and file the proper contract within ten (10) days after award by the Common Council and receipt of the contract form for signature. In case the successful bidder shall fail to execute and deliver the Contract and Performance Bond within the time limited by the City, the amount of the bid bond shall be forfeited to the City of Oshkosh as liquidated damages.
11. The City reserves the right to reject any and all bids and to waive any informalities in bidding.
12. For specifications and further information concerning this invitation to bid, contact Jon Urben, General Services Manager, email: jurben@ci.oshkosh.wi.us or telephone (920) 236-5100.

Mark A Rohloff

PUBLISH: JUNE 10, 2014

City Manager

PART B – INTRODUCTION

The objective of this Request for Proposals (RFP) is to identify and select a qualified firm to supply and install automatic passenger counter (APC) equipment on GO Transit's fleet of seventeen buses.

The City of Oshkosh/GO Transit is hereinafter referred to as "GO Transit".

Project Background

In 2013, GO Transit purchased two New Flyer XD35 buses equipped with APC equipment supplied and installed by Infodev EDI, Inc. APC data from the two buses is currently retrieved manually from the each bus weekly via a hand-held collector. The raw APC data is contained in a CSV file. This data is analyzed in an in-house database. The primary use of APC data is for transit planning purposes and individual bus stop analysis.

Since purchasing the APC-equipped buses in 2013, GO Transit has subsequently added Wi-Fi service within its garage. All buses are stored in the garage at the end of the service day and are within the Wi-Fi coverage.

GO Transit would like to equip the entire fleet with APC units and receive passenger count data for every bus route daily. GO Transit would also like to simplify the data retrieval process by utilizing our WiFi.

Description of Current Equipment

GO Transit operates fixed-route bus service in the City of Oshkosh, with a fleet of seventeen buses. GO Transit buses do not contain other ITS subsystems that would communicate with the APC system. As stated above, two buses in the fleet are equipped with APC units. The following table shows the equipment set-up on the seventeen vehicles included in this solicitation.

Bus Year/Type	No.	APC Equipment
2003 New Flyer DL40	3	None
2003 New Flyer DL35	8	None
2010 New Flyer DE40LF	4	None
2013 New Flyer Xcelsior XD-35	2	Infodev EDI, Inc. – computer (GW-400 RF), infrared sensors at front and rear doors & hand-held data collector.

Scope of Work & Technical Requirements

GO Transit has identified the following as minimum technical requirements:

Extent of System

- The vendor shall supply all parts and materials necessary to fulfill these requirements over the entirety of GO Transit's fleet (seventeen buses). If possible, the vendor is welcome to offer proposals to adapt GO Transit's existing APC equipment in a way that would meet all of the requirements of this RFP.

Operation

- The APC system shall count all boarding and alighting passengers per door at each bus stop. Counts shall be done at both bus doors.
- Location data is required with passenger counts. GPS accuracy shall be 5 m or better for stop location coordinates.
- Passenger counting shall only be performed when the doors are open.
- APC component will not be integrated with other ITS subsystems (i.e., MDT).

Hardware Specification

- The hardware/equipment shall be designed to:
 - operate in accordance with temperature specifications for ambient temperatures from -40°F to 158°F.
 - operate in ambient humidity up to 95%, non-condensing.
 - withstand the vibration and shock forces associated with vehicles.
 - be sealed against dust and water intrusion, certified in compliance with the IP65 standard or better.
- Hardware proposed shall be accurate within +/- 5% margin of error with a 95% confidence. Proposal must include proposed system's margin of error.
- Power and communications lines and chassis may be exposed to electrostatic discharges from personnel, so the units shall be tested and proved resistant through testing in accordance with accepted industry procedures for testing computer equipment.
- Each connector in a given physical location shall be keyed or otherwise configured as to prevent inadvertent mis-wiring during installation or maintenance.
- Each component/module/subsystem distinctly defined in these specifications shall be replaceable as a discrete unit.

Data Retrieval & Use

- The vendor's solution shall support automatic retrieval of recorded data through an owner-supplied WiFi network, installed at the owner's maintenance garage, where all vehicles are housed outside of service hours.
- The retrieval of stored data shall be simply accomplished.
- The vendor's system shall provide raw data in CSV file format. Data shall contain the vehicle number and the following by bus stop: date, arrival time, departure time, latitude, longitude and in & out counts at each door. Additionally data provided would be value-added. An example of the current format is shown in Part G. An identical data format to that shown in Part G is preferred.
- GO Transit will use existing in-house software to analyze the data from each vehicle and generate reports. GO Transit does not require a separate APC data software module for this purpose.

Installation, Training, and Maintenance Requirements

- The vendor shall provide all equipment required to install the system and to support download via Wi-Fi.
- The vendor shall provide on-site installation directly or through its agent. Installation will occur at GO Transit's maintenance facility located at 926 Dempsey Trail, Oshkosh, WI 54956.
- The vendor is responsible for all materials and equipment until installation and acceptance by GO Transit.
- The vendor shall provide on-site training with initial installation. The training will include troubleshooting, maintenance, and system operation.
- The vendor shall work around GO Transit's operating schedule in installing APC units.
- The vendor shall provide a one-year warranty on parts, labor and installation (a longer warranty period is value added).
- The vendor shall include support equipment that may be needed for the system's use, or would greatly improve the system's efficiency and usefulness.

Funding

Financial support for this project is anticipated to be provided through financial assistance grants from the Federal Transit Administration (FTA) and the Wisconsin Department of Transportation. As such, the solicitation and agreement with the successful vendor shall at all times be subject to the rules and regulations of Wisconsin Department of Transportation and the FTA, under the provisions of the Urban Mass Transportation Act of 1964, as amended. Any name appearing on the Comptroller General's list of ineligible contractors for federally financed and assisted projects is not an eligible bidder.

The successful Contractor shall be responsible for complying with all applicable laws and regulations governing the services described in this RFP as a contractor to the City of Oshkosh which is a recipient of Federal, State of Wisconsin, and City funding. Specific Federal requirements are outlined in Part E of this solicitation.

Length of Contract

The project shall be completed within three (3) months from the contract execution date.

Contract Type

Pursuant to the intent of this solicitation, all terms and conditions of this document shall become applicable in the resultant contract. Part H provides a sample agreement that will be drawn up with the successful proposer. The successful proposer will be expected to enter into a contract substantially similar to the sample contract agreement attached to the Request for Proposals. The successful bidder may propose additional contract language. However, proposers who submit and/or require contractual terms and conditions that are not acceptable to the City, but are considered by the contractor as a condition of their undertaking the City's project, will not be considered a responsible bidder by the City and their bid may be rejected for that reason. Bidders DO NOT need to submit this agreement when submitting their proposal.

Insurance

Certificates of Insurance acceptable to the City of Oshkosh shall be submitted prior to commencement of the work to the Transportation Department. See Part F.

GO Transit's DBE Policy Statement

The City of Oshkosh (GO Transit) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The City of Oshkosh (GO Transit) has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the City of Oshkosh (GO Transit) has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the City of Oshkosh (GO Transit) to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy –

- To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- To help remove barriers to the participation of DBEs in DOT-assisted contracts; and

- To assist the development of firms that can compete successfully in the market place outside the DBE Program.

Open Records

The City is a governmental entity which is subject to the Wisconsin Open Records laws. Therefore, all proposals and other materials submitted to the City may be considered a public record accessible to anyone who may request such information. If you believe that an information or document that you may submit to the City is not, or should not be, a public record, then you must contact the City before it comes into the possession of the City. The City will be glad to answer questions about the applicability of open record laws and to come to some type of resolution, if possible, regarding particular circumstances. Any ongoing discussions regarding open records will not extend the deadline for submitting proposals.

PART C – PROPOSAL SUBMITTAL AND AWARD

General Information

All proposals, sealed and marked **"GO TRANSIT AUTOMATIC PASSENGER COUNTERS"**, must be received by the City Clerk, 215 Church Avenue, Oshkosh, WI 54901 by **10:00 AM, CST, TUESDAY JULY 8, 2014**. Any proposal received after this time will not be considered. Each proposal shall remain open for a period of 35 days from the date of the proposal opening.

Proposers must submit, in a sealed package, one original (identified) plus 3 copies of all materials required for acceptance of their proposal on or before the submittal deadline. Prices quoted in any proposal shall include all items of labor, material, tools, equipment, training, and other costs necessary to fully provide the service pursuant to specifications.

Proposals may be withdrawn prior to the date/time set for proposal opening. Proposals may be modified or withdrawn by the proposer's authorized representative in person, or by written notice. If proposals are modified or withdrawn in person, the authorized representative shall make his identity known and shall sign a receipt for the proposal. Written notices shall be received in the office where proposal was submitted no later than the exact date/time for proposal opening.

Award of the contract shall be made to the most responsive and responsible proposer whose proposal meets the specifications and is most advantageous to the City of Oshkosh.

Proposed Schedule

The following schedule provides information on events and deadlines for this proposal.

RFP Issued	June 10, 2014
Last day for submitting written questions	June 17, 2014
Email amendments to proposers, which includes answers to all questions submitted, supplements and/or revisions to RFP	June 24, 2014
Proposal submittal deadline	July 8, 2014
Contract awarded	July 22, 2014
Contract start date	July 23, 2014

Addenda / Questions

All requests for interpretations, corrections or questions to this RFP must be emailed to Transit Coordinator David Vickman at dvickman@ci.oshkosh.wi.us by **Monday, June 17, 2014**. Only interpretations or corrections of the RFP made in writing by the Transit Coordinator are binding. In the event that it becomes necessary to provide additional clarifying data or information, or to revise any part of this RFP, revisions/amendments and/or supplements will be provided to all known recipients of this initial RFP. To ensure all supplemental information (if available) regarding the initial RFP is shared with all proposers, interested parties should email their contact info to David Vickman at dvickman@ci.oshkosh.wi.us before **Friday, June 20, 2014**.

Proposal Selection

The proposals will be initially reviewed to determine if mandatory requirements are met. Failure to meet mandatory requirements may result in the proposal being rejected.

Based on the evaluation of the written proposal, additional information may be required to clarify or confirm proposal information. Additional information obtained may be of any or all of the following: proposer interviews, reference reviews, and proposer presentation/demonstration.

If additional information is needed, GO Transit will make every reasonable attempt for scheduling at a time and location that is agreeable to the proposer. Failure of a proposer to fulfill or accommodate additional information requests may result in rejection of that proposer's proposal.

Evaluation Criteria

The following criteria are listed in priority order and will be followed to evaluate the information submitted in each proposal:

1. **Responsiveness & Solution**

The extent to which the vendor's solution responds to the scope and technical requirements outlined in this RFP.

2. **References**

The extent to which the references and past performance demonstrate the vendor's ability to satisfy the requirements outlined in this RFP. Proposals should demonstrate proven components that are currently in use.

3. **Cost**

The proposals will be evaluated against the "life-cycle" cost in the vendor's proposals, which includes hardware purchase price, installation and all other costs necessary for the vendor to fulfill the requirements of this RFP.

4. Proposal

The extent to which the firm's proposal is organized, complete, and demonstrates a thorough understanding of the service described in this RFP. Proposals which elaborate beyond that which is sufficient to present a complete and effective proposal are neither necessary nor desired.

5. Value Added

The extent to which the firm's proposed solution exceeds the requirements and provides additional value to GO Transit.

If only one proposal is received in response to the request for proposals, additional information may be requested of the single proposer to determine if the proposal is fair and reasonable or if a negotiation is required.

Protest Procedure

Any proposer who wishes to protest prior to or after the award of a contract must submit a detailed statement in writing of the grounds for protest and any supporting documentation to: Jon Urben, General Services Manager (jurben@ci.oshkosh.wi.us). Protests after the award must be received within five (5) working days of their receipt of the award decision. To expedite consideration of any protests, this statement must be sent by e-mail. The interested party must be an actual or prospective proposer whose direct economic interest would be affected by the award, or failure to award, the contract bid. Award of contract will be suspended temporarily unless this action will cause undue harm to the City of Oshkosh. The protest will be forwarded to the City Manager and City Attorney for further review. This review will be the basis on which the contract will be awarded. Minor errors in proposal procedures shall not be grounds for delaying or prohibiting approval of this contract.

If the formal process fails to resolve the complaint, the complainant may refer the matter to the Wisconsin Department of Transportation's Director of the Bureau of Transit, Local Roads, Railroads & Harbors (4802 Sheboygan Ave, RM 951, PO Box 7913, Madison, WI 53707). The Director's role is limited to a review of whether correct procedures have been followed by the City of Oshkosh. The Director shall not review the substance of the decision to select a particular Vendor. The City of Oshkosh must receive concurrent notice, indicating the nature of the appeal. WisDOT must be furnished a copy of all previous correspondence pertaining to the subjects covered by the appeal.

If further appeal is desired, protests may be directed to the Federal Transit Administration - Region V, 200 West Adams Street, Suite 320, Chicago, IL 60606 not later than five (5) full working days after the date of the second determination. FTA's

protest review is limited to examination whether the City of Oshkosh or WisDOT have failed to follow protest procedures or if there has been a violation of Federal law or regulation.

Mandatory Proposal Requirements

Proposals must include the following specified elements to aid in evaluation:

- a. Transmittal/Cover Letter containing the statement of performance verification criteria listed below and signed by an authorized officer of the responding organization.
 - 1) The information contained in this submission is accurate and complete as of the date of submission.
 - 2) The responding organization understands and is willing to comply with all contractual requirements.
- b. Technical Proposal
- c. Cost Proposal Form
- d. Amendments/Addendums (if any)
- e. Certifications
 - 1) Contractor Certification Regarding Compliance with FTA Requirements

Technical Proposal

Proposers shall answer the following with their proposal response. Each proposal shall limit their proposal to these elements and maintain the same order in their response.

- 1) Name of Organization
 - a. Business Address and Telephone Number
- 2) Legal status of Organization
 - a. Sole proprietor, For-profit corporation or joint venture corporation, For-profit partnership, Non-profit corporation, Public agency, or Other (Identify)
- 3) Name of individual designated as project manager that your company will assign to fulfill the contract requirements and oversee the project.
 - a. Name, Title, Telephone Number, & Email address
- 4) Have any of your firm's contracts been canceled or suspended due to inability to comply with the terms of the agreements? If yes, describe why each agreement was canceled or suspended.
- 5) Describe your approach to the requirements listed under the Scope of Work & Technical Requirements section of this RFP. Highlight any areas that go beyond these requirements and provide added value. Include any potential problems or obstacles which may be encountered.
- 6) Describe how data will be transmitted and retrieved using WiFi service provided by GO Transit. What is the data collection method?
- 7) Provide an example of the CSV data file generated by the proposed APC system. The example should show what data is included in the proposed format.

- 8) Explain how your firm's past performance and practices are applicable to meeting the requirements in this RFP.
- 9) If awarded the contract, identify a timeline for equipment installation and training. Include completion dates for all major activities.
- 10) Describe your firm's experience in working with manufacturers of buses sold to U.S. transit systems, such as New Flyer and Gillig, in installing APC systems at the point of bus assembly.
- 11) Provide a minimum of three transit system customer references which demonstrate the vendor's ability to meet the requirements of this RFP. Each reference shall provide a customer agency/company name, customer contact (name, title, telephone number and e-mail address), and a brief description of the type and scale of work which was done, such as number of vehicles, dollar value of contract and/or project schedule.
- 12) Briefly describe any additional information that you believe may be relevant to the evaluation of your firm's proposal.

**PROPOSAL
AUTOMATIC PASSENGER COUNTERS
FOR THE CITY OF OSHKOSH GO TRANSIT**

Cost Proposal Form

Please provide prices below. If there is no charge for a specific item, indicate "N/C" or "No Charge."

Item	Total Cost for Fleet (not unit price)
Hardware	\$
Installation & Training	\$
Other costs (attach breakdown of any additional costs not included above)	\$
Grand Total Installed System Cost for Fleet (sum 3 rows above)	\$

Prices shall be firm for acceptance 35 calendar days from date of opening, or as stated in the special conditions of the RFP.

The undersigned hereby offers and agrees to furnish the material or service in compliance with all terms, scope of work, conditions, specifications, and amendments in the Request for Proposals.

The undersigned hereby states, under penalty of perjury, that all information provided is true, accurate, and complete and states that he/she has authority to submit this proposal, which will result in a binding contract.

The undersigned certifies to have not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit a bid; that this bid has been independently arrived at without collusion with any other proposer, competitor, or potential competitor; that this bid has not been knowingly disclosed prior to the opening of bids of any other proposer or competitor; that the above statement is accurate under penalty of perjury.

Name of Authorized Individual, Partner, or Corporation

Address

Authorized Signature

Title

Date

Certification Regarding Compliance With FTA Requirements

49 CFR Part 18

The Contractor listed below hereby certifies that it 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 Federal Transit Administration (FTA) Master Agreement between the City of Oshkosh/Oshkosh Transit System and the Federal Transit Administration, as they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to so comply shall constitute a material breach of this contract.

Contractor Name

Name and Title of Contractor's Authorized Official

Signature

Date

PART D – CITY OF OSHKOSH STANDARD TERMS AND CONDITIONS

(Request For Bids/Proposals)

- 1) **SPECIFICATIONS:** The specifications in this request are the minimum acceptable. When specific manufacturer and model numbers are used, they are to establish a design, type of construction, quality, functional capability and/or performance level desired. When alternates are bid/proposed, they must be identified by manufacturer, stock number, and such other information necessary to establish equivalency. The City of Oshkosh shall be the sole judge of equivalency. Bidders/proposers are cautioned to avoid bidding alternates to the specifications which may result in rejection of their bid/proposal.
- 2) **DEVIATIONS AND EXCEPTIONS:** The bid/proposal shall be accepted as in strict compliance with all terms, conditions, and specifications and the bidders/proposers shall be held liable. Specific product types or manufacturers identified in specifications shall be interpreted to require bidding of those exact types and manufacturers. Specifications which allow for bids/quotes with "equal" materials must be fully supported with technical data, test results, or other pertinent information as evidence that the substitute offered is a sufficient alternate to the specification requirement. Failure to provide product information will result in disqualification of such requests.
- 3) **QUANTITIES:** The quantities shown on this request are based on estimated needs. The city reserves the right to increase or decrease quantities to meet actual needs.
- 4) **DELIVERY:** Deliveries shall be F.O.B. destination freight prepaid and included unless otherwise specified.
- 5) **ACCEPTANCE-REJECTION:** The City of Oshkosh reserves the right to accept or reject any or all bids/proposals, to waive any technicality in any bid/proposal submitted, and to accept any part of a bid/proposal as deemed to be in the best interests of the city. Only proposals which are made out on the bid/proposal form attached hereto will be considered. All bid/proposals forms must be completed in full compliance as specified. Failure to complete bid/proposals forms may result in disqualification and considered non-responsive.
- 6) **ORDERING:** Purchase orders or releases via purchasing cards shall be placed directly to the contractor by an authorized agency. No other purchase orders are authorized.
- 7) **GUARANTEED DELIVERY:** The contractor shall strictly adhere to delivery schedules as specified by the City and to promptly replace rejected or defective materials. The City retains the right to procure materials on its own when the Contractor's materials are not delivered, or replaced if necessary, according to the City's schedule. Contractor's failure to deliver, or replace when applicable, materials as required shall result in the

contractor's liability for all costs in excess of the contract price when the City is required to procure materials necessary due to Contractor's failure to act. The City's excess costs shall also include the administrative costs.

8) **ENTIRE AGREEMENT:** These Standard Terms and Conditions shall apply to any contract or order awarded as a result of this request except where special requirements are stated elsewhere in the request; in such cases, the special requirements shall apply. Further, the written contract and/or order with referenced parts and attachments shall constitute the entire agreement and no other terms and conditions in any document, acceptance, or acknowledgment shall be effective or binding unless expressly agreed to in writing by the contracting authority.

9) **APPLICABLE LAW:** This Contract shall be governed under the laws of the State of Wisconsin, and all disputes shall be resolved in the state or federal court jurisdiction within which Oshkosh, Wisconsin is located. The contractor shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct. The City of Oshkosh reserves the right to cancel any contract with a federally debarred contractor or a contractor which is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.

10) **SAFETY REQUIREMENTS:** Contractor must follow all applicable federal, state and local standards.

11) **SAFETY DATA SHEET:** If any item(s) on an order(s) resulting from this award(s) is a hazardous chemical, as defined under 29CFR 1910.1200, provide one (1) copy of a Material Safety Data Sheet for each item with the shipped container(s).

12) **PUBLIC RECORDS ACCESS:** It is the intention of the City of Oshkosh to maintain an open and public process in the solicitation, submission, review and approval of procurement activities. Bid/proposal documents and openings are public records and therefore subject to release unless excluded from release by Wisconsin Statutes. Those submitting information to the City that believe that their information is not subject to release must identify the applicable statute(s) and describe in detail how the information being submitted applies to the statute cited. The City's lack of response to assertions related to public records does not indicate any agreement with those assertions. Public records may not be available for public inspection prior to the opening of bids/quotes and/or the issuance of the notice of intent to award or the award of the contract.

13) **PRICING:** Unit prices shown on the bid/proposal or contract shall be the price per unit of sale (e.g., gal., cs., doz., ea.) as stated on the request or contract. For any given item, the quantity multiplied by the unit price shall establish the extended price; the unit price shall govern in the bid/proposal evaluation and contract administration. If the bid/quote clearly involves the City's desire to purchase a product or products, then all

prices shall exclude any Federal Excise Tax or State of Wisconsin Sales Tax as the City of Oshkosh is exempt from such taxes and will furnish an exemption certificate, if requested by the successful bidder. If the bid/quote is for the purpose of completing a project involving both labor and materials, then the Contractor/Consultant, and not the City, will be purchasing the material directly and the bid/quote must include all material costs, including without limitation, taxes.

14) **WARRANTY:** Unless otherwise specifically stated by the bidder/proposer, equipment purchased as a result of this request shall be warranted against defects by the bidder/proposer for one (1) year from date of receipt, or the manufacturer's warranty, whichever is longer. The equipment manufacturer's standard warranty shall apply as a minimum and must be honored by the contractor.

PART E – FEDERAL CONTRACT CLAUSES

The following clauses will be attached to the awarded proposer's contract.

No Obligation by the Federal Government

(1) The Purchaser and Contractor 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 the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the Federal Transit Administration (FTA). It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program fraud and false or fraudulent statements and related acts

31 U.S.C. 3801 et seq.
49 CFR Part 31 18 U.S.C. 1001
49 U.S.C. 5307

(1) The Contractor 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 Project. Upon execution of the underlying contract, the Contractor 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 Contractor 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 Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor 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 the 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 Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor 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.

Access to Records

49 U.S.C. 5325
18 CFR 18.36 (l)
49 CFR 633.17

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, 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 Contractor which are directly

pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three 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 Contractor agrees to maintain same until the Purchaser, 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).

7. FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes

49 CFR Part 18

Contractor 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 (see http://www.fta.dot.gov/funding/apply/grants_financing_3162.html) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Civil Rights

29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.

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 Contractor 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 Contractor 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 Contractor 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 Project. The Contractor 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 Contractor 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 Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor 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 Contractor 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 Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor 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.

Disadvantaged Business Enterprises

49 CFR Part 26

a. 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. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 1.25 %.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor 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 the GO Transit deems appropriate. Each subcontract the contractor signs with a

subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

The successful bidder will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the GO Transit. In addition, the contractor may not hold retainage from its subcontractors.

e. The contractor must promptly notify the GO Transit, 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 contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the GO Transit.

Incorporation of FTA Terms

FTA Circular 4220.1F

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 4220.1E 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 Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any GO Transit requests which would cause GO Transit to be in violation of the FTA terms and conditions.

Termination Provisions

49 U.S.C. Part 18

FTA Circular 4220.1F

(1) Termination for Convenience - The performance of work under the Contract may be terminated by GO Transit in accordance with this Section in whole, or from time to time in part, whenever GO Transit determines that such termination is in its best interest. Any such termination shall be effected by delivery to the Contractor of a notice of termination specifying the extent to which performance of work under the Contract is terminated and the date upon which such termination becomes effective.

(2) Termination for Default - If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, GO Transit may terminate this contract for default. GO Transit shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of GO Transit.

(3) Termination by Mutual Agreement - The Contract may be terminated by mutual agreement of the parties. Such termination shall be effective in accordance with a written agreement by the parties. Any other act of termination shall be in accordance with the termination by convenience or default provisions contained in these sections.

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, 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 contractor 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 bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by GO Transit. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to GO Transit, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Energy Conservation

42 U.S.C. 6321 et seq.
49 CFR Part 18

The contractor 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.

PART F – INSURANCE REQUIREMENTS

**CITY OF OSHKOSH
INSURANCE REQUIREMENTS**

III. PROFESSIONAL SERVICES LIABILITY INSURANCE REQUIREMENTS

The Contractor shall not commence work on contract until proof of insurance required has been provided to the applicable City department before the contract or purchase order is considered for approval by the City.

It is hereby agreed and understood that the insurance required by the City of Oshkosh is primary coverage and that any insurance or self insurance maintained by the City of Oshkosh, its officers, council members, agents, employees or authorized volunteers will not contribute to a loss. All insurance shall be in full force prior to commencing work and remain in force until the entire job is completed and the length of time that is specified, if any, in the contract or listed below whichever is longer.

1. PROFESSIONAL LIABILITY

- A. Limits
 - (1) \$1,000,000 each claim
 - (2) \$1,000,000 annual aggregate
- B. Must continue coverage for 2 years after final acceptance for service/job

2. GENERAL LIABILITY COVERAGE

- A. Commercial General Liability
 - (1) \$1,000,000 each occurrence limit
 - (2) \$1,000,000 personal liability and advertising injury
 - (3) \$2,000,000 general aggregate
 - (4) \$2,000,000 products – completed operations aggregate
- B. Claims made form of coverage is not acceptable.
- C. Insurance must include:
 - (1) Premises and Operations Liability
 - (2) Contractual Liability
 - (3) Personal Injury
 - (4) Explosion, collapse and underground coverage
 - (5) Products/Completed Operations must be carried for 2 years after acceptance of completed work
 - (6) The general aggregate must apply separately to this project/location

3. BUSINESS AUTOMOBILE COVERAGE– If this exposure shall exist:

- A. \$1,000,000 combined single limit for Bodily Injury and Property Damage each accident
- B. Must cover liability for Symbol #1 - "Any Auto" – including Owned, Non-Owned and Hired Automobile Liability.

4. **WORKERS COMPENSATION AND EMPLOYERS LIABILITY** – "If" required by Wisconsin State Statute or any Workers Compensation Statutes of a different state.
 - A. Must carry coverage for Statutory Workers Compensation and an Employers Liability limit of:
 - (1) \$100,000 Each Accident
 - (2) \$500,000 Disease Policy Limit
 - (3) \$100,000 Disease – Each Employee
5. **UMBRELLA LIABILITY** - If exposure exists, provide coverage at least as broad as the underlying Commercial General Liability, Watercraft Liability (If required), Automobile Liability and Employers Liability, with a minimum limit of \$2,000,000 each occurrence and \$2,000,000 aggregate, and a maximum self-insured retention of \$10,000.
6. **ADDITIONAL PROVISIONS**
 - A. **Acceptability of Insurers** - Insurance is to be placed with insurers who have an A.M. Best rating of no less than A- and a Financial Size Category of no less than Class VI, and who are authorized as an admitted insurance company in the state of Wisconsin.
 - B. **Additional Insured Requirements** – The following must be named as additional Insureds on all Liability Policies for liability arising out of project work - City of Oshkosh, and its officers, council members, agents, employees and authorized volunteers. On the Commercial General Liability Policy, the additional insured coverage must be ISO form CG 20 10 07 04 or its equivalent and also include Products – Completed Operations ISO form CG 20 37 07 04 or its equivalent for a minimum of 2 years after acceptance of work. This does not apply to Professional Liability, Workers Compensation and Employers Liability.
 - C. Certificates of Insurance acceptable to the City of Oshkosh shall be submitted prior to commencement of the work to the applicable City department. These certificates shall contain a provision that coverage afforded under the policies will not be canceled or non renewed until at least 30 days' prior written notice has been given to the City Clerk – City of Oshkosh.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	Insurance Agency contact information, including street address and PO Box if applicable.	CONTACT NAME:	Insurance Agent's contact information.	FAX (A/C. No.):
		PHONE (A/C. No. Ext.):		
		E-MAIL ADDRESS:		
		INSURER(S) AFFORDING COVERAGE	NAIC #	
		INSURER A: ABC Insurance Company	NAIC #	
		INSURER B: XYZ Insurance Company	NAIC #	
		INSURER C: LMN Insurance Company	NAIC #	
		INSURER D:	Insurer(s) must have a minimum A.M. Best rating of A- and a Financial Performance Rating of VI or better.	
		INSURER E:		
		INSURER F:		

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	General Liability Policy Number	Policy effective and expiration date.		EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 5,000
	<input checked="" type="checkbox"/> ISO FORM CG 20 37 OR EQUIVALENT						PERSONAL & ADV INJURY \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$ 2,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC						PRODUCTS - COMPROP AGG \$ 2,000,000
							\$
B	AUTOMOBILE LIABILITY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Auto Liability Policy Number	Policy effective and expiration date.		COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident) \$
							\$
A	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Umbrella Liability Policy Number	Policy effective and expiration date.		EACH OCCURRENCE \$ 2,000,000
	<input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						AGGREGATE \$ 2,000,000
	<input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10,000						\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	<input type="checkbox"/>	<input type="checkbox"/>	Workers Compensation Policy Number	Policy effective and expiration date.		<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICE/ MEMBER EXCLUDED? Y/N						E.L. EACH ACCIDENT \$ 100,000
	(Mandatory in NH) N						E.L. DISEASE - EA EMPLOYEE \$ 100,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT \$ 500,000
A	PROFESSIONAL LIABILITY	<input type="checkbox"/>	<input type="checkbox"/>	Professional Liability Policy Number	Policy effective and expiration date.		\$1,000,000 EACH CLAIM
							\$1,000,000 ANNUAL AGGREGATE

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Additional insureds per attached endorsements.

Certificates of Insurance acceptable to the City of Oshkosh shall be submitted prior to commencement of the work to the applicable City department. These certificates shall contain a provision that coverage afforded under the policies will not be canceled or non renewed until at least 30 days' prior written notice has been given to the City Clerk - City of Oshkosh.

CERTIFICATE HOLDER

CANCELLATION

City of Oshkosh, Attn: City Clerk
215 Church Avenue
PO Box 1130
Oshkosh, WI 54903-1130

Insurance Standard III
SAMPLE CERTIFICATE
Please indicate somewhere on this certificate, the contract or project # this certificate is for.

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE, THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2010 ACORD CORPORATION. All rights reserved.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
As required by contract	Any and all job sites
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

- A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
1. Your acts or omissions; or
 2. The acts or omissions of those acting on your behalf;

In the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

- B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Insurance Standard III
SAMPLE CERTIFICATE
Please indicate somewhere on this
certificate, the contract or project #
this certificate is for.

POLICY NUMBER: Policy #

COMMERCIAL GENERAL LIABILITY
CG 20 37 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
As required by contract	Any and all job sites
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

Insurance Standard III
SAMPLE CERTIFICATE
Please indicate somewhere on this
certificate, the contract or project #
this certificate is for.

PART G – SAMPLE OF CURRENT CSV DATA FILE

INFODEV GW-400 2 G01306 2 2.13.05 2.1.51 ZI=5007 ZA=0002																				
Type	YY	MO	DD	AHH	AMM	ASS	DHH	DMM	DSS	ODO	LAT	LOH	HEAD	IN1R	OUT1R	IN2M	OUT2M	GSTAT	GODO	ZONE
B	2014	5	19	6	8	0				0	44.01904	-88.5614						3	0	
P	2014	5	19	6	6	50	6	9	49	0	44.01911	-88.5613	0	0	0	0	0	3	0	1
E	2014	5	19	6	9	52				0	44.01911	-88.5613						3	0	
P	2014	5	19	6	9	49	6	12	54	0	44.0192	-88.5611	0	0	0	0	0	3	0	1
P	2014	5	19	6	12	54	6	15	53	0	44.01894	-88.5611	0	0	0	0	0	3	0	1
P	2014	5	19	6	15	53	6	18	52	0	44.01911	-88.5612	0	0	0	0	0	3	0	1
P	2014	5	19	6	18	52	6	21	51	0	44.01909	-88.5613	0	0	0	0	0	3	0	1

PART H – SAMPLE CONTRACT WITH SUCCESSFUL PROPOSER

AGREEMENT

THIS AGREEMENT, made on the ____ day of ____ 2013, by and between the CITY OF OSHKOSH, party of the first part, hereinafter referred to as CITY, and CONTRACTOR, hereinafter referred to as the CONTRACTOR,

WITNESSETH:

That the City and the Contractor, for the consideration hereinafter named, enter into the following agreement. The Contractor's proposal is attached hereto and reflects the agreement of the parties except where it conflicts with this agreement, in which case this agreement shall prevail.

ARTICLE I. PROJECT MANAGER

A. Assignment of Project Manager. The Contractor shall assign the following individual to manage the project described in this contract:

Contractor Name

B. Changes in Project Manager. The City shall have the right to approve or disapprove of any proposed change from the individual named above as Project Manager. The City shall be provided with a resume or other information for any proposed substitute and shall be given the opportunity to interview that person prior to any proposed change.

ARTICLE II. CITY REPRESENTATIVE

The City shall assign the following individual to manage the project described in this contract:

David Vickman, Transit Coordinator

ARTICLE III. SCOPE OF WORK

The Contractor shall provide the services described in the Contractor's Proposal. The Contractor may provide additional products and/or services if such products/services are requested in writing by the Authorized Representative of the City.

All reports, drawings, specifications, computer files, field data, notes and other documents and instruments prepared by the Contractor as instruments of service shall remain the property of the City.

ARTICLE IV. CITY RESPONSIBILITIES

The City shall furnish, at the Contractor's request, such information as is needed by the Contractor to aid in the progress of the project, providing it is reasonably obtainable from City records.

To prevent any unreasonable delay in the Contractor's work the City will examine all reports and other documents and will make any authorizations necessary to proceed with work within a reasonable time period.

ARTICLE V. TIME OF COMPLETION

The work to be performed under this contract shall be commenced and the work completed within the time limits as mutually agreed upon between the parties at the kickoff meeting.

The Contractor shall perform the services under this agreement with reasonable diligence and expediency consistent with sound professional practices. The City agrees that the Contractor is not responsible for damages arising directly or indirectly from any delays for causes beyond the Contractor's control. For the purposes of this agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters, failure of performance by the City, or discovery of any hazardous substances or differing site conditions. If the delays resulting from any such causes increase the time required by the Contractor to perform its services in an orderly and efficient manner, the Contractor shall be entitled to an equitable adjustment in schedule.

ARTICLE VI. COMPONENT PARTS OF THE CONTRACT

This contract consists of the following component parts, all of which are as fully a part of this contract as if herein set out verbatim, or if not attached, as if hereto attached:

1. Proposal Solicitation
2. This Instrument
3. Contractor's Proposal

In the event that any provision in any of the above component parts of this contract conflicts with any provision in any other of the component parts, the provision in the component part first enumerated above shall govern over any other component part which follows it numerically except as may be otherwise specifically stated.

ARTICLE VII. PAYMENT

A. The Contract Sum. The City shall pay to the Contractor for the performance of the contract the total sum of \$X, adjusted by any changes hereafter mutually agreed upon in writing by the parties hereto.

B. Method of Payment. The Contractor shall submit itemized monthly statements for services. The City shall pay the Contractor within 30 calendar days after receipt of such statement. If any statement amount is disputed, the City may withhold payment of such amount and shall provide to Contractor a statement as to the reason(s) for withholding payment.

C. Additional Costs. Costs for additional services shall be negotiated and set forth in a written amendment to this agreement executed by both parties prior to proceeding with the work covered under the subject amendment.

ARTICLE VIII. CONTRACTOR TO HOLD CITY HARMLESS

The Contractor covenants and agrees to protect and hold the City of Oshkosh harmless against all actions, claims and demands of any kind or character whatsoever which may in any way be caused by or result from the intentional or negligent acts of the Contractor, his agents or assigns, his employees or his subcontractors related however remotely to the performance of this Contract or be caused or result from any violation of any law or administrative regulation, and shall indemnify or refund to the City all sums including court costs, attorney fees and punitive damages which the City may be obliged or adjudged to pay on any such claims or demands within thirty (30) days of the date of the City's written demand for indemnification or refund.

ARTICLE IX. INSURANCE

The Contractor agrees to abide by the attached City of Oshkosh Insurance Requirements.

ARTICLE X. TERMINATION

A. For Cause. If the Contractor shall fail to fulfill in timely and proper manner any of the obligations under this Agreement, the City shall have the right to terminate this Agreement by written notice to the Contractor. In this event, the Contractor shall be entitled to compensation for any satisfactory, usable work completed.

B. For Convenience. The City may terminate this contract at any time by giving written notice to the Contractor no later than 10 calendar days before the termination date. If the City terminates under this paragraph, then the Contractor shall be entitled to compensation for any satisfactory work performed to the date of termination.

This document and any specified attachments contain all terms and conditions of the Agreement and any alteration thereto shall be invalid unless made in writing, signed by both parties and incorporated as an amendment to this Agreement.

In the Presence of:

CONTRACTOR

By: _____

(Seal of Contractor
if a Corporation.)

(Specify Title)

By: _____

(Specify Title)

CITY OF OSHKOSH

By: _____

Mark A. Rohloff, City Manager

(Witness)

And: _____

Pamela R. Ubrig, City Clerk

(Witness)

APPROVED:

City Attorney

I hereby certify that the necessary provisions have been made to pay the liability which will accrue under this contract.

City Comptroller

Greater Cleveland Regional Transit Authority

Nondisclosure and Confidentiality Agreement

Item 9

NONDISCLOSURE AND CONFIDENTIALITY

THIS AGREEMENT, entered into as of this _____ day of August, 2014, by and between the **Greater Cleveland Regional Transit Authority** (hereinafter the "Authority" or "GCRTA"), having an Office located at 1240 W. 6th St., Cleveland, Ohio 44113 and _____, (hereinafter "_____") whose business address is _____.

WITNESSETH: THAT

WHEREAS, GCRTA and [CONTRACTOR] have entered into an agreement for [CONTRACTOR] to provide _____ to the GCRTA under Contract No. _____ ("Project"); and

WHEREAS, in order to perform this work, [CONTRACTOR] will require access to the contents of GCRTA's system(s), database(s) and/or applications which may contain personal identification information in order to complete the Project; and

WHEREAS, during the course of the Project, [CONTRACTOR] will have access to information which is confidential and proprietary and which is of a type not available to the general public, the disclosure of which may bear civil fines and penalties; and

WHEREAS, [CONTRACTOR] will take appropriate and necessary steps to protect such confidential and proprietary information.

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is acknowledged by the parties hereto and evidenced by their signatures below:

IT IS HEREBY AGREED AS FOLLOWS:

1. [CONTRACTOR] and GCRTA each acknowledge that during the course of the Project, [CONTRACTOR] may have access to information which is confidential and proprietary and which is of a type not available to the general public, the disclosure of which may bear civil fines and penalties. [CONTRACTOR] and GCRTA each acknowledge and agree they will take appropriate and necessary steps to protect such confidential and proprietary information.

2. **Confidential and Proprietary Information.** For purposes of this Agreement, "confidential and proprietary information" (hereinafter "Confidential Information") means the contents of GCRTA's system(s), database(s), and/or applications which contain personal identification information ("PII"), the disclosure of which may bear civil fines and penalties.

3. **Nondisclosure.** [CONTRACTOR] will be given access to view and edit GCRTA's Confidential Information for the sole purpose of _____. [CONTRACTOR] is strictly prohibited from removing or transferring Confidential Information outside of GCRTA's database(s) and under no circumstances shall any Confidential Information be removed from or transferred out of GCRTA's database(s). If it is discovered that Confidential Information has been removed or transferred out of GCRTA's database(s), inadvertently or otherwise, [CONTRACTOR] shall immediately notify GCRTA and return or destroy (with documented proof) all such Confidential Information. Any changes or modifications to GCRTA's data must be performed on a clone of GCRTA's actual production

data. All Confidential Information shall be kept confidential by [CONTRACTOR], and shall not be disclosed or disseminated, either directly or indirectly, in any manner whatsoever, to a third party without the express written consent of GCRTA. SYNAPTIS agrees to use diligent and exhaustive efforts to protect GCRTA's Confidential Information and such information shall only be disclosed to employees or agents of [CONTRACTOR] on a need to know basis. Each such employee or agent shall also be bound by this Agreement.

[CONTRACTOR] shall be responsible for any damages to the Confidential Information, GCRTA's database(s), data corruption, support issues, security issues, or performance issues arising out of [CONTRACTOR's] performance under this Agreement or its access to GCRTA's database(s). [CONTRACTOR] shall be responsible for any restoration and/or recovery of data files and/or the operating system related to or necessitated by [CONTRACTOR's] performance under this Agreement or its access to GCRTA's database(s).

4. **Ownership, No License or Warranties.** All Confidential Information shall remain the property of GCRTA. The Parties recognize and agree that nothing contained in this Agreement shall be construed as granting to [CONTRACTOR] any rights, by license or otherwise, to any of GCRTA's Confidential Information. **ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS" WITH ALL ERRORS AND DEFECTS.** Nothing in this Agreement shall be construed as a warranty, representation, assurance, guarantee or inducement with respect to the content or accuracy of the Confidential Information, but any and all warranties contained in the Contract shall remain in full force and effect and shall bind [CONTRACTOR] notwithstanding this sentence. In no event shall the GCRTA be liable for the accuracy or completeness of the Confidential Information.

5. **Professional Liability Insurance.** [CONTRACTOR] shall, by the date upon which this Agreement is made, purchase and maintain professional liability/errors & omissions insurance in the amount of \$2 million per claim. The definition of wrongful acts must be applicable to the work performed hereunder. As this insurance is written on a claims-made basis, the policy must be maintained for a minimum of two years after the term of this agreement has concluded.

6. **Assurance of Safeguards to Protect Security and Integrity of Confidential Information.** Prior to execution of this Agreement by GCRTA, [CONTRACTOR] and any of its subcontractors shall each provide one of the following alternatives:

A. A SOC 2 report issued by a firm qualified by the ISACA (Information Systems Audit and Control Association), relevant to the effectiveness of the design and operation of [CONTRACTOR's] and any of its subcontractors' controls related to security, availability, processing integrity, confidentiality or privacy; or

B. A letter of assurance certifying that [CONTRACTOR] and any of their subcontractors have controls in place that are working effectively to ensure:

- **Security**—the system is protected against unauthorized access (both physical and logical).
- **Availability**—the system is available for operation and use as committed or agreed.
- **Processing integrity**—System processing is complete, accurate, timely and authorized.
- **Confidentiality**—Information designated as confidential is protected as committed or agreed.

- **Privacy**—Personal information is collected, used, retained, disclosed and destroyed in conformity with the commitments in the entity's privacy notice and with criteria set forth in Generally Accepted Privacy Principles (GAPP).

[CONTRACTOR] and any of its subcontractors' controls should be suitably designed to meet the criteria. The controls must operate effectively during the term of this agreement.

[CONTRACTOR] and any of its subcontractors must be in compliance with the commitments in its statement of privacy practices at all time.

7. **Export Laws.** [CONTRACTOR] acknowledges that Confidential Information which it accesses may include technical data developed in the United States, and therefore, SYNAPTIS shall not export or re-export any Confidential Information without full compliance with all applicable export laws.

8. **Remedies.** [CONTRACTOR] shall be liable for any disclosure, data corruption, support issues, security issues or performance issues arising out of its access to GCRTA's database(s) or its Confidential Information. [CONTRACTOR] will, at its sole cost and expense, indemnify, defend, satisfy all judgments and hold harmless GCRTA and its agents, representatives, and employees from and against all claims, actions, judgments, costs, penalties, liabilities, damages, losses and expenses, including but not limited to, attorneys' fees arising out of or resulting from its access to GCRTA's databases and/or Confidential Information. [CONTRACTOR] will, at its sole cost and expense, indemnify, defend, satisfy all judgments and hold harmless GCRTA and its agents, representatives, and employees from and against all claims, actions, judgments, costs, penalties, liabilities, damages, losses and expenses, including but not limited to, attorneys' fees arising out of or resulting from [CONTRACTOR] or any of its subcontractors' failure to comply with the assurances specified in Section 6 of this Agreement.

Should [CONTRACTOR] or any of its subcontractors violate the terms of this Agreement, it is expressly agreed that GCRTA would suffer irreparable damage. As such, in addition to all other remedies available at law, GCRTA shall be entitled to immediate injunctive relief, which may be granted without the necessity of posting a bond or other surety with the court.

9. **Employee Recruitment.** [CONTRACTOR] and GCRTA each agree that their respective employees are critical to the servicing of their customers. [CONTRACTOR] and GCRTA therefore agree to refrain from engaging or hiring, in any capacity, employees of the other during the term of this Agreement, and for a period of one year following termination thereof. Should any party violate this paragraph, the violating party will pay to the aggrieved party an amount equal to 50% of that employee's annualized compensation.

10. **Publicity.** All media releases and public announcements or disclosures by any party relating to this Agreement and that identify another party by name shall be approved by the other party in writing prior to the release thereof. Approval shall be timely and not unreasonably withheld. Notwithstanding the foregoing, if the parties are unable to agree on a mutually acceptable announcement, a party may nevertheless issue a news release if it is advised by counsel that such release is necessary to comply with applicable securities or similar laws.

11. **Severability.** Should any portion of this Agreement be found to be invalid, illegal or unenforceable, then such portion as is reasonably necessary to remove such invalidity, illegality

or unenforceability shall be deleted, and the remaining terms hereof shall continue in full force and effect.

12. **Survival.** The provisions of paragraphs 2, 3 and 4 shall survive termination of this Agreement for a period of three years thereafter.

IN WITNESS WHEREOF, SYNAPTIS and GCRTA have executed this Contract as of the date first written above:

ATTEST:

[CONTRACTOR]

Authorized Signature

Title

ATTEST:

GREATER CLEVELAND REGIONAL
TRANSIT AUTHORITY

Joseph A. Calabrese, CEO
General Manager/Secretary-Treasurer

APPROVED AS TO LEGAL FORM:

By: _____
Sheryl King Benford, General Counsel
Deputy General Manager for Legal Affairs

Greater Cleveland Regional Transit Authority

Software License and Service Agreement, April 5, 2016, between Greater
Cleveland Regional Transit Authority and Passport Parking, Inc. for Mobile
Ticketing

Item 10

SOFTWARE LICENSE AND SERVICE AGREEMENT

The following terms, including the terms and conditions found in Exhibit A, (the "Agreement"), represent the full understanding of PassportParking, Inc. ("Passport") and the Party named below ("Provider" and with Passport, the "parties" and each individually a "Party"). In exchange for the mutual covenants herein and other good and valuable consideration, the Parties agree and intend to be bound as follows:

Provider Legal Name: Greater Cleveland Regional Transit Authority		Contact: Wes Goodwin	
Email: Wgoodwin@gcrt.org		Phone: 216-781-4765	
Provider Contact Address		Provider Billing Contact Address	
1240 West 6 th Street Cleveland OH 44113		1240 West 6 th Street Cleveland OH 44113	
Services: Passport will provide services (the "Services") and license all software, including all web and mobile applications and related documentation, (the "Software") necessary for Provider to operate: <div style="margin-left: 40px;">a mobile ticketing for transit platform ("MTT") which allows Provider's transit riders to purchase transit fares using a smartphone application or mobile web application.</div>			
Governing State Law:		Ohio	
Merchant Processing Costs: Provider will be responsible for paying all merchant processing costs, including, without limitation, settlement fees, payment gateway fees, and interchange reimbursement fees, pursuant to Provider's existing merchant service agreement with contracted financial institution. No merchant processing fees will be owed or paid to Passport.			
Merchant of Record for Transactions:		X	Provider
Passport Merchant Processing Rate Per Transaction:		N/A	
Payment Gateway Provider:		Passport	X
Passport Gateway Fee Per Transaction:		N/A	
Extension: If Provider elects to extend this Agreement beyond the Pilot Term, the Parties will renegotiate the terms of this Agreement and execute a separate written agreement with such renegotiated terms prior to the commencement of any extension terms. Passport will have no obligation to provide any software or services after the Pilot Term unless the Parties have signed a new agreement governing the terms of such extension.			
Termination: The Pilot Term will begin upon the launch of the MTT and continue for six (6) months thereafter. Either Party may terminate this Agreement during the Pilot Term upon a material breach of the terms of this Agreement by the other Party that remains uncured for more than forty five (45) days.			
Termination for Convenience: Provider may terminate this Agreement in whole or in part for its convenience for any reason or for no reason at all without objection by Passport other than for Passport's prior performance. Provider requires Passport to perform prior to the date Provider gives notice of such termination to Passport.			

MTT Pilot License Fee	WAIVED
MTT Brand Name:	To be determined
Scope of Work The features and functionality of the Software and the services provided by Passport as part of the Services are described in Exhibit E.	
Brand Ownership: Provider will retain all permanent intellectual property rights in any brand assets associated with the brand name above, and will license such assets for Passport's use during the Pilot Term and any subsequent extension terms.	
Validation Devices: All mobile tickets and fares sold through the MTT will be validated visually during the Pilot Term. Passport will not complete any additional development work necessary to integrate with any ticket validation hardware.	
Minimum Signage Requirements: Provider will pay for the production and shipping of the following materials: <ul style="list-style-type: none"> a) One (1) sign per transit vehicle. For the purposes of this provision, each rail car will be considered a separate transit vehicle. b) One (1) sign per Rail Station and Transit Center 	
Installation: Provider will be solely responsible for installing all signs and other marketing material in its facilities. This obligation includes the responsibility to provide all hardware necessary to affix and display signs and decals, including without limitation, all hooks, poles, posts, brackets, screws, bolts, and nuts.	
Marketing Services: Passport will provide the marketing services described in Exhibit C for the fees listed therein, and Provider will provide the marketing services described in Exhibit D	
Other Fees: <ul style="list-style-type: none"> a) Provider will pay all third-party integration fees charged by the Provider's existing service providers. No third-party integration fees will be owed to or paid to Passport. b) All other fees and charges contained in all exhibits. c) Provider will reimburse Passport for any and all reasonable travel, lodging, and food expenses incurred by Passport employees while traveling at Provider's request. Travel reimbursement shall not exceed \$4,500 for the duration of the pilot agreement. Additionally, this amount provides for multiple trips. Invoiced reimbursement amounts must not exceed costs for lodging, food and incidental expenses as contained within the Conus Index + 25% for Cleveland OH. Additionally, airfare reimbursement is limited to \$600 per round trip. If auto travel is used in lieu of air travel (accommodates multiple travelers), a mileage reimbursement of 51 cent/mile is reimbursable. However the mileage reimbursement shall not exceed the cost of a single round-trip airfare. 	

This Software License and Service Agreement ("Agreement") is entered into, as of the Effective Date first written above, between PassportParking, Inc. and the Provider named above. This Agreement includes and incorporates the terms and conditions found in this document, the Standard Terms and Conditions found in Exhibit A, and the terms and conditions found in Exhibit B. There shall be no force or effect to any different terms of any related purchase order or similar form even if signed by the parties after the date hereof.

PassportParking, Inc.:

Name: 

Title: CEO

By: Christa Feller

Greater Cleveland Regional Transit Authority

BY: 

NAME: Joseph A. Calabrese, CEO

TITLE: General Manager/Secretary-Treasurer

DATE: 4/5/14

APPROVED AS TO LEGAL FORM AND CORRECTNESS: 

BY: 

Sheryl King Benford, General Counsel
Deputy General Manager for Legal Affairs

EXHIBIT A

STANDARD TERMS AND CONDITIONS ATTACHMENT

Service Levels

Passport will provide hosting for the Software in accordance with all local laws and regulations. Passport's sole and exclusive obligation in the event of an error or interruption of the Software is to use Passport's best efforts to restore or repair the Software as quickly as practicable.

System Uptime

Passport will provide the Software with uptime of at least ninety-nine percent (99%) calculated over a rolling six-month period ("Uptime Guarantee"). For any month during which system uptime drops below the Uptime Guarantee, Passport will provide a billing credit in an amount equal to: the percentage difference between a) the lowest uptime reached at any point during the month (calculated on a rolling six month period) and b) the Uptime Guarantee multiplied by the total fees payable to Passport for such month. For example, if during a given month the Software uptime fell as low as ninety-five percent (95%) and during that month, the fees payable to Passport were one hundred dollars (\$100.00), Passport would issue a billing credit of four dollars (\$4.00). For the purposes of this Agreement, Uptime is defined as any period of time during which end users of the Software can use the Software to pay for parking, pay for mobile tickets, or issue parking citations, as applicable.

Data Ownership

Only to the extent necessary for Passport to conduct the services agreed to herein, Passport hereby acquires a perpetual license, subject to revocation by end users, to store, display, transmit, and use all data provided by end users and all data stored, created, or transmitted by Passport as a result of any end user's use of any component of the Software, strictly in accordance with Passport's Privacy Policy, which Passport will provide upon Provider's request and which Passport reserves the right to update or modify from time to time. Upon the expiration or termination of this Agreement, Passport will provide a copy of all data associated with end users and their associated transactions in the Premises to Provider in a mutually agreed machine-readable format within thirty (30) days after receipt of a written request for such data from Provider. Passport shall not sell, convey, or otherwise use any data obtained herein for any purpose other than those necessary to perform the scope of services of this Agreement.

Intellectual Property

- (a) Provider hereby acquires a revocable, non-exclusive, non-assignable, non-transferable, and non-subleaseable right and license to use and access the Software for its internal business purposes. All intellectual property rights including, without limitation, trade names, source code, trademarks, copyrights, patents, and trade secrets, not explicitly granted to Provider in this Agreement are reserved to

- (b) Provider will not, directly, indirectly, alone,

or with another party, (i) copy, disassemble, reverse engineer, or decompile the Software or any subpart thereof; (ii) modify, create derivative works based upon, or translate the Software or source code; (iii) transfer or otherwise grant any rights in the Software or source code in any form to any other party; (iv) attempt to do any of the foregoing or cause or permit any third party to do or attempt to do any of the foregoing, except as expressly permitted hereunder.

Technical Support

Passport will field all technical support questions from Provider related to the mobile pay program.

Custom Design Revision Fees

For any custom design or content alteration services requested by Provider, including without limitation, customized signage, customized decals, customized logos, customized website content, customized notification letter language, customized citation language, or any custom design within the Software platform, Passport will provide a proof of concept design. For no additional fee, Passport will also provide one revised version of that initial proof of concept based on Provider's input. Provider will pay a one thousand dollar (\$1,000.00) fee per proof of concept revision for each requested revision thereafter. After Provider's acceptance of the proof of concept, Passport will create a final design draft. For no additional fee, Passport will also provide one revised version of that final design draft based on Provider's input. Provider will pay a one thousand dollar (\$1,000.00) fee per final design revision thereafter. The fees in this section will not negate the applicability of any other fee payable for custom design services, including any private label fees or custom signage fees.

Translation Services

If Provider requests that Passport provide a version of any mobile application or mobile web application included in the Software in any language other than English, Provider will pay a one thousand five hundred dollar fee (\$1,500.00) for Passport to perform or subcontract the necessary translation services. Passport will provide an initial version of all translated text. For no additional fee, Passport will also provide one revised version of such translation based on Provider's input. Provider will pay a one thousand dollar (\$1,000.00) fee per revision for each requested revision thereafter.

Wallet Services

Provider may elect to provide transit riders with a virtual wallet (a "Wallet Program"). With a Wallet Program, transit riders would be required to prepay

fees and/or transit ticket fares.

Marketing Services

The marketing and public relations services and materials, if any, provided by Passport and any optional marketing services, including associated fees, can be found in Exhibit C of this Agreement. The marketing services to be performed by Provider at Provider's sole cost, if any, can be found in Exhibit D.

Public Relations Cooperation

The Parties hereby agree that each Party will have the right to discuss and display qualitative information regarding the Parties' relationship. The Parties further agree that prior to any disclosure of any quantitative information regarding the Parties' relationship, the utilization of the Software, or any other element of the Parties' relationship, the disclosing Party must obtain the written permission of the non-disclosing Party except to the extent that disclosure is required of Provider in accordance with public records acts.

Payment Gateway

Provider must supply a payment gateway to enable the payment of all fees by end users, and Provider will bear all costs associated with providing such payment gateway, including all per transaction costs. Passport will integrate with one payment gateway supplied by Vantiv, Inc. designated by Provider for integration with the Software (the "Vantiv Gateway") at no cost to Provider.

In the event that Provider elects to use a payment gateway other than the Vantiv Gateway at any time during Pilot Term or any extension term, Passport can provide such gateway services to Provider. Exhibit B contains a list of other payment gateways supported by Passport. Passport will complete the integration of such payment gateways with the Software at no additional cost. For all other payment gateways, Passport will charge a two hundred and fifty dollar (\$250.00) per development hour necessary to perform necessary integrations. This service is only required and payable in the event the Provider selects a gateway not shown in Exhibit B.

Invoicing

Passport will send monthly invoices to Provider by the tenth day of each month for services rendered and travel reimbursements, per this Agreement, payable to Passport that accrued during the preceding month.

Scheduled Maintenance

If Passport plans to perform any scheduled maintenance during business hours, Passport will provide notice to Provider at least twenty-four (24) hours in advance of the commencement of such scheduled maintenance. For the purpose of this section, "business hours" means Monday through Friday between 9 AM Eastern Time and 5 PM Eastern Time.

Product Updates

Any system-wide improvements or modifications provided to Provider will automatically be subject to the terms of this Agreement. The Provider may not request new features or functionality to be built into the system during

the Pilot Term, unless otherwise agreed by Passport in a written addendum to this Agreement signed by both Parties..

Capacity

Provider represents and warrants that it has obtained or will obtain all licenses and authorizations necessary to license the Software. Provider further represents and warrants that the signer of this document has the authority to bind Provider to the terms herein.

Confidentiality.

Provider and Passport agree to treat all information furnished, or to be furnished, by or on behalf of the other party and information analyses, summaries and other work product derived from such information (collectively, the "Information") in accordance with the provisions of this section and to take, or abstain from taking, all actions set forth herein. The Information will be used solely in connection with the consummation of this Agreement between Passport and Provider and Provider's use and operation of the Software, and will be kept confidential by the Provider and Passport and each party's officers, directors, employees, representatives, agents and advisors; provided, however, that

- (a) any of such Information may be disclosed to officers, directors, employees, representatives, agents and advisors who need to know such information to execute this Agreement and/or effectively use the Software (so long as such persons only use or disclose such Information in the manner permitted in this section), and
- (b) such information may be disclosed to the extent required by law, including any open records law, open meetings law, or any other local public disclosure law applicable to Provider, and
- (c) upon the request of Provider or Passport, the other party will destroy or return to Passport all material containing or reflecting the Information, to the extent permitted by law.

Force Majeure

Neither Passport nor Provider will be held liable for any delay or omission in performance of their duties under this Agreement caused by causes beyond their reasonable control, including without limitation, acts of God, acts of the public enemy, fires, natural disasters, wars, or riots (each a "Force Majeure Event").

Disclaimer

The Software is provided to Provider by Passport "as is" and with all faults. Provider acknowledges and agrees that Passport bears no liability for any error, omission, defect, deficiency, or nonconformity within the Software except as explicitly provided in this Agreement. Other than as specifically set forth herein, neither of the Parties makes any

representations, warranties, or guarantees, express or implied, directly or indirectly, including, without limitation, any warranty of condition, merchantability, or fitness for a particular purpose or use, with respect to, arising out of, or in connection with the Software and related services to be performed pursuant to this Agreement.

Severability.

Whenever possible, each provision of this Agreement will be interpreted and construed to be valid under applicable law, but if any provision of the Agreement is found to violate applicable law, the violating provision will be ineffective only to the extent that it violates the law, without invalidating the remainder of the section containing the violating provision or any other provisions or sections of this Agreement.

Assignment

This Agreement and all of its provisions will be binding upon and inure to the benefit of the Parties and their respective successors and assignees. Neither Passport nor Provider may assign any rights, interests, or obligations hereunder without prior written consent of the other party.

Contractual Silence

If the Agreement fails to address a condition, obligation, benefit, or other term necessary to sufficiently define the relationship between the Parties or resolve a disagreement or conflict regarding the interpretation or construction of this Agreement, the Parties agree to reasonably cooperate to draft a mutually agreeable Amendment that clarifies the duties, rights, and obligations of the parties under this Agreement.

Amendments

The Parties may not amend or modify this Agreement except by a written instrument executed by the Parties (an "Amendment").

Cooperate

If either Provider or Passport has a claim, dispute, or other matter in question for breach of duty, obligations, services rendered or any warranty that arises under this Agreement, the Parties Agree to cooperate to achieve a mutually beneficial resolution of such matter. If after sixty (60) days the dispute remains unresolved, the parties may pursue other remedies.

Independent Contractor

Passport is an independent contractor and not an agent or employee of Provider. No agency, partnership, franchise, joint venture, or employment relationship exists between Passport and Provider. Passport's employees and agents will not be employees or agents of Provider. Passport shall be fully and solely responsible for the supervision, control, performance, compensation, benefits (including, without limitation, all forms of insurance) withholdings, health and safety of all of its employees and agents. Provider will not be responsible or liable for any withholding taxes or contributions to state worker's compensation, unemployment or other funds or programs.

Limitation of Liability

In no event will Passport be liable to Provider for any lost profits, lost savings, or incidental, indirect, special, or consequential damages arising out of Provider use or inability to use the product or the breach of this Agreement, even if Passport has been advised of the possibility of such damages.

Notices

All notices, consents, and communications required hereunder shall be given in writing and delivered via electronic mail or mail, shall be deemed to be given upon receipt thereof, and shall be sent to the address below:

Passport
1300 S. Mint Street
Suite 200
Charlotte, NC 28203
Email: ben.winokur@gopassport.com

Greater Cleveland Regional Transit Authority
Attn: Wesley Goodwin
1240 West 6th Street
Cleveland, OH 44113

Email: wgoodwin@gcrt.org

Entire Agreement

This Agreement represents the full and complete understanding of the Parties and supersedes any and all prior agreements.

EXHIBIT B

SUPPORTED PAYMENT GATEWAYS

1. Authorize.net
2. Converge
 - Elavon Gateway Product
3. FirstData Direct Connect
4. Internet Secure
5. Moneris
6. Point and Pay

EXHIBIT C

MARKETING SERVICES SCHEDULE

- **Custom Website**

- Splash Page Free
 - *or verbiage on existing page*
- 2-5 Pages \$2,000
- 5-10 Pages \$5,000
- 10+ Pages TBD

- **Signage and Decals**

- Custom Design Included

For quantities, see "Equipment Provided by Passport" section.

- **Promotional Materials**

handouts, coasters, validation cards, direct mail

- Standard
 - Custom Design Included
 - Orders over 4 pieces per space at cost (including shipping)
 - Specialty items Quote upon request
 - *shirts, hats, etc*

- **Print Ads**

for Provider's use in local newspapers and magazines

- Customized Included

- **Digital Ads**

for Provider's use in display, mobile, social (Facebook, Twitter)

- Customized Included

- **Media Relations**

- Launch Press Release Free
- Milestone Press Releases Free
- Extended Media Distribution Free

EXHIBIT D

MARKETING SERVICES PROVIDED BY PROVIDER

- **Provider Website**
 - Feature on homepage
 - Content on Trip Planning pages
 - Content on Fare pages
- **Email**
 - Prompts to opt-in subscribers to download Passport's smartphone application
 - Prompts to key stakeholder groups, including without limitation local employers, business associations, charitable organizations, and community organizations
- **Social Media**
 - Twitter and Facebook posts
- **Newsletters**
 - Posts in all relevant Provider newsletters, including internal newsletters, newsletters sent to riders, and newsletters sent to any other stakeholder
- **Advertising**
 - *Transit Vehicles*
 - Bus and/or Train exterior display ads
 - Bus and/or Train interior display ads
 - Bus and/or Train station informational signage
 - *Paid Media*
 - Community newspaper ads
 - Other relevant local publication ads
- **On Street Information**
 - Inclusion in bus and/or Rail Station informational crawl
 - Banner and poster within Provider ticket office

EXHIBIT E

SCOPE OF WORK

Provide a fare payment and usage solution that will give customers the ability to utilize GCRTA services via an app on their smart mobile device.

1. Pilot starts no later than July 1, 2016
2. Vendor hosted solution at no cost
3. Utilize payment card transaction processing services offered by GCRTA's banking contract.
4. 99% solution availability for customer activities and GCRTA back office processing
5. Provide Disaster Recovery such that solution recovery is fully restored and fully functional within 2 hours
6. Submit PCI compliance certification
7. Requires minimal/protects customer personal data
8. Securely allow customers to purchase multiple offered GCRTA fares
9. Provide GCRTA the ability to maintain fare offerings, structure and pricing
10. Prohibit fraudulent use of mobile ticketing and usage of transportation services.
11. Provide simple feature and process for secured transference of mobile ticket to replacement device, in the event a device is lost or stolen,
12. Support visual proof of payment validation
13. Mobile ticket should also have an "active" screen so that it can be visually verified.
14. Provide for GCRTA branding and integrate features such as Translōc, Google Maps, to incorporate route planning service (both scheduled and real-time arrival) and customer support contact information.
15. Mobile Ticketing solution must not require GCRTA to furnish Wi-Fi access for its vehicle, fare equipment and customers
16. Customers must have capability to use mobile fares in the event their cellular/phone service is disrupted.
17. Provide detailed reporting capabilities showing mobile ticket fares purchased, revenue generation, balancing of sales vs revenue. Reports should have ability to show number/amount by selectable fare types or for any given time period
18. Provide GCRTA access to all data captured throughout the duration of the pilot plus 1 year

Los Angeles County Metropolitan Transportation Authority

TAP Customer Relationship Management (CRM) Project Scope

Item 11

TAP CUSTOMER RELATIONSHIP MANAGEMENT (CRM) PROJECT SCOPE

Implement the modification of the Salesforce CRM Platform using the services described below:

HIGH-LEVEL REQUIRED CRM CAPABILITIES

Contractor shall implement Salesforce.com to provide the following capabilities:

TAP CUSTOMER SERVICE REPRESENTATIVES

Find Customers with Registered cards

- Register Cards
- Look up transactions and transaction history
- Look up vendor locations
- Create data or data requests for attention by other teams

TAP CUSTOMER SALES REPRESENTATIVES

- Find customers with Registered cards
- Register Cards
- Look up transactions and transaction history
- Electronically load products and sell cards
- Create data or data requests for attention by other teams

REDUCED FARE PROCESSING

- Find customers with registered cards
- Approve and scan application into system
- Information exchange with card processors for personalization and card creation
- Process data and photos for application creation
- Revise and update applications

FINANCIAL

- Process web and phone sales transactions for integration with Metro's financial program (now Oracle)
- Set up a credit/debit gateway for web and phone sales

BACK-OFFICE

- Find/adjust customers with registered cards
- Look up transactions and transaction history
- Make adjustments and refunds to TAP cards via electronic processing (autoload/hotlist)
- Pull transactions and sales records
- Manage special card programs

WEB AND GO TAP

- High-end, customizable design
- Public-side patron website for general TAP information
- Private-side patron website for card information, ordering and loading (secure site)
- Individual TAP participant information sites

- Private-side group card information, ordering and loading capabilities (secure site)
- Reports

SCOPE OF WORK

WEB AND GOTAP

- Sales Team Transition to Project Team
- Prepare for Kickoff
- Conduct Project Kickoff Meeting
- Assemble Team, Setup Users and Environment
- Collect Project Objectives
- Collect Challenges with Existing Systems
- Identify Project Success Criteria
- Prepare for Workshops

Number of Team Members: 4

BUSINESS PROCESS REVIEW

- Conduct Business Process Review workshops. This interactive session with project stakeholders identifies business requirements and ensures agreement regarding the processes to be supported through the Application. Specific goals include:
- Document Key Business Processes
- Identify Key Business Information (Fields & Objects) and Validation Requirements
- Identify Requirements for Configuration, Custom Code, Workflow, Security, Reporting, Data Loading, and Training

Number of Workshops: 2

DOCUMENT FUNCTIONAL REQUIREMENTS

- Document all business requirements collected during business process workshop into Contractor's format. Each requirement will include business need, category, priority and scope/project phase. The categories will include: config, workflow, reporting, code, process, training and integration requirements.

Number of Workshops: 10

Telephone Sales Workshop

- Identify Sales Process
- Identify Key Business Information (Fields & Objects)
- Identify Data Validation Requirements
- Identify Custom Configurations
- Identify Workflow Requirements
- Identify Reporting Requirements

Number of Workshops: 1

Application Processing Workshop

- Identify Reduced Fare Application Processes

- Identify Key Business Information (Fields & Objects)
- Identify Data Validation Requirements
- Identify Custom Configurations
- Identify Workflow Requirements
- Identify Reporting Requirements

Number of Workshops: 1

Information Processing Workshop

- Identify Information Retrieval and Input Processes
- Identify Key Business Information (Fields & Objects)
- Identify Data Validation Requirements
- Identify Custom Configurations
- Identify Workflow Requirements
- Identify Reporting Requirements

Number of Workshops: 1

GoTap Workshop

- Identify Individual Processes for Online Programs
- Identify Key Business Information (Fields & Objects)
- Identify Data Validation Requirements
- Identify Custom Configurations
- Identify Workflow Requirements
- Identify Reporting Requirements

Number of Workshops: 1

Back Office Workshop

- Identify Back Office Processes
- Identify Key Business Information (Fields & Objects)
- Identify Data Validation Requirements
- Identify Custom Configurations
- Identify Workflow Requirements
- Identify Reporting Requirements

Number of Workshops: 1

Card Management/Inventory Control Workshop

- Identify card management and inventory Process
- Identify Key Business Information (Fields & Objects)
- Identify Data Validation Requirements
- Identify Custom Configurations
- Identify Workflow Requirements
- Identify Reporting Requirements

Number of Workshops: 1

Website Workshop

- Identify Web Sales Processes
- Identify Key Business Information (Fields & Objects)
- Identify Data Validation Requirements
- Identify Custom Configurations
- Identify Workflow Requirements
- Identify Reporting Requirements

Number of Workshops: 2

INTEGRATION REQUIREMENTS

- Determine how Salesforce.com will integrate with external systems.
- Identify External Systems: NextFare, WebSales, Oracle
- Identify Interfaces (Objects/Tables for each system)
- Identify Integration Actions: Insert, Update, Delete
- Identify Frequency and Triggering Event
- Identify Integration Technique (Batch file, web services, etc)
- Identify Integration Security Protocol and Authentication

Number of External Systems: 2

REQUIREMENTS REVIEW

- Review all documented requirements with key stakeholders to confirm Contractor's understanding of the requirement and review the estimated Level of Effort. TAP will have an opportunity to confirm the priority assigned to each requirement and validate that it should be considered In Scope given budgetary constraints.

Number of Workshops: 1

TECHNICAL SPECIFICATION

- Document the Technical Specifications of this project including: security and authentication, data model and database storage, integration with other systems.

Number of Technical Specifications: 3

SOLUTION DESIGN

- Create a powerpoint presentation to describe the overall solution including the technical architecture, functional architecture, integration architecture, object model and key features.

Number of Design Documents: 1

DESIGN PORTAL PAGES

- Design the following pages to support the new LA Metro Community Website:
- Home
- About
- Where to Use
- How to Get
- Order + 5 pages associated with the order

- Add Value + 2
- Register a card
- Support
- Log a ticket
- Knowledge + 2
- Account Home
- Order History
- Transaction History
- Renew Card
- Profile
- Discounts
- Auto Load
- Retail Locations
- Forms and Policies
- Vendors
- GoTAP portal
- Muni Template Page

Number of Pages: 28

CONTRACTOR DESIGN REVIEW

- Independent review of designed solution proposed to meet TAP requirements by Contractor architect team. This review will assess the viability, usability, performance factors of the solution versus industry best practices.

Number of Reviews: 1

TAP DESIGN REVIEW

- Review functional and technical design with stakeholders.

Number of Design Reviews: 2

DETAILED DESIGN

- Update each requirement with detailed functional and/or technical specifications to identify the details of what will be constructed.

Number of Iterations: 6

ACCOUNTS AND CONTACTS

- Standard & custom fields to track customers. Complete Activity Tracking.

Number of Record Types: 4

CONFIGURE DATA MODEL

- Create Fields and Data Validation (up to 10 fields per object)

- Configure Page Layouts and Views (up to 3 views per object)
- Custom Objects: Sales Orders, Cards, Service, Payment History, Activities, Devices, Operations, Card History

Number of Objects: 7

CASE MANAGEMENT

- Case Origin: automatically create Cases from one designated Email address and one Web form
- Assignment Rules: new Cases will automatically go to Queues based on type and be assigned automatically to Users
- Automatically send a reply upon receipt Case to the submitter
- Full email capability for sending replies from Salesforce.com or Outlook and assigning to cases
- Configure the Case page with approximately 5-10 custom fields
- Multiple Case Types will be supported from a single form such as : Problems, Research Help, Process Questions

Number of Record Types: 1

CARD MANAGEMENT

- Build custom pages and controls as defined in the requirements to support general card management.

Number of Classifications: 3

INVENTORY MANAGEMENT

- Inventory Management module to track from CSR to fulfillment. This will include a card inventory containing information about each card (type, issue date, unique identifier, etc), buyers and their location of cards (e.g. Joe's Liquor with a box of 250 cards) and card single and build card orders. Orders will support the issuance of special card orders like senior, student or disabled. System will be able to track order information including: Order received, Order sent for processing, Order processed, Card sent out for delivery.
- Assumptions:
 - Inventory management will be visible to internal users only. No inventory management reports and dashboards will be created, but the implementation will include training to show end users how to create their own reports and dashboards using salesforce.com intuitive reporting tools.

Number of Objects: 3

TAP COMMUNITY PORTAL

- Setup TAP Community Portal
- Simple Customization of Portal Look and Feel: Modify Colors and install Header, Footer, and Logo to reflect TAP branding.
- Configure Portal User Access: Consultant will set up one sample Portal User and provide instruction to TAP on setting up additional Users.
- Assumptions:
 - TAP will provide all HTML/CSS/Image files for Portal
 - TAP will create a button/link on existing Website to direct access to the TAP Portal
 - The standard Salesforce.com Help file will be used for online help.

Number of Communities: 1

WEB SALES STOREFRONT

- Build Storefront to allow: Card purchase, Card reloading, discounted pass application, auto load, locations, policies, FAQ's etc.

Number of Web Sales Storefront: 1

WEB SALES CONTENT

- Set up Web Sales Content Manager.

Number of Web Sales Content Manager: 1

PAYMENT PROCESSING

- Provide Payment processing through website or for internal users.

Number of Payment Processing: 1

KNOWLEDGE - CONFIGURE ARTICLE TYPES

- Configure article (FAQ, How-To's) templates which control the information structure and visibility by channel (public knowledge base, partners, authenticated TAPs, internal teams)

Number of Article Types: 1

CONFIGURE DATA CATEGORY GROUPS

- Data Category Groups describe the highest level taxonomic categorization of an article. Such as Region, Product, or Branch

Number of Data Categories: 2

CONFIGURE ARTICLE MANAGEMENT WORKFLOW

- Configure approval workflows to implement any required review of new or revised content.

Number of Approval Workflow Rules: 1

CONFIGURE DATA CATEGORY ITEMS

- Data Category Items are a hierarchical list of items within a Data Category Group. Such as United States, and Europe under Region. United States can be further broken down into each State or a Geographical Region.

Number of Data Category Items: 2

NEXTFARE INTEGRATION

- Consultant will construct a webservices integration between NextFare and Salesforce.com.
- NextFare->Transaction (web service query)
- New only->Transactions (Customer, Date, Amount, Type:Purchases/Refunds- Sales Use
- Salesforce -> Action
- 5 APIs/3-4 methods = 15 unique actions
- Assumptions:
 - A method is a webservices call to view or update data.
 - TAP is responsible for providing access to a web service or open api. This service will leverage standard integrations protocols (SOAP, REST, XML). Client will provide clear documentation on how to call the integration services.
 - TAP is responsible for any firewall work to ensure salesforce has access to these services.
 - TAP is responsible for maintaining the quality and integrity of data involved in integrations where it is mutually understood as required for the integrations to function as designed. This includes data inside of salesforce.com.

Number of Methods: 17

CARD DISTRIBUTION/BATCH INTEGRATION

- Contractor will create an automated import of a card and order information from Card Distributor. This will be two

automated data loads, each with one single file. Consultant may leverage an open-source solution that includes pre-built integrations to Salesforce.com.

- Assumptions:
- An interface is a one-way connection between a single table in the source system with a salesforce.com object.
- TAP will provide required network access for development, implementation, and on-going functioning of the integration solution.
- If middleware tool(s) is/are selected, TAP is responsible for procuring, installing, hosting, testing, deploying, and maintaining any associated hardware, third party software, patches, or upgrades required to support this tool.
- TAP is responsible for monitoring and resolving errors logged in error files. The native logging functionality of the integration tool will be used.
- The field names and types in the integration data structures will remain static over time and will follow the schema documented herein.
- The integration program will exchange data as it is provided from either involved system. Additional effort will be necessary if data cleansing, transformation, aggregation or other data manipulation are required for the integration to function as designed.
- TAP is responsible for maintaining the quality and integrity of data involved in integrations where it is mutually understood as required for the integrations to function as designed. This includes data inside of salesforce.com.
- Data error notifications will be displayed back to the status record

Number of Interfaces: 1

REPORTS AND DASHBOARDS

- Leverage salesforce.com's flexible analytics functionality to create custom Reports and Dashboards.
- Assumptions: TAP will provide report specifications in advance, Contractor will allow for one iteration of changes. Further changes will be the responsibility of TAP.

Number of Reports: 10

SECURITY SETUP

- Setup/Modify Org Wide Security
- Setup/Modify User Profiles
- Setup/Modify Object/Field Level Access
- Setup/Modify Data Sharing Rules

Number of Profiles: 5

WORKFLOWS AND NOTIFICATIONS

- Setup salesforce.com workflows and approval processes to automate process based on requirements. Create associated email templates.

Number of Workflows: 4

DATA MIGRATION

- Contractor will conduct one test and one production load of this data into Salesforce: Accounts, Contacts, Sales Orders, Cards, Service, Payment History, Activities, Devices, Operations.
- Data Migration Assumptions:
- TAP will extract data from legacy system(s) and provide one CSV file per Salesforce.com object for loading data into Salesforce.com (object type = Account, contact, products, etc.).

- TAP will be responsible for data cleansing, de-duplication or other transformations of data. Contractor will provide data cleansing support and provide data cleansing, de-duplication and data transformation services when TAP provides clear rules to apply to the data.
- A unique record identifier for each record and straightforward method for determining record ownership will be provided in the CSV file
- All data to be loaded is supported by the application's existing data types.

Number of Data Loads: 9

TEST PLAN

- Develop an overall test plan to define how the application will be tested and who will be responsible for each phase of testing.

Number of Test Plans: 1

SYSTEM TEST CASES

- Develop detailed Test Cases for System Testing.

Number of Processes: 12

CONDUCT SYSTEM TEST

- Contractor will conduct a System Test to test major business functionality, ensure the defined requirements are met, ensure the system supports the use cases that have been defined.

Number of Test Cycles: 4

INTEGRATION TEST

- Contractor will work with TAP to test the integration of Salesforce.com with TAP systems. Testing will be conducted in a Salesforce.com sandbox and a test environment for the other TAP systems.

Number of Methods: 17

FACILITATE USER ACCEPTANCE TEST

- Work with TAP Subject Matter Experts to guide them through a full business scenario test of the application and delivered functionality. The business scenarios and test execution will be performed by TAP. Any defects or change requests should be logged as bugs in ProjectForce.

Number of Iterations: 6

DEFECT RESOLUTION

- Resolve any defects found during System or User Acceptance Testing.

Number of Iterations: 6

TRAINING MATERIALS

- Contractor will customize our standard training materials to address the unique needs of the TAP's business process. The materials delivered will be in the form of Powerpoint presentation for instructors.

Number of Courses: 2

END USER TRAINING

- Contractor will conduct training session(s) to teach end users how to use the system. Each session will last up to 4 hours with up to 15 users. Classes can be in person or virtual.
- Assumptions:
- TAP is responsible for course logistics for onsite training. All training facilities must include projector, screen (or equivalent), whiteboard (or equivalent), and high speed internet access for instructor machine and participant machines.

Number of Sessions: 8

DEPLOY APPLICATION

- Deploy custom code and configurations from Sandbox to Production environment. Assumes code migration to an active production org with existing VisualForce and Apex code and live business data. Effort includes: deployment preparation and troubleshooting, deployment and post go-live support.

Number of Deployment Instances: 4

PROJECT CLOSURE

- Review outstanding requirements, bugs, deliverables and issues and determine follow-up actions.
- Handoff Meeting with Contractor, Salesforce.com and TAP to transition project to salesforce.com support.

Number of Team Members: 4

PROJECT MANAGEMENT

- Utilize project management tool to monitor project work items, accomplishments, risk, issues, budget and schedule on a daily basis to ensure project stays on track.

Number of Weeks: Through project completion

POST GO-LIVE SUPPORT

- After go live, Contractor will provide user and technical support to address small functional changes or defects.
- Service will be provided over the phone or via web conference. Requests that do not require TAP involvement can be emailed. During this time, Contractor will transition support to Salesforce.com Premiere support for ongoing support.
- Contractor will do their best to respond to all requests within 24 hours and provide an estimated time for completion of the requested work or a request for further clarification on the request to facilitate scoping. Contractor will endeavor to complete the work as soon as possible, but does not guarantee any specific response time.

Number of Support Weeks: 4

MILESTONES AND DELIVERABLES

Deliverable	Description	Schedule	Acceptance Criteria
Project Kickoff	Project has been approved. Resources are identified and staffed on the project. The kickoff meeting will align all team members and set the stage for the project.	2 Weeks NTP	Delivery of Project Kickoff presentation and execution of Kickoff meeting.
Weekly Status Reports	Contractor will produce weekly status reports for any week where Contractor is providing substantial implementation services. These status reports will include activities for the past, upcoming activities, risk issues and any changes requested of the project.	Weekly	No acceptance is required.

Deliverable	Description	Schedule	Acceptance Criteria
Project Plan	Project management tool which manages requirements, tasks, deliverables, sprints/iterations, risk and issues.	6 Weeks NTP Update Monthly	TAP review and acceptance of iterations, deliverables and schedule.
Documented Requirements	Defines, documents, and prioritizes TAP's business and technical requirements (Contractor's Project Force instance of Salesforce.com or Google Apps workbook).	8 Weeks NTP Update as Needed	TAP accepts that this is the complete set of requirements that will be used as the basis for designing and testing the system. TAP shall confirm scope and prioritize this list. (Formal TAP signoff)
Technical Specifications	A document outlining the technical aspects of the project including: security and authentication, custom code, data model and database storage, and integration with other systems.	12 Weeks NTP Update as Needed	TAP input into content, TAP sign-off of documentation.
Solution Design	Powerpoint document describing all of the high-level system components and business processes required to implement TAP's requirements including object model, to-be user processes, automation techniques, integrations, data management, 3rd party partners, and any other system design considerations. For integrations, this will also include a high level description of the integration model.	16 Weeks NTP	TAP accepts the Solution Design document. (Formal TAP signoff)

APPROACH

Six Phases: Plan; Analyze; Design; Build; Validate; Deploy.

PLAN PHASE

- Establish an initial Project Plan, including purpose, timeline, budget, resource assignments, and a project governance and change control structure to expedite decision making throughout the Project.
- Conduct a formal Project Kick-Off meeting, which also serves as the first meeting of the Project Steering Committee.

ANALYZE PHASE

- Conduct Business Process Review workshops. These interactive sessions with Project stakeholders identify business requirements and ensure agreement regarding the processes to be supported through the Application. Potential barriers to success such as change-resistant behavior, pending organizational or

infrastructure changes or contingencies, and disagreements among stakeholders on priorities are also be identified. Pre-workshop interviews ensure its success.

- Assess any gaps between agreed-upon scope and identified requirements, and use change control processes as needed.
- Create Requirements Workbook deliverable and/or provide TAP access to Contractor's information for managing requirements, status and defects.

DESIGN PHASE

- Apply salesforce.com best practices to evaluate design alternatives to meet TAP requirements. Establish best-fit design, create Solution Design overview presentation and configure prototype application.
- Depending on project length or complexity, conduct Solution Design Workshop and detailed, iterative technical and configuration specification meetings.
- Create Solution Design Document deliverable and detailed design specification deliverables: Application and Process Design Specification; Technical Design Specification; Data Mapping; Validation Plan and Test Cases.

BUILD PHASE

- Configure application with iterative reviews.
- Develop integration code and/or scripts with code reviews and unit tests.
- Populate data migration workbook with field mappings;
- Establish end-to-end testing environment; create test scripts for system testing.

VALIDATE PHASE

- Deploy integration to test environment.
- Conduct end-to-end (system) testing; address any bugs or issues, regression test, iterate.
- Deploy configuration, integration, and data to production environment.
- Assist with user acceptance testing.
- Document all testing results.

DEPLOY PHASE

- Import users and final data set; activate user accounts.
- Conduct Training.
- Conduct Lessons Learned and Closure meeting to address any remaining issues, assist TAP in prioritizing follow-on requirements, and provide feedback on Project.

Metropolitan Atlanta Rapid Transit

GSA Federal Acquisition Service Information Terminology Schedule Pricelist for
SHI International Corporation and Terms and Conditions Applicable to Purchase
of General Purpose Commercial Information Technology Equipment, November
24, 2004 through November 23, 2019

Item 12



U.S. General Services Administration

**GENERAL SERVICES ADMINISTRATION
FEDERAL ACQUISITION SERVICE INFORMATION TECHNOLOGY SCHEDULE
PRICELIST**

Note: SHI International Corporation has been awarded the Cooperative Purchasing Program for the following SINS: 132-8, 132-12, 132-33, 132-34, 132-50

Note: SHI International Corporation has been awarded the Disaster Recovery Program for the following SINS: 132-8, 132-12, 132-33, 132-34, 132-50

SHI International Corporation
290 Davidson Avenue
Somerset, NJ 08873
Phone: (800) 527-6389; (732) 764-8888
Fax: (732) 764-8889
Internet Address: www.publicsector.shidirect.com

Contract Number:
GS-35F-0111K

Period Covered by Contract:
November 24, 2004 through November 23, 2019

General Services Administration Schedule 70
General Purpose Commercial Information Technology Equipment, Software, and Services

Pricelist current through Modification #**PO-0453**
Pricelist current through effective date **June 28, 2016**

On-line access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic delivery order are available through GSA Advantage!®, a menu-driven database system. The INTERNET address GSA Advantage!® is: GSAAdvantage.gov.

For more information on ordering from Federal Supply Schedules click on the FSS Schedules button at www.gsa.gov/fas.



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SIN 132-8 PURCHASE OF EQUIPMENT

FSC CLASS 7025 - INPUT/OUTPUT AND STORAGE DEVICES

Printers

Storage

Other Input/Output and Storage Devices, Not Elsewhere Classified

SIN 132-12 - MAINTENANCE OF EQUIPMENT, REPAIR SERVICE, AND REPAIR PARTS/SPARE PARTS (FPDS Code J070 - Maintenance and Repair Service)(Repair Parts/Spare Parts - See FSC Class for basic equipment)

- Maintenance

SIN 132-33 - PERPETUAL SOFTWARE LICENSES

FSC CLASS 7030 - INFORMATION TECHNOLOGY SOFTWARE

Large Scale Computers

Operating System Software

Application Software

Electronic Commerce (EC) Software

Utility Software

Communications Software

Core Financial Management Software

Ancillary Financial Systems Software

Microcomputers

Operating System Software

Application Software

Electronic Commerce (EC) Software

Utility Software

Communications Software

Core Financial Management Software

Ancillary Financial Systems Software

SIN 132-34 - MAINTENANCE OF SOFTWARE

SIN 132-50 - TRAINING COURSES FOR INFORMATION TECHNOLOGY EQUIPMENT AND SOFTWARE (FPDS Code U012)



U.S. General Services Administration

1a. Table of Awarded Special Item Numbers (SINs):

SPECIAL ITEM NUMBER 132-8 PURCHASE OF NEW EQUIPMENT
SPECIAL ITEM NUMBER 132-12 - EQUIPMENT MAINTENANCE
SPECIAL ITEM NUMBER 132-33 - PERPETUAL SOFTWARE LICENSES
SPECIAL ITEM NUMBER 132-34 - MAINTENANCE OF SOFTWARE AS A SERVICE
SPECIAL ITEM NUMBER 132-50 - TRAINING COURSES

1b. Lowest Priced Model Number and Price for Each SIN: See attached pricelist for details

1c. Hourly Rates: Not Applicable

2. Maximum order:

Maximum Order value for the following Special Item Numbers (SINs) is \$500,000:

Special Item Number 132-8 - Purchase of Equipment
Special Item Number 132-12 - Equipment Maintenance
Special Item Number 132-33 - Perpetual Software Licenses
Special Item Number 132-34 - Maintenance of Software as a Service

The Maximum Order for the following Special Item Numbers (SINs) is \$25,000:

Special Item Number 132-50 - Training Courses

3. Minimum order: \$100

4. Geographic coverage (delivery area): The Geographic Scope of this Contract is domestic delivery only.

5. Point(s) of production (city, county, and State or foreign country): See attached pricelist for details

6. Discount from list prices or statement of net price: Government prices are net.

7. Quantity/Volume discounts: None

Quantity: None

Volume Dollar Volume: None

8. Prompt payment terms: 0% - NET 30 days from receipt of invoice or date of acceptance, whichever is later.

9a. The Government purchase Card will be accepted for payment on orders below the micro-purchase threshold.

9b. The Government purchase Card will be accepted for payment on orders above the micro-purchase threshold.



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10. Foreign items: See attached pricelist for details

11a. Time of delivery:

132-8	30 Days
132-12	30 Days
132-33	30 Days
132-34	30 Days
132-50	As Negotiated

11b. Expedited Delivery: As negotiated on the task order level

11c. Overnight and 2-day delivery: As negotiated on the task order level

11d. Urgent Requirements. As negotiated on the task order level

12. F.O.B. point: Destination

13a. Ordering address:

SHI International Corporation
290 Davidson Avenue
Somerset, New Jersey 08873
(or any branch office)

13b. Ordering procedures: For supplies and services, the ordering procedures, information on Blanket Purchase Agreements (BPA's) are found in Federal Acquisition Regulation (FAR) 8.405-3. For supplies and services, the ordering procedures, and information on Blanket Purchase Agreements (BPA's) are found in Federal Acquisition Regulation (FAR) 8.405-3.

14. Payment addresses:

SHI International Corporation
P.O Box 952121
Dallas, Texas 75395-2121

15. Warranty provision: Standard Manufacturers Warranty applies

16. Export packing charges, if applicable: Not Applicable

17. Terms and conditions of Government purchase card acceptance (any thresholds above the micro Purchase level): Not Applicable

18. Terms and conditions of rental, maintenance, and repair (if applicable): Not Applicable



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- 19. Terms and conditions of installation (if applicable): Not Applicable
- 20. Terms and conditions of repair parts indicating date of parts price lists and any discounts from list prices (if applicable): Not Applicable
- 20a. Terms and conditions for any other services (if applicable): Not Applicable
- 21. List of service and distribution points (if applicable): Not Applicable
- 22. List of participating dealers (if applicable): Not Applicable
- 23. Preventive maintenance (if applicable): Not Applicable
- 24a. Special attributes such as environmental attributes (e.g., recycled content, energy efficiency, and/or reduced pollutants): Not Applicable
- 24b. If applicable, indicate that Section 508 compliance information is available on Electronic and Information Technology (EIT) supplies and services and show where full details can be found (e.g. contractor's website or other location.) The EIT standards can be found at: www.Section508.gov/: Not Applicable
- 25. Data Universal Number System (DUNS) number: 611429481
- 26. Notification regarding registration in SAM.gov (formerly the Central Contractor Registration) database. CAGE Code: 1HTF0



**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF
GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY
EQUIPMENT
(SPECIAL ITEM NUMBER 132-8)**

1. MATERIAL AND WORKMANSHIP

All equipment furnished hereunder must satisfactorily perform the function for which it is intended.

2. ORDER

Written orders, EDI orders (GSA Advantage! and FACNET), credit card orders, and orders placed under blanket purchase agreements (BPA) agreements shall be the basis for purchase in accordance with the provisions of this contract. If time of delivery extends beyond the expiration date of the contract, the Contractor will be obligated to meet the delivery and installation date specified in the original order.

For credit card orders and BPAs, telephone orders are permissible.

3. TRANSPORTATION OF EQUIPMENT

FOB DESTINATION. Prices cover equipment delivery to destination, for any location within the geographic scope of this contract.

4. INSTALLATION AND TECHNICAL SERVICES

- a. **INSTALLATION.** When the equipment provided under this contract is not normally self-installable, the Contractor's technical personnel shall be available to the ordering activity, at the ordering activity's location, to install the equipment and to train ordering activity personnel in the use and maintenance of the equipment. The charges, if any, for such services are listed below, or in the price schedule:

All products are considered to be customer installable.

b. INSTALLATION, DEINSTALLATION, REINSTALLATION.

The Davis-Bacon Act (40 U.S.C. 276a-276a-7) provides that contracts in excess of \$2,000 to which the United States or the District of Columbia is a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works with the United States, shall contain a clause that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rates as determined by the Secretary of Labor. The requirements of the Davis-Bacon Act do not apply if the construction work is incidental to the furnishing of supplies, equipment, or services. For example, the requirements do not apply to simple installation or alteration of a public building or public work that is incidental to furnishing supplies or equipment under a supply contract. However, if the construction, alteration or repair is segregable and exceeds \$2,000, then the requirements of the Davis-Bacon Act applies.



The ordering activity issuing the task order against this contract will be responsible for proper administration and enforcement of the Federal labor standards covered by the Davis-Bacon Act. The proper Davis-Bacon wage determination will be issued by the ordering activity at the time a request for quotations is made for applicable construction classified installation, deinstallation, and reinstallation services under SIN 132-8.

c. **OPERATING AND MAINTENANCE MANUALS.**

The Contractor shall furnish the ordering activity with one (1) copy of all operating and maintenance manuals which are normally provided with the equipment being purchased.

5. **INSPECTION/ACCEPTANCE**

The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any equipment that has been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming equipment at no increase in contract price. The ordering activity must exercise its post acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

6. **WARRANTY**

- a. Unless specified otherwise in this contract, the Contractor's standard commercial warranty as stated in the contractor's commercial pricelist will apply to this contract.
- b. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.
- c. Limitation of Liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.
- d. If inspection and repair of defective equipment under this warranty will be performed at the Contractor's plant, the address is as follows:

SHI International Corporation
290 Davidson Ave.
Somerset, NJ 08873

7. **PURCHASE PRICE FOR ORDERED EQUIPMENT**

The purchase price that the ordering activity will be charged will be the ordering activity purchase price in effect at the time of order placement, or the ordering activity purchase price in effect on the installation date (or delivery date when installation is not applicable), whichever is less.



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8. RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City or otherwise) covering work of this character, and shall include all costs, if any, of such compliance in the prices quoted in this offer.

9. TRADE-IN OF INFORMATION TECHNOLOGY EQUIPMENT

When an ordering activity determines that Information Technology equipment will be replaced, the ordering activity shall follow the contracting policies and procedures in the Federal Acquisition Regulation (FAR), the policies and procedures regarding disposition of information technology excess personal property in the Federal Property Management Regulations (FPMR) (41 CFR 101-43.6), and the policies and procedures on exchange/sale contained in the FPMR (41 CFR part 101-46).



**TERMS AND CONDITIONS APPLICABLE TO MAINTENANCE, REPAIR
SERVICE AND REPAIR PARTS/SPARE PARTS FOR GOVERNMENT-OWNED
GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY
EQUIPMENT (AFTER EXPIRATION OF GUARANTEE/WARRANTY
PROVISIONS AND/OR WHEN REQUIRED SERVICE IS NOT COVERED
BY GUARANTEE/WARRANTY PROVISIONS) AND FOR LEASED EQUIPMENT
(SPECIAL ITEM NUMBER 132-12)**

1. MAINTENANCE ORDER

- a. Agencies may use written orders, EDI orders, credit card orders, or BPAs, for ordering maintenance under this contract. The Contractor shall confirm orders within fifteen (15) calendar days from the date of receipt, except that confirmation of orders shall be considered automatic for renewals for maintenance (Special Item Number 132-12). Automatic acceptance of order renewals for maintenance service shall apply for machines which may have been discontinued from use for temporary periods of time not longer than 120 calendar days. If the order is not confirmed by the Contractor as prescribed by this paragraph, the order shall be considered to be confirmed by the Contractor.
- b. The Contractor shall honor orders for maintenance for the duration of the contract period or a lesser period of time, for the equipment shown in the pricelist. Maintenance service shall commence on a mutually agreed upon date, which will be written into the maintenance order. Maintenance orders shall not be made effective before the expiration of any applicable maintenance and parts guarantee/warranty period associated with the purchase of equipment. Orders for maintenance service shall not extend beyond the end of the contract period.
- c. Maintenance may be discontinued by the ordering activity on thirty (30) calendar days written notice, or shorter notice when agreed to by the Contractor; such notice to become effective thirty (30) calendar days from the date on the notification. However, the ordering activity may extend the original discontinuance date upon written notice to the Contractor, provided that such notice is furnished at least ten (10) calendar days prior to the original discontinuance date.
- d. Annual Funding. When annually appropriated funds are cited on a maintenance order, the period of maintenance shall automatically expire on September 30th of the contract period, or at the end of the contract period, whichever occurs first. Renewal of a maintenance order citing the new appropriation shall be required, if maintenance is to continue during any remainder of the contract period.
- e. Cross-year Funding Within Contract Period. Where an ordering activity's specific appropriation authority provides for funds in excess of a 12 month, fiscal year period, the ordering activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.
- f. Ordering activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of maintenance service, if maintenance is to be terminated at that time. Orders for continued maintenance will be required if maintenance is to be continued during the subsequent period.



2. LOSS OR DAMAGE

When the Contractor removes equipment to his establishment for repairs, the Contractor shall be responsible for any damage or loss, from the time the equipment is removed from the ordering activity installation, until the equipment is returned to such installation.

3. SCOPE

- a. The Contractor shall provide maintenance for all equipment listed herein, as requested by the ordering activity during the contract term. Repair service and repair parts/spare parts shall apply exclusively to the equipment types/models within the scope of this Information Technology Schedule.
- b. Equipment placed under maintenance service shall be in good operating condition.
 - (1) In order to determine that the equipment is in good operating condition, the equipment shall be subject to inspection by the Contractor, without charge to the ordering activity.
 - (2) Costs of any repairs performed for the purpose of placing the equipment in good operating condition shall be borne by the Contractor, if the equipment was under the Contractor's guarantee/warranty or maintenance responsibility prior to the effective date of the maintenance order.
 - (3) If the equipment was not under the Contractor's responsibility, the costs necessary to place the equipment in proper operating condition are to be borne by the ordering activity, in accordance with the provisions of Special Item Number 132-12 (or outside the scope of this contract).

4. RESPONSIBILITIES OF THE ORDERING ACTIVITY

- a. Ordering activity personnel shall not perform maintenance or attempt repairs to equipment while such equipment is under the purview of a maintenance order, unless agreed to by the Contractor.
- b. Subject to security regulations, the ordering activity shall permit access to the equipment which is to be maintained or repaired.

5. RESPONSIBILITIES OF THE CONTRACTOR

For equipment not covered by a maintenance contract or warranty, the Contractor's repair service personnel shall complete repairs as soon as possible after notification by the ordering activity that service is required. Within the service areas, this repair service should normally be done within 4 hours after notification.

6. INVOICES AND PAYMENTS

- a. Maintenance Service
 - (1) Invoices for maintenance service shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.



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- (2) Payment for maintenance service of less than one month's duration shall be prorated at 1/30th of the monthly rate for each calendar day.

**TERMS AND CONDITIONS APPLICABLE TO
PERPETUAL SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-33) AND
MAINTENANCE (SPECIAL ITEM NUMBER 132-34) OF GENERAL PURPOSE
COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE**

1. INSPECTION/ACCEPTANCE

The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any software that has been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming software at no increase in contract price. The ordering activity must exercise its post acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the software, unless the change is due to the defect in the software.

2. ENTERPRISE USER LICENSE AGREEMENTS REQUIREMENTS (EULA)

The Contractor shall provide all Enterprise User License Agreements in an editable Microsoft Office (Word) format.

3. GUARANTEE/WARRANTY

- a. Unless specified otherwise in this contract, the Contractor's standard commercial guarantee/warranty as stated in the contract's commercial pricelist will apply to this contract.

Ninety (90) Days on Media Only

- b. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.
- c. Limitation of Liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.

4. TECHNICAL SERVICES

The Contractor, without additional charge to the ordering activity, shall provide a hot line technical support number (800) 527-6389 for the purpose of providing user assistance and guidance in the implementation of the software. The technical support number is available from 9:00 AM EST to 5:00 PM EST.



5. SOFTWARE MAINTENANCE

- a. Software maintenance as it is defined: (select software maintenance type) :

X 1. Software Maintenance as a Product (SIN 132-32 or SIN 132-33)

Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that are included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for user's self diagnostics.

Software maintenance as a product does NOT include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance as a service.

Software Maintenance as a product is billed at the time of purchase.

X 2. Software Maintenance as a Service (SIN 132-34)

Software maintenance as a service creates, designs, implements, and/or integrates customized changes to software that solve one or more problems and is not included with the price of the software. Software maintenance as a service includes person-to-person communications regardless of the medium used to communicate: telephone support, on-line technical support, customized support, and/or technical expertise which are charged commercially. Software maintenance as a service is billed arrears in accordance with 31 U.S.C. 3324.

Software maintenance as a service is billed in arrears in accordance with 31 U.S.C. 3324.

- b. Invoices for maintenance service shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

6. PERIODS OF MAINTENANCE (132-34)

- a. The Contractor shall honor orders for periods for the duration of the contract period or a lesser period of time.
- b. Maintenance may be discontinued by the ordering activity on thirty (30) calendar days written notice to the Contractor.



- c. **Annual Funding.** When annually appropriated funds are cited on an order for maintenance, the period of the maintenance shall automatically expire on September 30 of the contract period, or at the end of the contract period, whichever occurs first.
Renewal of the maintenance orders citing the new appropriation shall be required, if the maintenance is to be continued during any remainder of the contract period.
- d. **Cross-Year Funding Within Contract Period.** Where an ordering activity's specific appropriation authority provides for funds in excess of a 12 month (fiscal year) period, the ordering activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.
- e. **Ordering activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of an order, if the maintenance is to be terminated at that time. Orders for the continuation of maintenance will be required if the maintenance is to be continued during the subsequent period.**

7. UTILIZATION LIMITATIONS - (132-33 AND 132-34)

- a. Software acquisition is limited to commercial computer software defined in FAR Part 2.101.
- b. When acquired by the ordering activity, commercial computer software and related documentation so legend shall be subject to the following:
 - (1) Title to and ownership of the software and documentation shall remain with the Contractor, unless otherwise specified.
 - (2) Software licenses are by site and by ordering activity. An ordering activity is defined as a cabinet level or independent ordering activity. The software may be used by any subdivision of the ordering activity (service, bureau, division, command, etc.) that has access to the site the software is placed at, even if the subdivision did not participate in the acquisition of the software. Further, the software may be used on a sharing basis where multiple agencies have joint projects that can be satisfied by the use of the software placed at one ordering activity's site. This would allow other agencies access to one ordering activity's database. For ordering activity public domain databases, user agencies and third parties may use the computer program to enter, retrieve, analyze and present data. The user ordering activity will take appropriate action by instruction, agreement, or otherwise, to protect the Contractor's proprietary property with any third parties that are permitted access to the computer programs and documentation in connection with the user ordering activity's permitted use of the computer programs and documentation. For purposes of this section, all such permitted third parties shall be deemed agents of the user ordering activity.



- (3) Except as is provided in paragraph 8.b(2) above, the ordering activity shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime Contractors, subcontractors and agents of the ordering activity who have the ordering activity's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the ordering activity to use software, documentation, or information therein, which the ordering activity may already have or obtains without restrictions.
- (4) The ordering activity shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred, or in cases of disaster recovery, the ordering activity has the right to transfer the software to another site if the ordering activity site for which it is acquired is deemed to be unsafe for ordering activity personnel; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; to transfer a copy of the software to another site for purposes of benchmarking new hardware and/or software; and to modify the software and documentation or combine it with other software, provided that the unmodified portions shall remain subject to these restrictions.
- (5) "Commercial Computer Software" may be marked with the Contractor's standard commercial restricted rights legend, but the schedule contract and schedule pricelist, including this clause, "Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersede any different or additional terms and conditions included in the standard commercial legend.

8. SOFTWARE CONVERSIONS - (132-33)

Full monetary credit will be allowed to the ordering activity when conversion from one version of the software to another is made as the result of a change in operating system, or from one computer system to another. Under a perpetual license (132-33), the purchase price of the new software shall be reduced by the amount that was paid to purchase the earlier version.

9. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY

The Contractor shall include, in the schedule pricelist, a complete description of each software product and a list of equipment on which the software can be used. Also, included shall be a brief, introductory explanation of the modules and documentation which are offered.



10. RIGHT-TO-COPY PRICING

The Pricelist reflects a discounted price for a right-to-copy license.

**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF
TRAINING COURSES FOR GENERAL PURPOSE COMMERCIAL
INFORMATION TECHNOLOGY EQUIPMENT AND SOFTWARE
(SPECIAL ITEM NUMBER 132-50)**

1. SCOPE

- a. The Contractor shall provide training courses normally available to commercial customers, which will permit ordering activity users to make full, efficient use of general purpose commercial IT products. Training is restricted to training courses for those products within the scope of this solicitation.
- b. The Contractor shall provide training at the Contractor's facility and/or at the ordering activity's location, as agreed to by the Contractor and the ordering activity.

2. ORDER

Written orders, EDI orders (GSA Advantage! and FACNET), credit card orders, and orders placed under blanket purchase agreements (BPAs) shall be the basis for the purchase of training courses in accordance with the terms of this contract. Orders shall include the student's name, course title, course date and time, and contracted dollar amount of the course.

3. TIME OF DELIVERY

The Contractor shall conduct training on the date (time, day, month, and year) agreed to by the Contractor and the ordering activity.

4. CANCELLATION AND RESCHEDULING

- a. The ordering activity will notify the Contractor at least seventy-two (72) hours before the scheduled training date, if a student will be unable to attend. The Contractor will then permit the ordering activity to either cancel the order or reschedule the training at no additional charge. In the event the training class is rescheduled, the ordering activity will modify its original training order to specify the time and date of the rescheduled training class.
- b. In the event the ordering activity fails to cancel or reschedule a training course within the time frame specified in paragraph a, above, the ordering activity will be liable for the contracted dollar amount of the training course. The Contractor agrees to permit the ordering activity to reschedule a student who fails to attend a training class within ninety (90) days from the original course date, at no additional charge.
- c. The ordering activity reserves the right to substitute one student for another up to the first day of class.



- d. In the event the Contractor is unable to conduct training on the date agreed to by the Contractor and the ordering activity, the Contractor must notify the ordering activity at least seventy-two (72) hours before the scheduled training date.

5. FOLLOW-UP SUPPORT

The Contractor agrees to provide each student with unlimited telephone support for a period of one (1) year from the completion of the training course. During this period, the student may contact the Contractor's instructors for refresher assistance and answers to related course curriculum questions.

6. PRICE FOR TRAINING

The price that the ordering activity will be charged will be the ordering activity training price in effect at the time of order placement, or the ordering activity price in effect at the time the training course is conducted, whichever is less.

7. INVOICES AND PAYMENT

Invoices for training shall be submitted by the Contractor after ordering activity completion of the training course. Charges for training must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

8. FORMAT AND CONTENT OF TRAINING

- a. The Contractor shall provide written materials (i.e., manuals, handbooks, texts, etc.) normally provided with course offerings. Such documentation will become the property of the student upon completion of the training class.
- b. ****If applicable**** For hands-on training courses, there must be a one-to-one assignment of IT equipment to students.
- c. The Contractor shall provide each student with a Certificate of Training at the completion of each training course.
- d. The Contractor shall provide the following information for each training course offered:
 - (1) The course title and a brief description of the course content, to include the course format (e.g., lecture, discussion, hands-on training);
 - (2) The length of the course;
 - (3) Mandatory and desirable prerequisites for student enrollment;
 - (4) The minimum and maximum number of students per class;
 - (5) The locations where the course is offered;
 - (6) Class schedules; and
 - (7) Price (per student, per class (if applicable)).



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- e. For those courses conducted at the ordering activity's location, instructor travel charges (if applicable), including mileage and daily living expenses (e.g., per diem charges) are governed by Pub. L. 99-234 and FAR Part 31.205-46, and are reimbursable by the ordering activity on orders placed under the Multiple Award Schedule, as applicable, in effect on the date(s) the travel is performed. Contractors cannot use GSA city pair contracts. The Industrial Funding Fee does NOT apply to travel and per diem charges.



U.S. General Services Administration

***SHI INTERNATIONAL CORP's
AUTHORIZED GSA SCHEDULE CONTRACT PRICING***

Metropolitan Atlanta Rapid Transit

Resolution Authorizing Award of a Contract for the Procurement of Software for Item 13
the Oracle Enterprise Applications Security Management and Supplementary Conditions -
Renew Maintenance Support for Oracle Database, ERP, and ID Management
Licenses

DATE:
AGENDA ITEM NO.:
REGULAR/EXECUTIVE:

10/13/2010

Regular

**RESOLUTION AUTHORIZING AWARD OF A CONTRACT FOR THE
PROCUREMENT OF SOFTWARE FOR THE ORACLE ENTERPRISE APPLICATIONS
SECURITY MANAGEMENT
GSA SCHEDULE GS-35F-0009T**

WHEREAS, the Authority's Department of Technology has identified a need for the procurement of software for Oracle Enterprise Applications Security Management; and,


WHEREAS, it has been determined by the Authority's staff that the Oracle software can be purchased under General Services Administration Schedule GS-35F7-0009T; and,

WHEREAS, Section 14(l) of the MARTA Act permits the Authority to purchase without competitive bidding any goods, supplies, equipment, other property, or services from any vendor who at the time of such purchase, has in effect a contract or schedule for the sale thereof to the United States Government, provided that such purchase is made pursuant to the prices, terms and conditions of such contract or schedule and the Authority receives all the benefits thereof; and,

WHEREAS, the Authority's staff recommends award of the Contract to Oracle, a General Services Administration Vendor.

RESOLVED THEREFORE, by the Board of Directors of the Metropolitan Atlanta Rapid Transit Authority that the General Manager/CEO or her delegate be, and hereby is, authorized to execute a Contract consistent with the prices, terms, and conditions of General Services Administration Schedule GS-35F-0009T with Oracle in the amount of \$1,552,707.44.

APPROVED AS TO LEGAL FORM:



Counsel, Metropolitan Atlanta
Rapid Transit Authority

**SUPPLEMENTARY CONDITIONS
RENEW MAINTENANCE SUPPORT FOR ORACLE DATABASE,
ERP, AND ID MANAGEMENT LICENSES**

REQUEST FOR PRICE PROPOSAL P27978

SC1. DESCRIPTION

The Contract consists of licensing and support services for the continued use of Oracle's Database as defined in the attached Statement of Work, Attachment "A".

SC2. CONTRACT TERM

In addition to Article 4, CONTRACT TERM, of the General Conditions, the following shall apply:

The term of the Contract shall be for a term of four (4) years. Further details are described in Attachment "B".

SC3. PAYMENT

The payment/billing terms are quarterly in arrears for technical support services that have been provided.

Each invoice shall show the number of this Contract, and shall be sent or delivered in duplicate to:

MARTA
2424 Piedmont Road, N.E.
Atlanta, Georgia 30324-3330
Attention: Markisa S. Davis, Contract Specialist I
Contracts & Procurement and Material

The Authority will pay each invoice properly rendered within thirty (30) days from date of invoice.

SC4. INSURANCE REQUIREMENTS

In addition to Article 6 of the General Conditions, INSURANCE, the following shall apply:

- (a) The Contractor shall maintain in effect during the term of the Contract, at its own expense, at least the following coverage and limits of insurance:
 - 1. General Liability (Public Liability), Bodily Injury and Property Damage, including Products/Completed Operations, and Contractual Liability covering the indemnification herein, with not less than \$1,000,000 single limits per occurrence.
 - 2. Automobile, Bodily Injury and Property Damage Liability, with not less than \$2,000,000 single limits.
 - 3. Workers' Compensation – Georgia Statutory coverage and Employers Liability with not less than \$1,000,000 limit.

- (b) Coverage shall be secured through insurers under forms of policies acceptable to the Authority, and shall contain provisions that such insurance is non-cancelable without at least thirty (30) days prior written notice to MARTA, Office of Risk Management, 2424 Piedmont Road, N.E., 6th Floor, Atlanta, Georgia 30324-3330.
- (c) Prior to issuance of the Acceptance of Proposal, the Contractor shall furnish evidence of the above. Such evidence shall be in the form and format requested by the Authority and shall be furnished to the Director of Contracts & Procurement and Material, 2424 Piedmont Road, N.E., Atlanta, Georgia 30324-3330.
- (d) If original insurance will expire during the term of the Contract, Contractor shall furnish evidence of renewal of such insurance to the Authority's Contract Administrator prior to such expiration.

SC5. CHANGES

The Authority shall have the right to direct changes in the services to be performed under the Contract, or in the manner in which or the time or times at which they are to be performed, provided that no such changes shall materially alter the general scope thereof. All changes to this Contract must be in writing, executed by the appropriate officer or employee of the Authority based upon the Authority's delegations of authority. The Contractor shall not be compensated for performance of any services or delivery of any goods not authorized by written change order executed as described herein.

(a) If any change under this Paragraph causes an increase or decrease in the Contractor's cost of performing the Contract, whether directly or indirectly, the Contract price shall be adjusted to compensate the Contractor for the additional costs actually and reasonably incurred or reasonably anticipated to be incurred in order to perform the Contract as changed, and to credit the Authority for any costs reasonably to be saved. The Contractor shall have the responsibility, as a condition of any increase in price, of showing by documentary evidence satisfactory to the Authority the amount of any compensation due hereunder.

(b) If any change under this Paragraph delays the performance of any work under the Contract, the schedule will be extended as reasonably required in order to perform the Contract as changed; provided, that the Contractor shall have the responsibility to demonstrate such delay by such analysis, documentation, or other evidence as the Authority may reasonably require.

(c) The Contractor shall be entitled to adjustments in compensation or to the schedule determined in accordance with this Paragraph, and to any other modification of the Contract or other relief so determined, only for changes directed or accepted by the Authority in writing expressly as changes under this Paragraph. No other order or statement, oral or written, or other conduct of the Authority or of its employees or representatives shall be considered to be a change under this Paragraph, or to entitle the Contractor to an adjustment to the Contract price or schedule, or to other relief, as provided herein.

(d) No change under this paragraph shall be effective until all requirements of the Authority's Technology Change Management process and Technology's

Project Management processes have been met. The Contractor shall be provided with a copy of said processes and is expected to fully comply therewith. It shall be the Contractor's affirmative duty to ascertain that changes directed under this paragraph have been properly documented and approved through the change management process and Project Management processes prior to commencement of work.

SC6. AUDIT AND ADJUSTMENT

The Authority, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Contract that support Contractor's invoice(s) under this Contract, for the purpose of making audit examination, excerpts, and transcription.

The data supporting the Contractor's pricing of adjustments are subject to verification by the Authority's Auditors, unless such pricing adjustments are based upon established catalog or market prices of commercial items, or unit prices of services, sold in substantial quantities to the general public, or are set by law or regulation. In the case of any cost or price based upon established catalog or market prices or unit prices for services, the Authority shall be provided such evidence as reasonably necessary to verify that the items or services are, in fact, sold at such prices in substantial quantities to the general public. All data necessary for audit verification will be made available by the Contractor.

SC7. INTEGRATION

This Contract, including the attached General and Supplementary Conditions, Contractor's Pricing and Service Contract #s 16338013, 17792975, 3425284, and 14040000, constitute the entire Contract between the parties, and excludes and supersedes any statement or undertaking, oral or written, not included herein. The Contract cannot be changed, modified, or amended except by Contract Modification signed on behalf of the Authority by its duly authorized representative.

SC8. WAIVER

No waiver of any term or condition of the Contract on any occasion shall be deemed to be a waiver of any other term or condition hereof, or of the same or any other such term or condition on any other occasion. If upon the occurrence of any default the Authority shall waive the same, or shall elect not to terminate the Contract, such waiver or election shall not be a waiver of any other default or an election not to terminate because of any other default, nor a waiver of or election not to terminate because of a like default on another occasion.

SC9. SUSPENSION OF WORK DURING ALERTS ISSUED BY HOMELAND SECURITY ADVISORY SYSTEM – This Article supercedes Article 11 of the General Conditions.

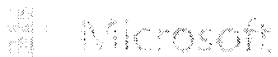
When the Secretary of Homeland Security announces an alert under the National Terrorism Advisory Service (NTAS), whether such alert is issued publically or otherwise, the Authority shall have the right to suspend or delay completion of work under this Contract and take additional action as the Authority deems necessary to secure the Authority's facilities as follows:

Elevated Threat Alert: the Authority shall have the right to delay or suspend work, as determined in its sole discretion, monitor all work areas and Contractor's personnel and equipment entering work areas until such alert expires.

Imminent Threat Alert: the Authority shall have the right to suspend all non-critical maintenance and capital work, as determined in its sole discretion, and to restrict or deny access to work areas until such alert expires.

The Authority shall provide notice to the Contractor, as soon as is practicable, of the receipt of a NTAS Alert and the effect such alert will have upon the work of the Contractor. To facilitate the provision of such notice, the Contractor is required to provide the Contract Administrator with emergency contact information in the form of cell phone numbers, facsimile numbers and e-mail addresses to which such notices may be forwarded, and to keep said numbers current. Notice or attempted notice given to the most recent points of contact shall be deemed to be sufficient notice to the Contractor that work shall be delayed or suspended in accordance with this paragraph. Any delay or suspension of work required under this paragraph shall not entitle the Contractor to any claims for additional compensation under this contract.

Should the Federal Transit Administration (FTA) or the Secretary of Homeland Security adopt a different method of identifying threats to homeland security, or if the FTA or the Secretary of Homeland Security adopt rules binding upon the Authority for the suspension of work which differ from those set forth herein, this Contract shall be modified by written agreement of the parties to reflect such changes."



Enterprise Enrollment Multi-Tenant Enrollment Amendment M130

Enrollment Number
Microsoft to complete for initial term
Partner to complete for renewal

6490656

002-shancock-s-502

This amendment ("Amendment") is entered into between the parties identified on the attached program signature form. It amends the Enrollment or Agreement identified above. All terms used but not defined in this Amendment will have the same meanings provided in that Enrollment or Agreement.

1. Definitions.

- a. "Tenant" means the environment established by Microsoft on its multi-tenant servers from which Online Services are hosted for Enrolled Affiliate's Enterprise. More information about Tenants may be found in the applicable Services Descriptions posted to the following or a successor site Microsoft identifies: <http://technet.microsoft.com/en-us/library/jj819284.aspx> and included below in Section "Technical considerations for multi-Tenant deployment".
- b. "Tenant Administrator" means any licensed user of a Tenant that has their role set to "Global Administrator" in their profile settings in the Tenant User Administration page of the tenant portal. A Tenant can have multiple users configured as "Global Administrator" and in this case there is no differentiation of technical capabilities between them, they are each Tenant Administrators for that Tenant and can perform their technical functions unilaterally. The login credentials must be unique across the entire global system for each user, including but not limited to, users that are configured as Tenant Administrators.

2. Tenant Enrollment terms.

- a. Customer Data in each Tenant is logically isolated from Customer Data in other Tenants, and each Tenant is managed separately by Tenant Administrator(s) using entirely different login credentials. Two Tenants may not share Tenant Administrator(s) with the same login credentials or share data objects such as address lists or SharePoint Online sites.

To enable multiple Tenants for Online Services Plans, as identified in the Product List, Enrolled Affiliate can request assignment of an enrollment number ("Tenant Enrollment") for each Affiliate or subset of Affiliates included in its Enterprise that require separate Tenants ("Tenant Affiliate"). Tenant Enrollments may only be established for Affiliates included in the Enrolled Affiliate's Enterprise in the "Enrolled Affiliate's Enterprise" section of the Enrollment.

To facilitate Tenant Enrollments for Tenant Affiliates, the parties agree that an enrollment number will be assigned for each Tenant Affiliate listed in the table in Appendix A to this amendment. Enrolled Affiliate hereby accepts the terms and conditions of the Lead Enrollment on behalf of each Tenant Affiliate. Enrolled Affiliates represents and warrants that it has the right, power, and authority to accept on behalf of Tenant Affiliate.

- b. Notwithstanding that the Tenant Affiliates listed in the table in Appendix A will appear as Enrolled Affiliates in Microsoft's Volume Licensing Servicing Center ("VLSC"), Enrolled Affiliate acknowledges and agrees that it is the sole Enrolled Affiliate, and sole Licensee, with respect to each Tenant Enrollment, and Enrolled Affiliate will be solely responsible for each Tenant Enrollment's compliance with the terms and conditions of the Lead Enrollment and the associated Enterprise Agreement.
- c. Price level under each Tenant Enrollment will be the same level that is reflected on the Product Selection Form and is based upon the aggregate of License and Software

Assurance quantity of the Lead Enrollment and each Tenant Enrollment as described in the Product Selection Form or as described in other agreement documents.

- d. The effective date, term, anniversary dates and payment dates for each Tenant Enrollment shall coincide with the Lead Enrollment identified above.
- e. All Product Licenses that are not covered in the scope of the Online Services must be purchased under the Lead Enrollment, including Enterprise Products and Additional Products.
- f. Enrolled Affiliate must submit an annual order for each Tenant Enrollment per the terms of the Lead Enrollment and must comply with the requirements set forth in the Lead Enrollment under the Section titled "Order Requirements", with the exception of the initial order requiring a minimum of 250 Licenses for each Tenant Enrollment and (if applicable) the submission of an Update Statement under each Tenant Enrollment. The initial order and all subsequent orders will be submitted separately for each respective Tenant Enrollment. For any included Affiliate that remains licensed with on-premise Licenses and does not require a separate Tenant Enrollment, orders must be placed under the Lead Enrollment.
- g. If the Enrolled Affiliate is Transitioning Licenses (as contemplated in the Lead Enrollment), Licenses from which the Enrolled Affiliate is Transitioning will be reduced from the Lead Enrollment identified above and the Licenses to which the Enrolled Affiliate is Transitioning will be ordered under the specific Tenant Enrollment(s).
- h. Due to technical considerations for multi-tenant deployment, described below, Licenses may not be reassigned between the Tenant Affiliates.
- i. Each Tenant Enrollment may be managed separately in VLSC (or a successor site) by the individuals whose names and contact information are identified in Appendix A, or by other individuals to whom each Tenant Affiliate may delegate such management responsibilities, to the same extent as if such Tenant Affiliate had enrolled separately as an Enrolled Affiliate under the Enterprise Agreement pursuant to its own Enrollment.
- j. Enrolled Affiliate acknowledges and agrees that free media (e.g., CD/DVD-ROM) kits will not be shipped to each Tenant Affiliate during the initial term or any renewal term of a Tenant Enrollment. If electing physical media, this may only be elected by the Enrolled Affiliate for the Lead Enrollment.
- k. Enrollment acceptance and order reminders will be sent to contact(s) identified on the Lead Enrollment only.

3. Technical considerations for multi-Tenant deployment.

Each Tenant Affiliate will be assigned a separate Tenant, provided that it complies with the terms and conditions of this amendment. Each Tenant will require Tenant Administrator(s) with unique login credentials, and each Tenant Affiliate will manage its Tenant separately in the administrator console. This will permit and require each Tenant Affiliate to be managed and operated independently of the other. Due to the independent nature of each Affiliate Tenant from the other, there will be a number of technical boundaries associated with managing or using the tenants together, including but not limited to those in the following list:

- a. No ability to provide consolidated administrative reporting or control across Tenants.
- b. No automated ability to move users between Tenants. For example, if a user moves from one affiliate to another, this will require Tenant Administrators to manually create new User accounts, download mail to PST files and import, and delete old user.
- c. No consolidated Global Address List for all Tenants.
- d. No ability for a single individual with the same Tenant Administrator login credentials to manage more than one Tenant. However it is possible for a single person to have unique login credentials for each tenant as long as they track their own login credentials.
- e. No ability to share domain names across Tenants.

- f. No ability to share SIP domains; each Tenant will have a separate Skype for Business Online SIP domain.
- g. Separate Licenses required if users in one Tenant need to access SharePoint Online in another Tenant.
- h. No master SharePoint content index combining all Tenants; each Tenant's index will be restricted to that Tenant.
- i. Additional on premise configuration required for directory synchronization; some scenarios may not be possible. Affiliate is advised to consult with technical specialists prior to signing this Amendment to determine if their proposed configuration will work.

4. Common Enrollment information for Tenant Enrollment based upon Enrollment.

The following information will be applied to all Tenant Enrollments based upon the information provided in the Lead Enrollment, as well as any change requested to such information. Changes to individual Tenant Enrollments for these details will not be allowed.

- a. Primary Contact. For purposes of delineating enrollments, Tenant Enrollments will be delineated uniquely in the enrollment details to be displayed on VLSC with the following format "Tenant-Lead Enrollment number-Tenant Affiliate Entity Name". This entity name must be provided in Appendix A for this Amendment under Tenant Affiliate Entity Name. The individual contact identified as Primary contact will be the same individual with the same physical address across all Tenant Enrollments as identified on the Lead Enrollment.
- b. Notices Contact and Online Administrator
- c. Microsoft Account Manager
- d. Media Delivery Address
- e. Billing contact and Software Advisor/Reseller information
- f. Financing and Tax Elections as provided in the Lead Enrollment

5. Online Services Manager.

For each Tenant Enrollment, a unique Online Services Manager must be provided in Appendix A. This contact is authorized to (1) manage the Online Services ordered under the Enrollment and (2) reserve Licenses for eligible Online Services, including adding or reassigning Licenses, stepping-up, and initiating Transitions prior to a true-up order.

Appendix A

Prior Tenant Enrollment number (if renewal)	Tenant Enrollment Number (Microsoft to Complete)	Profile ID	Purchase Order Number	Tenant Affiliate Entity Name	Online Services Manager Contact Details
		MARTAG Tenant		MARTAG Tenant	<p>Contact name: First: Ming Last: Hsi Contact email address: MHsi@itsmarta.com Street address: 2424 Piedmont Rd City: Atlanta State/Province: GA Postal code: 30324-3330 (For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx) Country: United States Phone: 404-848-5769 Fax: Is this contact is a third party (not Enrolled Affiliate)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Warning: This contact receives personally identifiable information of the Customer and its Affiliates.</p>
					<p>Contact name: First: Last: Contact email address: Street address: City: State/Province: Postal code: (For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx) Country: Phone: Fax: Is this contact is a third party (not Enrolled Affiliate)? <input type="checkbox"/> YES <input type="checkbox"/> NO Warning: This contact receives personally identifiable information of the Customer and its Affiliates.</p>

Prior Tenant Enrollment number (if renewal)	Tenant Enrollment Number (Microsoft to Complete)	Profile ID	Purchase Order Number	Tenant Affiliate Entity Name	Online Services Manager Contact Details
					Contact name: First: Last: Contact email address: Street address: City: State/Province: Postal code: - (For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx) Country: Phone: Fax: Is this contact is a third party (not Enrolled Affiliate)? <input type="checkbox"/> YES <input type="checkbox"/> NO Warning: This contact receives personally identifiable information of the Customer and its Affiliates.
					Contact name: First: Last: Contact email address: Street address: City: State/Province: Postal code: - (For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx) Country: Phone: Fax: Is this contact is a third party (not Enrolled Affiliate)? <input type="checkbox"/> YES <input type="checkbox"/> NO Warning: This contact receives personally identifiable information of the Customer and its Affiliates.

Prior Tenant Enrollment number (if renewal)	Tenant Enrollment Number (Microsoft to Complete)	Profile ID	Purchase Order Number	Tenant Affiliate Entity Name	Online Services Manager Contact Details
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					Contact name: First: Last: Contact email address: Street address: City: State/Province: Postal code: - (For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx) Country: Phone: Fax: Is this contact is a third party (not Enrolled Affiliate)? <input type="checkbox"/> YES <input type="checkbox"/> NO Warning: This contact receives personally identifiable information of the Customer and its Affiliates.

Except for changes made by this Amendment, the Enrollment or Agreement identified above remains unchanged and in full force and effect. If there is any conflict between any provision in this Amendment and any provision in the Enrollment or Agreement identified above, this Amendment shall control.

This Amendment must be attached to a signature form to be valid.



Northeast Illinois Regional Commuter Railroad Corporation (Metra)

Agreement for Professional Services, March 24, 2016, between Northeast
Illinois Regional Commuter Railroad Corporation (Metra) and Kronos Talen
Management, LLC

Item 14

AGREEMENT
FOR PROFESSIONAL SERVICES

This Agreement is entered into this 24th day of March, 2016 in Chicago, Illinois, by and between the Northeast Illinois Regional Commuter Railroad Corporation d/b/a Metra, Metropolitan Rail ("Metra"), a public corporation under Illinois law, and **Kronos Talent Management, LLC** ("Consultant"), having offices located at 11850 SW 67th Avenue, Portland, OR 97223, Consultant and Metra are sometimes collectively referred to as "**Parties.**" In consideration of the promises and agreements set forth, the Parties agree:

1. SCOPE AND DESCRIPTION OF SERVICES.

Consultant will perform the following services ("**Work**"): **Kronos Workforce Talent Acquisition Services** as set forth in the documents forming this Exhibit 1:

Exhibit 1-A – Affidavits & Certifications
Exhibit 1-B – Services Agreement Proposal

2. COMPENSATION.

Metra agrees to pay, and Consultant agrees to accept as full payment for the Work, the prices set forth in Proposal attached as Exhibit 1 of this Agreement. The full payment for the Work shall be **\$162,992.00** ("**Total Price**"). The Total Price also includes the cost of all applicable taxes (where Metra is not exempt), and other charges of every kind and nature. The Total Price shall not include, and Metra shall not pay, taxes or fees from which Metra is exempt. Metra is exempt from various federal taxes, all state and unit of local government taxes, and registration and license fees. Invoices must be addressed to the "Accounts Payable Department" for payment and must show **Metra Contract No. K60155 and S60155**. If Consultant fails to follow the instructions under this paragraph, or any instructions subsequently issued for its invoices, Metra may, at its sole discretion, reject invoices for that billing period, and withhold payment of those invoices until such billing period as Consultant has complied with the requirements of this paragraph. An incomplete or inaccurate invoice will be deemed received only when completed and corrected to Metra's satisfaction. However, if the omission or inaccuracy is, in Metra's sole judgment, minor and inconsequential, Metra will use reasonable efforts to ascertain and pay the complete and accurate portion of the invoice. Payments are subject to audit and inspection as set forth in Section 9.B below.

3. PERFORMANCE OF THE WORK.

The term of this Agreement shall be from the date of execution until 1,095 days.

4. **STATE OF ILLINOIS GIFT BAN ACT.** Consultant shall comply with the applicable provisions of the State of Illinois Gift Ban Act, 5 ILCS 430 (Article 10) et seq., and refrain from providing gifts to Metra's employees in violation of Metra's Gift Ban Policy, which is incorporated herein by reference.

5. **EMPLOYMENT AND CIVIL RIGHTS.**

A. **ILLINOIS EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS.**

In the event of Consultant's non-compliance with the provisions of this equal employment opportunity clause, the Illinois Human Rights Act ("Act"), or the rules and regulations of the Illinois Department of Human Rights ("Department"), Consultant may be declared ineligible for future contracts or subcontracts with the State of Illinois, or any of its political subdivisions, or municipal corporations; and this Agreement may be canceled or voided in whole or in part; and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this Agreement, Consultant agrees as follows:

1. That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service, and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate action to rectify such underutilization;

2. That, if it hires additional employees in order to perform this Agreement or any portion thereof, it will determine the availability (in accordance with the Department's rules and regulations) of minorities and women in the area(s) from which it may reasonably recruit, and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized;

3. That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service;

4. That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of Consultant's obligations under the Act and the Department's rules and regulations. If any such labor organization or representative fails or refuses to cooperate with Consultant in its efforts to comply with such Act and rules and regulations, Consultant will promptly so notify the Department and Metra, and will recruit employees from other sources when necessary to fulfill its obligations thereunder;

EXHIBIT 1

5. That it will submit reports as required by the Department's rules and regulations, furnish all relevant information as may from time to time be requested by the Department or Metra, and in all respects comply with the Act and the Department's rules and regulations;

6. That it will permit access to all relevant books, records, accounts, and work sites by personnel of Metra and the Department for purposes of investigation to ascertain compliance with the Act and the Department's rules and regulations;

7. That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor in the same manner as with other provisions of this Agreement. Consultant will be liable for compliance with applicable provisions of this clause by such subcontractors, and further it will promptly notify Metra and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, Consultant will not utilize any subcontractor declared by the Department to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations; and

8. That Consultant will have written sexual harassment policies that shall include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under state law; (iii) a description of sexual harassment, utilizing examples; (iv) Consultant's internal complaint process including penalties; (v) the legal recourse, investigative, and complaint process available through the Department and the Human Rights Commission ("Commission"); (vi) directions on how to contact the Department and Commission; and (vii) protection against retaliation as provided by Section 6-101 of the Act. A copy of the policies shall be provided to the Department upon request.

B. FEDERAL CIVIL RIGHTS REQUIREMENTS. The requirements of this Section flow down to Consultant and its subcontractors at every tier.

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, Consultant 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, Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

EXHIBIT 1

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, Consultant 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 activities undertaken in the course of the project. Consultant 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, Consultant agrees to comply with any implementing requirements FTA may issue.

b. Age - In accordance with 29 U.S.C. § § 621 et seq., 42 U.S.C. §§ 6101 et seq., and Federal transit law at 49 U.S.C. § 5332, Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Consultant 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, Consultant 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, Consultant agrees to comply with any implementing requirements FTA may issue.

3. Consultant agrees to comply with all applicable requirements of any other nondiscrimination statute(s) that may apply to the project, and Consultant 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.

6. RECORDS.

A. RETENTION. Consultant shall maintain records, including those records required under the Compensation Section above, to show its time and costs, and shall submit monthly progress reports describing the portion of the Work already performed and anticipated during the next time period. On 15 days notice from Metra, all time sheets, billings, and other documentation used in preparing said progress reports shall be made available for inspection, copying, and auditing by Metra at any time during normal business hours, at 547 West Jackson Boulevard, Chicago, Illinois 60661. Consultant shall maintain, for a minimum of five (5) years after the completion of this Agreement, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with this Agreement. Failure to maintain the books, records, and supporting documents required by this Section shall establish a presumption in favor of Metra for the recovery of any funds paid by Metra under this Agreement for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

B. FOIA REQUIREMENTS. Metra is subject to the Illinois Freedom of Information Act (5 ILCS 140/1 et seq., "FOIA"), and pursuant to the FOIA, this Agreement is subject to disclosure. In addition, from time to time, Metra may be required to produce certain "public records," as defined in Section 2 of the FOIA, that are in the possession of or under the control of [Company]. Upon Metra's notification to [Company] of a request pursuant to the FOIA, [Company] will, within two (2) business days of Metra's notice, either (i) produce the public records, (ii) notify Metra, in writing, that additional time is required to produce the public records, or (iii) notify Metra, in writing, that the public records do not exist or have been destroyed. In the event that [Company] requires additional time to produce the public records, the written notification under (ii), above, will provide an explanation for the delay and the date when the public records will be received from [Company] by Metra. [Company] agrees that in no event shall a delay to produce public records exceed five (5) business days.

If any failure by [Company] to timely comply with a request for public records results in any adverse consequences to Metra, including, but not limited to, fines or penalties being imposed on Metra, said failure by [Company] shall be deemed a material breach of this Agreement.

7. CONTRACT CHANGES. By written order, at any time, and without notice to the surety, the Executive Director may, subject to all appropriate adjustments, make changes to the general scope of this Agreement ("Change Order").

A. CHANGE ORDER PROCEDURES.

1. Either Metra or Consultant may initiate a Change Order.
2. Metra shall prepare and when appropriate, issue the written Change Order in conformance with Metra's applicable administrative procedures for Change Orders. Consultant shall supply all requested information, proposals, and any supporting back-up documentation.


8. METRA'S TAX EXEMPTION IDENTIFICATION NUMBER.


EXHIBIT 1

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS
AGREEMENT ON THE DATES RECITED BELOW:

NORTHEAST ILLINOIS REGIONAL
COMMUTER RAILROAD
CORPORATION D/B/A METRA

CONSULTANT

BY: 
Signature
Donald A. Exeno
PRINT NAME

BY: 
Signature of Authorized Representative
Annette Kuhn
PRINT NAME

TITLE: EXECUTIVE DIRECTOR

TITLE: Director, Product Services

DATE: 3/24/16

COMPANY NAME: Kronos Talent Management LLC
ADDRESS: 11850 SW 67th Ave
Portland, OR 97223

PHONE/FAX: 503.546.3214

EMAIL: Annette.Kuhn@kronos.com

DATE: 02/08/16

EXHIBIT I-A
AFFIDAVITS/CERTIFICATION

AFFIDAVITS/CERTIFICATIONS FOR CONTRACTORS

FILL IN THE BLANKS AND SUBMIT THIS FORM WITH BID.

HAVE APPLICABLE SIGNATURES NOTARIZED.

STATE OF Oregon

COUNTY OF Washington

The undersigned represents that s/he is Annette Kuhn ("Undersigned") the
(Print Name)

Director Product Services of Kronos Talent Management, LLC
(Print "President" or Other Proper Title) (Print Name of Entity)

"COMPANY" OR "UNDERSIGNED" IS AUTHORIZED TO ATTEST ON BEHALF OF HIMSELF/HERSELF AND SAID COMPANY BY STATING AS FOLLOWS:

A. PROHIBITED INTERESTS AND CONFLICTS OF INTEREST.

1. PUBLIC OFFICER PROHIBITED ACTIVITIES ACT AFFIDAVIT

The Company is the bidder submitting this bid and that the proposer is in compliance with provisions set forth in the Public Officer Prohibited Activities, 50 ILCS 105/0.01, et seq., and to the best of its knowledge and belief, no person holding office, either by election or appointment under the laws or constitution of this State, is in any manner interested, either directly or indirectly, in his/her own name or in the name of any other person, association, trust, or corporation, in this contract or the performance of any work/services under this contract which such officer has been or may be called upon to act or vote.

2. METRA'S CONFLICTS OF INTEREST ORDINANCE

Pursuant to 64.03 of Metra's Bidding Regulations:

Members of the Board, officers, and employees of Metra, their spouses, their children, their parents, their brothers and sisters and their children, are prohibited from having or acquiring any contract or any direct pecuniary interest in any contract which will be wholly or partially performed by the payment of funds or the transfer of property of the Metra. Any firm, partnership, association, or corporation from which any member of the Board, officer, or employee of the Metra is entitled to receive more than seven and one half percent (7-1/2%) of the total distributable income, is prohibited from having or acquiring any contract or direct pecuniary interest in any contract which will be performed in whole or in part by payment of funds or the transfer of property of Metra.

Any firm, partnership, association, or corporation from which members of the Board, officers, employees of Metra, their spouses, their children, their parents, their brothers and sisters and their children, are entitled to receive in the aggregate more than fifteen percent (15%) of the total distributable income, is prohibited from having or acquiring any contract or direct pecuniary interest in any contract which will be performed in whole or in part by the payment of funds or the transfer of property of Metra.

Board members and employees are prohibited from participating in the selection, award, or administration of a contract supported by Metra funds, federal funds, or any other grant funds if a real conflict of interest or to his or her knowledge; an apparent conflict of interest would be involved. A real or apparent conflict of interest would arise when any of the following has an interest in the entity selected for award: (a) an employee, officer, board member, or agent; (b) any member of his or her immediate family (as listed above in the first paragraph); (c) his or her business partner; or (d) an organization that employs; or intends to employ, any of the above. "Apparent" is defined under this paragraph as being one in which a person is an officer or director of an entity, or has an interest in the ownership or profits of an entity, and such interest appears substantial to a reasonable person. "Interest" is defined under this paragraph as a direct or indirect entitlement to receive any of the entity's profits.

In addition, Undersigned states that no officer of Metra has represented, either as an agent or otherwise, the proposer with respect to this application or bid for contract. Finally, Undersigned states that to best of its knowledge and belief, no officer of Metra has received or been offered from any person on behalf of the proposer, either directly or indirectly, any money or other thing of value as a gift, bribe, or means of influencing any vote or action in any official's capacity. Furthermore, Undersigned certifies that, to the best of its knowledge, it is in compliance with Metra's Bidding Regulations and is unaware of any of the foregoing persons having an interest prohibited by Section 4.03 of the Bidding Regulations.

B. NON-COLLUSION AFFIDAVIT.

The Company is the bidder submitting this bid and that such bid was not made in the interest of or on behalf of any undisclosed person, partnership, company, organization or corporation; that such bid is genuine and not collusive or a sham and that said proposer has not been a party to any agreement or collusion among bidders/proposers or prospective bidders/proposers in restraint of freedom of competition by agreement to bid a fixed price or otherwise, or to refrain from proposing, and has not, directly or indirectly, by agreement, communication, or conference with anyone, attempted to induce action prejudicial to the interest of Metra, or of any proposer or anyone else interested in the proposed contract.

C. CERTIFICATE FOR BID.

As a part of its offer to contract for services to Metra, the Undersigned hereby certifies that neither the Company nor any of its principals are barred from proposing on the aforementioned contract as a result of a violation of either Section 33 E-# or 33-4 of 720 ILCS 5/33 E.

D. CERTIFICATE OF DEBARMENT.

As the potential contractor for a primary contract, or subcontractor to a primary contractor for subcontracts over \$25,000.00, the Undersigned certifies to the best of its knowledge and belief, that the Company and its principals:

1. Are not included on the U.S. Comptroller General's Consolidated List of Persons or Firms Debarred from federal contracts for violations of various public contracts incorporating labor standard provisions;
2. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal, state, or local government entity;

EXHIBIT 1-A
AFFIDAVITS/CERTIFICATION

3.(a) have not been convicted under the laws of Illinois or any other state of bribery or attempting to bribe any government officer or employee or have made an admission of guilt of that conduct that is a matter of record but has not been prosecuted for that conduct. No business shall be barred from contracting with Metra as a result of a conviction under this Section of any employee or agent of the business if the employee or agent is no longer employed by the business and : I) the business has been finally adjudicated not guilty; or ii) the business demonstrates to Metra, and Metra finds that the commission of the offense was not authorized, requested, commanded, or performed by a director, officer, or high managerial agent on behalf of the business as provided in paragraph (2) of subsection (a) of Section 5-4 of the Criminal Code of 1961. For purposes of this Subsection (a), when an official, agent, or employee of a business committed the bribery or attempted bribery on behalf of the business and in accordance with the direction or authorization of a responsible official of the business, the business shall be chargeable with the conduct. Contractor hereby certifies that the contractor and its subcontractors are not barred from being awarded a contract or subcontract under this Section.

(b) are not convicted of a felony. No person or business shall do business with Metra from the date of conviction until 5 years after the date of completion of the sentence for that felony, unless no person held responsible by a prosecutorial office for the facts upon which the conviction was based continues to have any involvement with the business. Contractor hereby certifies that the Contractor is not barred from being awarded a contract under this Section.

4. Are not presently indicted for, or otherwise criminally or civilly charged by a government entity (federal, state or local) for any reason; or

5. Have not, within a three-year period preceding this bid, had one or more public transactions (federal, state or local) terminated for cause or default.

(If the Undersigned is unable to certify to any of the statements in this certification, the Undersigned shall attach an explanation).

THE UNDERSIGNED CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF THE FEDERAL FALSE CLAIMS ACT ARE APPLICABLE THERETO.

E. CERTIFICATION OF RESTRICTIONS ON LOBBYING.

This certification is required to be completed with the solicitation if the bid exceeds \$100,000.00. Failure to return this certification with the solicitation may result in a determination that the offer is non-responsive or non-responsible.

The Undersigned certifies to the best of its knowledge or belief that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a federal contract, grant, loan, or cooperative agreement, the Undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The Undersigned shall require that the language of this certification be included in the award document for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements), and that all subrecipients shall certify and disclose accordingly.

F. REVOLVING DOOR PROHIBITION.

The Undersigned has reviewed its list of employees (and subcontractors) involved in this procurement and it has no knowledge of any former Metra employee being involved in the solicitation process in violation of Section 4.05 of Metra's Bidding Regulations.

Section 4.05 states that all Metra Board members and non-contract personnel in specified positions are expressly prohibited, for a period of one (1) year after terminating employment with Metra, from engaging in any procurement activity with Metra. A "specified position" is one that is non-contract, is held for a period of six (6) months preceding such termination, is at a Grade P12 or above (including M Grades), and is not merely clerical or ministerial in nature. The prohibition includes, but is not limited to: lobbying the procurement process; specifying; bidding; or proposing bid, proposal, or contract documents on the part of the former employee or Board member, or in association with the former employee or Board member by or on behalf of any firm, partnership, association, or corporation affiliated with the former employee or Board member. The Undersigned certifies that the award and/or execution of a contract would not cause any violation of Section 4.05.

G. CONTINUING OBLIGATION TO INFORM METRA.

If Company acquires information after executing this certification that there may be an actual or apparent violation of any of the above Company shall promptly bring such information to the attention of Metra's procurement officer. Company shall thereafter cooperate with Metra's review and investigation of such information, and comply with any instruction it receives from Metra in regard to remedying the situation.

H. ILLINOIS WAGE ACT/DAVIS-BACON ACT CERTIFICATION.

To the extent applicable, the Undersigned hereby certifies that the wage rate paid by said Undersigned will be no less than the wage rates set forth by the State of Illinois and the Federal Davis-Bacon Act. Labor classifications and current wage rates are available for review at Metra's headquarters upon written request.

I. PENALTIES.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into the Contract pursuant to Metra's regulations and 31 U.S.C. §1352. A Company, who makes a false statement, material to the certification, is subject to termination for cause.

PRIME CONTRACTOR SIGNATURES REQUIRED ON NEXT PAGE

EXHIBIT 1-A
AFFIDAVITS/CERTIFICATION

The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Company understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure.

Kronos Talent Management LLC
(Print) Name of Company

By: _____

Signature of Person Making Affidavit (Undersigned listed above)

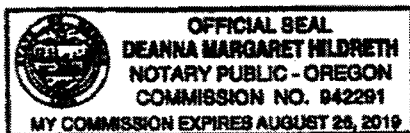
Date: 02/08/16

Director, Product Services
(Print) Title of Person Making Affidavit

NOTARIZE HERE

Subscribed and sworn to before me
This 8 day of Feb 20 16.

[Signature]
NOTARY PUBLIC



SUBCONTRACTOR
DEBARMENT CERTIFICATION

~1A

NOTE: PRIMARY CONTRACTOR IS RESPONSIBLE FOR THIS FORM BEING SUBMITTED PRIOR TO AWARD. SUBCONTRACTOR(S) WITH SUBCONTRACTS OVER \$25,000.00 MUST ALSO COMPLETE AND SIGN THE FOLLOWING:

STATE OF _____

COUNTY OF _____

The undersigned represents that s/he is _____ ("Undersigned Subcontractor")
the **(Print Name)**

_____ of _____
(Print "President" or Other Proper Title) **(Print Name of Subcontractor Entity)**

("Subcontractor" or "Undersigned Subcontractor") and is authorized to attest on behalf of himself/herself and Subcontractor Entity by stating as follows:

1. As a subcontractor to a primary contractor for subcontracts over \$25,000.00, the Undersigned Subcontractor certifies to the best of its knowledge and belief that the debarment statements in Section D of the above are truthful and accurate.
2. If Undersigned Subcontractor acquires information after executing this certification that there may be an actual or apparent violation of any of the above, Subcontractor shall promptly bring such information to the attention of Metra's procurement officer.
3. The provisions of Section I above are applicable.

(Print) Name of Subcontractor Entity

By: _____ **Date:** _____
Signature of Person Making Affidavit (Undersigned listed above)

(Print) Title of Person Making Affidavit

NOTARIZE HERE

Subscribed and sworn to before me

This _____ **day of** _____ **20** _____.

NOTARY PUBLIC



Workforce Talent Acquisition **Enterprise**

Services Agreement Proposal

Proposal Prepared For: **Metra**

Proposal Date: December 4th, 2015

Pricing Valid Through: January 31st, 2015

Agreement Term: 3 Year agreement

Pricing based on up to 3,000 employees

Service Fee: (Monthly) **\$ 2,872**

One Time Implementation: **\$ 46,600**

Training **\$13,000**

Services Included:

Hiring Management Console (Version 9.1 or above)

External Requisition Based Candidate Experience

Mobile Optimized Candidate Experiences

Internal Candidate experience

Supported CE Language(s): English

Electronic Onboarding

Hiring Analytics reporting engine

Interview Scheduling with Exchange integration

Customer Support - Customer will provide first-level support

Standard Integration to Kronos HRMS v7+

Training

1 End User Sessions

1 System Administration Session

1 Reporting Training Session

Annual subscription to Corporate Pass Training (Web – unlimited users) for 2 years

1 Project team training - Web

Optional Services:

Integration with eQuest Job Board Aggregator

Add \$75 a month and a onetime charge of \$2,000

Services Agreement

This Agreement is entered into on 3/24/16 ("Effective Date") between Kronos Talent Management LLC ("Kronos TM"), an Oregon limited liability company with a business address of 11850 SW 67th Avenue, Tigard, OR 97223, and Northeast Illinois Railroad Corporation ("Customer"), a Illinois government agency with a business address of 547 W Jackson Boulevard, Chicago, IL 60661.

1. **Services Provided.** Kronos TM agrees to provide Customer with the services ("Services") set forth in Appendix A and in the Statement of Work ("SOW") attached as Appendix B at the rates set forth in Appendix A and according to the service levels set forth in Appendix C. Any changes to the SOW following execution of this Agreement will require Kronos TM and Customer to enter into a written change order ("Change Order") and may result in additional fees and/or schedule changes as agreed in the applicable Change Order. The Appendices, Addenda, and any Change Order are incorporated herein by reference. Customer may only use the Services in accordance with the terms of this Agreement. Customer, and not Kronos TM, is responsible for ensuring that (i) all content, configurations and changes made to or included in the Services are compliant with all applicable laws and regulations, and (ii) Customer's use of the Services, including any assessments, is compliant with all applicable laws and regulations. Customer agrees to indemnify and hold Kronos TM harmless from any claim(s) arising out of or based upon such content, use, configurations or changes, including legal expenses. Kronos TM shall be promptly reimbursed by Customer for professional services, fees and expenses reasonably incurred by Kronos TM in assisting Customer in its defense of claims brought against Customer.

All title and intellectual property rights in and to the underlying technology used in delivering Services hereunder, including, but not limited to the software, assessments and engineering knowhow and any updates, changes, alterations, or modifications to such intellectual property, will be and remain the property of Kronos or its third party licensors.

2. **Term and Termination.** The term of this Agreement shall begin on the Effective Date and shall continue for three (3) years (the "Minimum Service Term") following the activation of Services at the minimum number of Customer locations set forth in Appendix A. Following the Minimum Service Term, this Agreement shall continue on a month-to-month basis at Kronos-TM's then-current rates for the Services provided pursuant to Appendix A and Appendix B, as amended, until terminated by either party on no less than thirty (30) days advance written notice.
3. **Payments.** In consideration for the Services provided by Kronos TM hereunder, Customer agrees to pay Kronos TM the fees and to reimburse Kronos TM for the expenses set forth in this Section. Except as otherwise set forth in this Section, payments are due and payable net thirty (30) days following the date of invoice. Unless otherwise specified in Appendix A, all invoices and payments shall be in US dollars.
 - 3.1 **Service Fee.** Kronos TM shall invoice Customer and Customer shall pay Kronos TM (i) in advance, the monthly Service Fee per unit of billing set forth in Appendix A in accordance with the Service Availability Date(s) set forth in Appendix A, (ii) shipping and handling to the Customer's location, if applicable, and (iii) all applicable sales and/or use taxes. For the purposes of this Agreement, the "Service Availability Date" shall be the date by which Kronos TM has performed all of the following tasks for a given location: a) configured the Services and related components for the Customer pursuant to the SOW; and either: b) enabled its network to support connection of equipment from the Customer location to the Kronos TM network, based on the Technical Requirements specifications set forth in the SOW, or c) enabled access to the Services and related components via the Internet by providing Customer with appropriate web addresses (URL's).
 - 3.2 **Development Fees.** Upon execution of this Agreement, Kronos TM shall invoice Customer monthly in arrears, and Customer shall pay Kronos TM, for the number of hours worked by Kronos TM in that month for implementation of the Services pursuant to Appendix B, at the rate(s) set forth in Appendix A. Customer recognizes and agrees that the Kronos TM professional and educational services resources ("PS Resources") identified and the hours defined within Appendix A or Appendix B (SOW) or similar statement of work document that may be provided by Kronos TM, have been estimated based upon: (i) the preliminary information provided by Customer; and, (ii) Customer fulfilling its obligations as defined in the SOW or similar statement of work document. Additional PS Resources and/or hours may be required to complete the implementation as a result of newly discovered information, Customer's delay in fulfilling its obligations, or a change in the scope of the project. Kronos TM will review with Customer the PS Resources and the number of hours Kronos anticipates will be required for the completion of the work after assessment of Customer's requirements. Kronos TM will monitor the PS Resources and hours used as the work progresses, and will advise Customer through a change order if more are required. The applicable rate for each PS Resource is set forth in Appendix A and/or the Change Order Form and shall remain in effect for 12 months from the effective date of the SOW, Change Order or similar statement of work document. Pricing for

professional services associated with the implementation of additional modules or services subsequent to an initial SOW will be priced at the then-current Kronos professional service rates.

3.3 Professional Service Fees. If applicable, Customer shall pay the Professional Services fees set forth in Appendix A. Customer will be invoiced at the time the professional services are performed.

3.4 Third Party Language Translation Expenses. Customer shall also reimburse Kronos TM for third-party language translation fees and related expenses as described in Appendix A or Appendix B, as applicable.

Unless Customer is tax exempt, Customer agrees to pay all applicable taxes levied or based on the products, Services or other charges hereunder, including state and local sales and excise taxes, and any taxes or amounts in lieu thereof payable by Kronos TM, exclusive of taxes based on net income. Taxes, if any, will be calculated on a location basis and itemized on the Customer's invoice.

Kronos TM and Customer agree that after activation of Services at a Customer site, the Party originating a telephone or internet connection or other communication from or to the Equipment at that site is responsible for the cost of such telephone or internet connection or other communication.

- 4. Warranty.** Kronos TM warrants that the Services will be provided in a professional manner and that they will conform to the requirements of the SOW. KRONOS TM DISCLAIMS ALL OTHER WARRANTIES ON THE SERVICES, EITHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 5. Assignment/Sub-contracting.** Neither party may assign its rights or obligations hereunder without the other party's written consent; provided, however, that either party may assign this Agreement to any successor or assignee directly or indirectly owning or controlling a majority of the voting stock of that party as a result of a merger, consolidation or acquisition. Any assignment by either party will not relieve the assignor of its obligations hereunder. Kronos TM may also engage the services of one or more sub-contractors to provide certain of the Services to be provided by Kronos TM hereunder.
- 6. Mutual Indemnity.** Each party agrees to defend and hold the other harmless from all claims of personal injury to any agent, employee, customer, or business visitor of the indemnified party, or damage to tangible property (other than data or information) owned or leased by the indemnified party, to the extent caused by the negligence or willful misconduct of the indemnifying party; provided that (i) the indemnified party gives the indemnifying party prompt written notice of such claim; (ii) the indemnifying party fully controls the defense and disposition of the claim; and (iii) the indemnified party cooperates fully with the reasonable requests of the indemnifying party to that end.
- 7. Termination.**
- 7.1. Events of Default of either Party.** Any of the events described below will constitute an Event of default:
- (a) **Nonpayment.** Customer has failed to pay any amounts due for Services under this Agreement more than 15 days past the date when Kronos TM has provided Customer with written and electronic notice that such amounts are past due; provided, however that Kronos shall not be required to give such notice more than twice in any twelve month period.
 - (b) **Service Interruption.** A failure by Kronos TM to correct any material interruption in Service within ten (10) days of receipt of written notice thereof provided such failure was not due to the fault of Customer or due to causes beyond Kronos TM's reasonable control.
 - (c) **Assignment for the Benefit of Creditors/Bankruptcy.** Either Party makes an assignment of any rights under this Agreement for the benefit of creditors, is placed under the appointment of a trustee or receiver, or commences or has commenced against it a proceeding seeking reorganization or liquidation under federal or state bankruptcy laws and such assignment or proceeding is not dismissed with thirty (30) days.
 - (d) **Other Breaches.** Either Party fails to perform any other material covenant, agreement, term, or condition of this Agreement, and such breach has not been cured within thirty (30) days after written notice of such breach (specifying in reasonable detail the nature of such breach) from the other Party.

- 7.2. **Remedies.** If this Agreement is terminated by Kronos TM due to a default by Customer, Kronos TM may terminate the Services without liability to Customer, and Customer shall pay to Kronos TM all sums then due and owing to Kronos TM at the time of termination. The non-defaulting party may exercise any other remedy or right, and recover damages for the breach hereof (subject to the limitations in Section 11). Each remedy shall be cumulative and in addition to any remedy referred to above or otherwise available to the non-defaulting party at law or in equity.
8. **Grant of Software License.** Customer hereby grants Kronos TM a nonexclusive, revocable license to place a (textual/graphical) hyperlink from the Customer's web site to the Kronos TM URL for the purpose of processing prospective employee applicants. The text or graphic portion of the hyperlink, not the link itself which will be determined by Kronos, shall be designed by the customer.
9. **Data Access and Usage.** Kronos TM shall make collected applicant data available for Customer's use in such forms as are mutually agreeable during the term of this Agreement and as documented in the SOW. Kronos TM shall have the right to include in the Services standard equal employment opportunity applicant questions for adverse impact analysis. Kronos TM shall have the unrestricted right without the prior written consent of Customer to access and use the collected data in the aggregate, provided Kronos TM protects and does not reveal the identity of Customer or any applicant with respect to its use of the data in this manner. Kronos TM shall notify Customer in writing of Kronos TM's intent to destroy any Customer specific information retained by Kronos TM. Customer shall then have sixty (60) days to request in writing that such information be provided to Customer. If so requested, Kronos TM will provide such information in Kronos TM's standard format. If Customer does not provide timely notice thereof, the Customer specific information may be destroyed by Kronos TM. Customer shall not knowingly permit or allow third party web "scraping" services to aggregate information from the Customer's instance(s) of the Services without Kronos TM's prior written consent, and Customer shall cooperate with and assist Kronos TM in terminating such activities.

10. Confidentiality.

Confidential Information means any information of one party that is clearly marked as "confidential" and that is disclosed to the other party pursuant to this Agreement. However, the terms, conditions and pricing contained in this Agreement are subject to Freedom of Information Act requests, and shall be disclosed under FOIA rules if requested. With the exception of Freedom of Information Act request, this contract shall be deemed to be Kronos TM's Confidential Information. Each party shall protect the Confidential Information of the other party with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which such party utilizes for its own information of similar character that it does not wish disclosed to the public. Neither party shall disclose to third parties (except the parent company or the wholly owned subsidiaries of the disclosing party who have a need to know) the other party's Confidential Information, or use it for any purpose not explicitly set forth herein, without the prior written consent of the other party. The obligation of confidentiality shall survive for three (3) years after the disclosure of such Confidential Information.

This Agreement imposes no obligation upon either party with respect to the other party's Confidential Information which the receiving party can establish by legally sufficient evidence: (a) was rightfully possessed by the receiving party without an obligation to maintain its confidentiality prior to receipt from the disclosing party, (b) is generally known to the public without violation of this Agreement; (c) is obtained by the receiving party in good faith from a third party having the right to disclose it without an obligation with respect to confidentiality; (d) is independently developed by the receiving party without use of the disclosing party's confidential information, which can be shown by tangible evidence; or (e) was required to be disclosed by applicable law (e.g. pursuant to subpoena or government investigation); provided that the receiving party notifies the disclosing party of such requirement prior to disclosure to allow disclosing party the opportunity to obtain a protective order or appropriate relief, and provided further that the receiving party makes diligent efforts to limit disclosure and maintain confidentiality as to the disclosed information. If Customer becomes legally compelled to disclose any Confidential Information of Kronos TM (e.g. pursuant to subpoena or government request), then Customer will notify Kronos TM before any Confidential Information is disclosed so that Kronos TM has the opportunity to seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, then Customer will furnish only that portion of Confidential Information which Customer is legally required to disclose and will use best efforts to ensure that confidential treatment will be accorded to the Confidential Information that is disclosed. Customer agrees that Kronos TM may use Customer's name as part of Kronos TM's published customer lists.

- 11. LIMITATION OF LIABILITY.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL KRONOS TM OR ITS PARENTS, SUBSIDIARIES, AFFILIATES OR THIRD PARTY LICENSOR'S LIABILITY TO CUSTOMER, HOWSOEVER CAUSED, EXCEED THE CUMULATIVE DOLLAR AMOUNT HAVING BEEN PAID TO KRONOS TM THROUGH THE DATE OF THE EVENT WHICH GIVES RISE TO THE CLAIM, AND IN NO EVENT WILL KRONOS TM OR ITS PARENTS, SUBSIDIARIES AFFILIATES OR THIRD PARTY LICENSORS BE LIABLE FOR LOST PROFITS, LOST TAX BENEFITS, LOST DATA OR ANY OTHER INCIDENTAL OR

CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT WHETHER SUCH CLAIM IS BASED ON WARRANTY, CONTRACT, TORT OR THE EXISTENCE, FURNISHING, FUNCTIONING OR CUSTOMER'S SPECIFIC USE OF, OR INABILITY TO SO USE, ANY EQUIPMENT OR SERVICES PROVIDED FOR IN THIS AGREEMENT.

General.

- 12.1 **Entire Agreement.** This Agreement and any information expressly incorporated herein, together with the applicable Appendices, constitute the entire agreement between the parties for the products and Services described herein and supersede all prior or contemporaneous representations, negotiations, or other communications between the parties relating to the subject matter of this Agreement. This Agreement may be amended only in writing signed by authorized representatives of both parties. Customer understands and acknowledges that while Kronos TM may disclose to customers certain confidential information regarding general product development direction, potential future products and/or product enhancements under consideration, Customer is not entitled to any products or product enhancements other than those contained in the SOW. Customer has not relied on the availability of any future version of the Services or Equipment identified in the SOW, nor any other future product in executing this Agreement.
- 12.2 **Survival.** The terms and conditions of this Agreement regarding confidentiality, payment and all others that by their context are intended to survive the execution, delivery, performance, termination or expiration of the Agreement survive and continue in effect.
- 12.3 **Notices.** Any notice or other communication hereunder shall be in writing addressed to the other party at the addresses first noted above, attention Corporate Counsel, and shall be deemed delivered either upon hand delivery against receipt or upon mailing by certified mail, return receipt requested or by facsimile with evidence of delivery.
- 12.4 **Applicable Law and Limitation on Actions and Attorney Fees.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. No action, regardless of form, may be brought by either party more than two (2) years after the cause of action has arisen.
- 12.5 **Force Majeure.** Neither party shall be liable for failures or delays in performance due to causes beyond its reasonable control, including war, strikes, lockouts, fire, flood, storm or other acts of God. Both parties agree to use their best efforts to minimize the effects of such failures or delays.
- 12.6 **Non-Waiver.** No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented.
- 12.7 **Severability.** The invalidity or illegality of any provision of this Agreement shall not affect the validity of any other provision. The parties' intend for the remaining unaffected provisions to remain in full force and effect.
- 12.8 **Counterparts.** This Agreement may be executed in one or more counterparts.
- 12.9 **Headings.** The section headings herein are provided for convenience only and have no substantive effect on the construction of this Agreement.

The parties have caused this Agreement to be executed by their duly authorized representatives as follows:

Northeast Illinois Railroad Corporation



Signature

Donald A. Droeno

Printed Name

Executive Director/CEO

Title

3/24/16

Date

Kronos Talent Management LLC



Signature

Annette Kuhn

Printed Name

Director Product Services

Title

02/08/16

Date

Appendix A

<i>Summary of Services</i>	
Below is a summary of the Services to be provided. Specific information regarding the scope of the Services shall be found in Appendix B (Statement of Work)	
Core Services – Candidate Experience(s)	
Languages: English only	
Requisition –based Services– web-based	
Internal Candidate Experience – Requisition-based Services – web-based	
Core Services – Employer Experience (Hiring Management Console)	
Hiring Management Console	
Hiring Processes, Job Families, Job Positions, and Forms	
Location Activation	
Hiring Analytics	
Integrations	
Data Feeds	
On-Boarding / E-Signature	
Training	

Monthly Service Fee	
\$2,872 for up to 3,000 Employees plus \$86 for each additional 100 Employees or fraction thereof	

Customer will be invoiced for a minimum of three thousand (3,000) Employees per month during the Minimum Service Term regardless of the actual number of Employees activated or maintained.

Quantity	Development Fees and Training	Unit Cost	Total Cost
233	Development Fees	\$200	\$46,600
1	Training Fees		\$13,000
	Total Fees		\$59,600

For the purposes of Section 2 of the Agreement, the Minimum Service Term shall commence when Customer has activated one location:

Number of Locations	Service Availability Date
1	Within 60 business days of the commencement of the “Introduce” phase of the implementation project as set forth in Exhibit 1 of Appendix B

For the purposes of this Agreement “Employee” shall be defined as any Customer employee actively working in any position for which the Services are configured to accept applications. Upon advance written notice to Kronos TM as specified below, Customer may request that additional locations or Employees be added to this Agreement. A fax or email of the request indicating the location address, equipment type, number of Employees and requested activation date will satisfy the requirement that the communication be made in writing. If Customer has not otherwise designated a representative in writing as the person authorized by Customer to add locations or Employees to this Agreement, Kronos TM may rely upon the instructions from whoever of Customer’s employees communicates the request to Kronos TM, and Kronos TM may invoice accordingly. In the event Customer adds additional Employees or locations at any point other than the beginning of the applicable monthly period set forth above, the price per group of Employees or location will be prorated for the remainder of the then-current billing period and invoiced immediately. Kronos TM’s invoices specifying the number of location or Employee units of billing shall be presumed to be correct unless Customer disputes any such invoice within ninety (90) days from the date of invoice. Customer will pay at least the minimum amount in each pricing tier above regardless of the actual number of locations or Customer Employees during the term of the Agreement.

Kronos TM shall have the right, once each calendar year, or upon reasonable cause, and upon reasonable advance written notice, to audit the Customer’s non-confidential records for the limited express purpose of determining the correct Employee count as required by this provision. In the event an audit reveals that the number of Employees covered by the Services is more than five percent (5%) greater than the number for which the Customer was most recently invoiced, Customer shall bear the cost of the audit, otherwise the cost of the audit shall be borne by Kronos TM.

Advance notice requirement: Customer agrees to provide Kronos TM with number of Employees and the street address of all location(s) to be activated, including locations to be initially activated, no later than the days in advance specified below for the equipment type(s) to be installed:

<u>Equipment Type</u>	<u>Street Address Provided to Kronos TM</u>
Customer-owned Equipment	Thirty (30) Days prior to Service Availability Date

Installation support service provided via telephone to site locations for product and service activation will be provided for no additional fee.

Additional professional services beyond the scope of the Statement of Work, including Kronos TM-provided training, development and customization, and consulting, will be provided at Kronos TM's then-current rates.

In consideration of Customer's ongoing Service fee(s), Kronos TM shall provide support as outlined below.

Hours of Customer Support Services – Gold Support

Kronos Global Support
Monday – Friday: 8:00am to 9:00pm ET (Eastern Time) excluding holidays

Customer Support Services Access Methods

Support contacts may request Customer Support Services via telephone or via the customer portal.

Telephone:	1-800-394-4357
Customer Portal:	https://customer.kronos.com/Templates/LoginPage.aspx?ReturnUrl=%2f

Customer Support Help Desk and Technical Support


First Line Support – Customer

Second Line Support – Kronos TM


For "First Line Support – Customer", Customer shall be required to provide its own internal help desk/support system to its users/locations, and only four designated Customer internal personnel may contact the Kronos TM help desk. Kronos TM does not provide first line support.

"Second Line Support – Kronos TM" is provided by the Kronos Global Support organization, which will respond to calls only from designated Customer internal personnel. The assigned customer personnel will have access to the Kronos Customer Portal, which provides the ability to open new issues, check status of open issues, as well as search for solutions via an online knowledge base.

Northeast Illinois Railroad Corporation


Signature
Executive Director/CEO
Title
3/24/16
Date

Kronos Talent Management LLC


Signature
Director, Product Services
Title
02/08/16
Date

Customer, please complete the following:

Check one:

☐ The address for receiving invoices under this Agreement is the same as the corporate address at the top of page 1

☒ The address for receiving invoices under this Agreement is the following:

547 W. Jackson, 4th Floor

Attn. Accounts Payable

Chicago, IL 60661

Please also COMPLETE: Customer Billing/Invoicing Contact Name:

Name Harry Kamer

Email: Kamer@metrarr.com

Phone # 312-322-6572

Rockford Mass Transit District

Agreement for Fixed Route AVL, December 23, 2014, between Rockford
Mass Transit District and RouteMatch Software, Inc.

Item 15

Fixed Route AVL Contract Terms

a. State Clauses

i. Scope and Description

Procuring Agency: Rockford Mass Transit District
520 Mulberry Street
Rockford, IL 61101-1016

Contracting Officer: Richard W. McVinnie, Executive Director

The contract to be awarded hereunder shall be for the Fixed Route AVL as herein required at 520 Mulberry Street in Rockford, Illinois.

The contract resulting from this solicitation consists of the following:

- Contract Terms
- Technical Specifications Provided by Rockford Mass Transit District
- The Contract Form that follows these Contract Terms
- Addenda - As Issued

This constitutes the entire agreement and there are no agreements or understandings, implied or expressed, except as specifically set forth in this contract, and that all prior agreements and understandings, in this connection, are merged into and contained in this contract.

DEFINITIONS:

FTA - The Federal Transit Administration (forms viewable on-line at <http://www.fta.dot.gov/>)

USDOT (or DOT) - The United States Department of Transportation

IDOT - The Illinois Department of Transportation

RMTD - The Rockford Mass Transit District. The letters "RMTD" shall be considered synonymous with the word "Owner."

CFR - Code of Federal Regulations (viewable on-line at <http://www.gpoaccess.gov/index.html>)

U.S.C. - United States Code (viewable on-line at <http://www.gpoaccess.gov/index.html>)

DBE - Disadvantaged Business Enterprise certified by the Illinois Unified Certification Program (IUCP) and listed in the current IUCP Directory

Authorized Signature - The person who is executing this contract on behalf of the Bidder/Contractor and who is authorized to bind the Bidder/Contractor to the terms and conditions of said contract.

Bid - The word "bid" shall be considered synonymous with the word "proposal" and, in the case of an RFQ, with the words "statements of qualifications".

Bidder - The individual, firm, or corporation formally submitting a proposal for the work contemplated or any portion thereof, acting directly, or through an authorized representative. The word "bidder" shall be considered synonymous with the words "contractor", "supplier", and "vendor".

Contract - The word "contract" shall be considered synonymous with the word "Agreement."

Performance - An evaluation in quantifiable terms, of a manufacturer's ability to produce reliable equipment, as specified, in a time frame responsive to the owner's needs.

Work - Any and all labor, supervision, services, materials, machinery, equipment, tools, supplies, and facilities called for by the contract and necessary to the completion thereof.

Working Day - Any day excluding all Saturdays, Sundays, and RMTD Administrative Holidays.

ii. Product Restrictions

All technical specifications referencing a particular brand name product are considered to include "brand name or equal" unless otherwise noted. Any such reference that does not clearly specify the required features or performance of the brand name product must be brought to the attention of RMTD no later than ten (10) working days before the bid due date.

iii. Unrestricted Supply

See Federal Buy America section for regulations that apply, if any.

iv. Contract Scope

Included in Contract Agreement.

v. Compensation

The maximum compensation or reimbursement payable under this contract shall not exceed the amount shown on the Contract Agreement, including all amendments and addendums, plus any amounts shown in change orders.

vi. Method of Payment

The method of payment for the work performed shall be defined in the Contract Agreement.

vii. Contract Period

All work to be performed under the terms of this contract must be completed in accordance with the schedule defined in the Contract Form.

viii. Termination

The termination provisions of the Federal Termination section shall apply to this contract.

ix. Financial Assistance

This contract is subject to financial assistance contracts between RMTD and the United States Department of Transportation and the Illinois Department of Transportation.

x. Interests of Member of Congress

No member of or delegate to the Illinois General Assembly or the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising therefrom.

xi. Prohibited Interests

No member, or officer, or employee of RMTD or a local public body with financial interest or control in this contract during their tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

xii. Contract Changes

Any proposed change in this contract shall be submitted to RMTD in writing for RMTD's prior approval. Any work performed by the Contractor prior to formal RMTD approval of a change in this contract shall be done at the expense of the Contractor and shall not be eligible for reimbursement to the Contractor. Any change in this contract must include the following release by the Contractor: "The Contractor hereby releases any and all liability under the Owner – Contractor Agreement for this project for further equitable adjustments attributable to this change."

xiii. Escalation

Escalation clauses are not allowed as part of specifications or contracts.

xiv. Equal Employment Opportunity

In the event of the Contractor's non-compliance with any provisions of this Equal Employment Opportunity Clause, the Illinois Human Rights Act Rules and Regulations of the Illinois Department of Human Rights ("Department"), the Contractor may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this contract, the Contractor agrees as follows:

- 1) That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
- 2) That, if it hires additional employees in order to perform this contract or any portion thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
- 3) That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, national origin or ancestry, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.
- 4) That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organizations or representative of the Contractor's obligations under the Illinois Human Rights Act and the Department's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Contractor in its efforts to comply with such Act and Rules and Regulations, the Contractor will promptly notify the Department and RMTD and will recruit employees from other sources when necessary to fulfill its obligations thereunder.
- 5) That it will submit reports as required by the Department's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or RMTD, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations.
- 6) That it will permit access to all relevant books, records, accounts, and work sites by personnel of the contracting agency and the Department for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.
- 7) That it will include verbatim or by reference the provisions of this Section in every subcontract it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this contract, the Contractor will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify RMTD and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, the Contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

8) RMTD has a policy on sexual harassment that shall be in effect during the entire course of this contract. The Contractor may obtain a copy of this policy by contacting RMTD.

9) See Federal Civil Rights section also.

xv. Audit and Inspection of Records

The Contractor shall permit the authorized representatives of RMTD and the State of Illinois to inspect and audit all data and records of the Contractor relating to his performance under the contract. Such inspection and audit shall also extend to all work and materials provided by the Contractor.

xvi. Retention of Records

The Contractor shall maintain, for a minimum of three (3) years after completion of the Agreement, all books, records, and supporting documents to verify the amounts, receipts, disbursements, recipients, and uses of all funds passing in conjunction with the Agreement.

Additionally, for service contracts, the Contractor shall maintain records to show actual time devoted and costs incurred.

b. Federal Clauses

i. Buy America

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to RMTD the appropriate Buy America certification (attached) with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

FORM REQUIRED: Buy America Certification (Steel, etc.) or Buy America Certification (Rolling Stock, etc.)

ii. Energy Conservation

The Contractor 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.

iii. Clean Water

(a) The Contractor 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 Contractor agrees to report each violation to RMTD and understands and agrees that RMTD will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(b) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

iv. Access to Records

The following access to records requirements apply to this Contract:

(a) Where RMTD is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide RMTD, 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 Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

(b) Not Applicable.

(c) Where RMTD enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide RMTD, the FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

(d) Where RMTD, which is the FTA Recipient in accordance with 49 U.S.C. 5325(a), enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to RMTD, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

(e) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(f) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three 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 Contractor agrees to maintain same until the Purchaser, 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).

(g) FTA does not require the inclusion of these requirements in subcontracts.

v. Federal Changes

The Contractor 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 and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract. (The Master Agreement is viewable on-line at <http://www.fta.dot.gov/documents/16-Master.pdf> for October 1, 2009 through September 30, 2010. The Master Agreement for all subsequent years can be found after such agreements are issued by changing the 16 in the web address to a number that is the sum of 7 plus the last two digits of the year of the October 1 starting date.)

vi. Clean Air

(a) The Contractor 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 Contractor agrees to report each violation to RMTD and understands and agrees that RMTD will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(b) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

vii. Recovered Materials

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

This provision is applicable to items designated by the EPA (See list at 40 CFR Part 247 Subpart B—Item Designations), when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds.

viii. No Obligation by the Federal Government

(a) RMTD and the Contractor 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 RMTD, the Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(b) The Contractor 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.

ix. Program Fraud and False or Fraudulent Statements or Related Acts

(a) The Contractor 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 Project. Upon execution of the underlying contract, the Contractor 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 Contractor 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 Contractor to the extent the Federal Government deems appropriate.

(b) The Contractor 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 the 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 Contractor, to the extent the Federal Government deems appropriate.

(c) The Contractor 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.

x. Termination

Termination for Convenience - RMTD may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's and/or RMTD's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to RMTD to be paid the Contractor. If the Contractor has any property in its possession belonging to RMTD, the Contractor will account for the same, and dispose of it in the manner that RMTD directs.

Opportunity to Cure - RMTD in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If the Contractor fails to remedy to RMTD's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by the Contractor of written notice from RMTD setting forth the nature of said breach or default, RMTD shall have the right to terminate the Contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude RMTD from also pursuing all available remedies against the Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach - In the event that RMTD elects to waive its remedies for any breach by the Contractor of any covenant, term or condition of this Contract, such waiver by RMTD shall not limit RMTD's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

Termination for Default (Purchase of Goods or Service Contract) - If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, RMTD may terminate this contract for default. RMTD shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of RMTD.

xi. Debarment and Suspension

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, 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 Contractor 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 bid or proposal, the Bidder certifies as follows:
The certification in this clause is a material representation of fact relied upon by RMTD. If it is later determined that the Bidder knowingly rendered an erroneous certification, in addition to remedies available to RMTD, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Bidder agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Bidder further agrees to include a provision requiring such compliance in its lower tier covered transactions.

FORM REQUIRED (Printed by RMTD before Purchase Order is issued): SAMS and State Ineligible Contractor Verification. No action required from Bidder.

xii. Contracts Involving Federal Privacy Act Requirements

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(a) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(b) The Contractor also agrees to include these requirements in each subcontract to administer any

system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

(c) The Contractor must protect, and take measures to ensure that its subcontractors at each tier protect, "sensitive security information" made available during the administration of a this contract or subcontract to ensure compliance with 49 U.S.C. Section 40119(b) and implementing DOT regulations, "Protection of Sensitive Security Information," 49 CFR Part 15, and with 49 U.S.C. Section 114(s) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 CFR Part 1520.

xiii. Civil Rights

The following requirements apply to the underlying contract:

(a) 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 Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability and will not discriminate in employment or business opportunity. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(b) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

1. 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 Contractor 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 Project. The Contractor 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 Contractor agrees to comply with any implementing requirements FTA may issue.

2. 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 Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor 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 Contractor agrees to comply with any implementing requirements FTA may issue.

(c) The Contractor 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.

xiv. Disputes

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by RMTD's Executive Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Executive Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the

Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by RMTD, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between RMTD and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Illinois.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by RMTD, consultants of RMTD or the Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

xv. Disadvantaged Business Enterprise

a. 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. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. RMTD's overall goal for DBE participation is 5.0% with RMTD's DBE commitments outlined in the RMTD OBJECTIVES/POLICY Statement in Section 1.3.18 of the RMTD Required Clauses. Only entities found in the Illinois Unified Certification Program Directory as found at: http://www.dot.il.gov/ucp/ucp.html#DBE_Directory will be counted toward the DBE goal for this project. A separate contract goal of DBE participation has not been established for this procurement. RMTD will strive to reach this goal from race-neutral participation. Please note that in calculating the goal for Federal FY 2013-2015, RMTD has estimated that an A&E project will reach 11.7% in DBE participation, a Construction project will reach 10.6% in DBE participation, and all other FTA procurements will average 1.5% DBE participation.

b. The Contractor and each subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor 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 RMTD deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from RMTD. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of RMTD. This clause applies to both DBE and non-DBE subcontracts. In addition, the Contractor is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by RMTD and Contractor's receipt of the partial retainage payment related to the subcontractor's work. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following

written approval of RMTD. This clause applies to both DBE and non-DBE subcontracts.

e. The Contractor must promptly notify RMTD, 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 Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of RMTD.

xvi. State and Local Law Disclaimer

The use of many of the FTA-suggested clauses is not governed by Federal law and is significantly affected by State law. The language of the suggested clauses has been reviewed by RMTD's legal counsel and was found to be compatible with Illinois law. Any challenges to RMTD's findings must be submitted to RMTD no later than ten (10) days before the bid due date. Submission of a bid/quotation on this project constitutes the Contractor's concurrence with said legal review.

xvii. Incorporation of 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, dated November 1, 2008, 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 Contractor shall not perform any act, fail to perform any act, or refuse to comply with any RMTD requests which would cause RMTD to be in violation of the FTA terms and conditions.

xviii. Small and Minority Firms and Woman's Business Enterprises

RMTD encourages the Contractor to utilize small and minority firms and women's business enterprises to the fullest extent practical, whether or not those firms are certified as DBE firms by the Illinois Unified Certification Program. Such use should include:

1. Notice: Include such firms on solicitation lists and provide personal contact for applicable subcontracting opportunities.
2. Contract Size: When economically feasible, divide procurements into smaller groups to increase subcontracting opportunities for such firms. Procurement actions relative to contract size that must be taken to increase subcontracting opportunities for such firms include:
 - a. Removing all unnecessary and unjustified bundling of contract requirements.
 - b. Requiring bidders on large contracts to identify and/or provide specific subcontracts appropriate for small business participation.
 - c. Letting prime contracts of a size that small businesses can reasonably compete for and perform
3. Delivery Schedule: Modify required delivery schedules to encourage participation in procurement subcontracts.
4. Small Business Administration, Department of Commerce Minority Business Development Agency, and Illinois Small Business Association: Utilize these agencies to encourage participation in procurement subcontracts.
5. Subcontracting Opportunities: Include this section in all subcontract agreements to further use of such firms by subcontractors. Note that race-neutral and gender-neutral small business set-asides are permitted to provide additional small business prime contracting opportunities.

xix. Seat Belt Use

In compliance with Federal Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. Section 402 note, RMTD encourages the Contractor to adopt and promote on-the-job seat belt use policies and programs for the Contractor's employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in any subcontracts involving the project.

xx. Electronic Reports and Information

Reports and other information prepared in electronic format developed in connection with this contract that RMTD intends to provide to FTA, among others, whether as a contract end item or in compliance with contract administration provisions, must comply with the accessibility standards of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 794d, and ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 CFR Part 1194.

xxi. Metric Measurements

The Common Grant Rules require RMTD to accept property and services with dimensions expressed in metric measurements, to the extent practicable and feasible, in compliance with the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. Sections 205a et seq.; Executive Order No. 12770, "Metric Usage in Federal Government Programs," July 25, 1991, 15 U.S.C. Section 205a note; and applicable Federal regulations.

xxii. False Claims Act

Any Supplier or Contractor or any level of sub-supplier or subcontractor that knowingly submits a false claim for money or property shall be subject to the penalties defined in the False Claims Act as found in Title 31, Section 3729 of the United States Code which is online at:

[http://frwebgate.access.gpo.gov/cgi-bin/usc.cgi?ACTION=RETRIEVE&FILE=\\$\\$xa\\$\\$busc31.wais&start=2046780&SIZE=10962&TYPE=PDF](http://frwebgate.access.gpo.gov/cgi-bin/usc.cgi?ACTION=RETRIEVE&FILE=$$xa$$busc31.wais&start=2046780&SIZE=10962&TYPE=PDF)

xxiii. Texting While Driving and Distracted Driving

Consistent with Executive Order No. 13513 (Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, 23 U.S.C. Section 402 note) and DOT Order 3902.10 (Text Messaging While Driving, December 30, 2009), RMTD encourages the Contractor to adopt and promote policies and initiatives for the Contractor's employees and other personnel that decrease crashes by distracted drivers. Such policies must include a ban text messaging while driving. The Contractor must include this provision in each third party subcontract involving the project.

c. RMTD Clauses

i. Prompt Payment

For all contracts other than construction contracts, the Contractor agrees to pay each subcontractor and material supplier under the prime contract for satisfactory performance of that subcontractor's or material supplier's contract no later than 30 days from the receipt of each payment the Contractor receives from RMTD or within one day of when the subcontractor or material supplier provides the Contractor with all waivers and payroll records required by the Agreement, whichever is later. Should the Contractor fail to pay the subcontractor or material supplier within this time frame, the contractor shall pay each such subcontractor or material supplier, in addition to the payment due, interest in the amount of 2% per month, calculated from the expiration of the 30-day period until fully paid. This Section shall also apply to

any payments made by all tiers of subcontractors and material suppliers to a lower tier of subcontractors and material suppliers throughout the contracting chain.

Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of RMTD. This clause applies to both DBE and non-DBE subcontractors.

This section is only applicable to contracts where subcontractors and/or suppliers of deliverable items are involved.

ii. Contractor Indemnification

The Contractor shall defend, indemnify and hold harmless RMTD, IDOT, FTA and USDOT for all claims, damages, lawsuits and expenses, against RMTD, IDOT, FTA, and USDOT, including attorney fees, arising out of or resulting from the Contractor's intentional or negligent act, error, or omission in the performance of any and all work under this contract, except where such is due to the active negligence of the party seeking to be indemnified.

iii. Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to an officer of the corporation for whom it was intended, or if delivered at or sent by certified mail, return receipt requested, to the last known business address of the recipient.

iv. Governing Laws

This contract shall be governed by the laws of the State of Illinois.

v. Severability of Clauses

The illegality or invalidity of any term or clause of this contract, shall not affect the validity of the remainder of this contract. This contract shall remain in full force and effect as if such illegal or invalid term or clause were not contained herein.

vi. Waiver of Breach

The waiver by either Party of any breach of this contract shall not constitute a waiver as to any other breach.

vii. Disputes

In the event that any disputes or disagreements arise with respect to performance of this contract and prior to the pursuit of remedies at law, the Contractor and RMTD agree to use best efforts to resolve such disputes or disagreements through good faith negotiations.

viii. Successors and Assigns

RMTD shall bind RMTD and RMTD's successors, assigns, and legal representatives to the Contractor and the Contractor's partners, successors, assigns, and legal representatives with respect to the terms of this contract. Also, the Contractor shall bind the Contractor and the Contractor's partners, successors, assigns, and legal representatives to RMTD and RMTD's successors, assigns, and legal representatives with respect to the terms of this contract. Neither RMTD nor the Contractor shall assign, transfer, convey or subcontract this contract, in whole or in part, or otherwise dispose of the same without the prior written consent of the other.

ix. Covenant Against Contingent Fees

The Contractor warrants that the Contractor shall not employ or retain any company or person other than a bona fide employee working solely for the Contractor to solicit or secure this contract, and shall not pay or agree to pay any company or person other than a bona fide employee working solely for the Contractor any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, RMTD shall have the right to annul this contract without liability or, in RMTD's discretion, to deduct from the compensation due under the terms of this contract, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

x. Default by Contractor

In the event of a default by the Contractor, RMTD shall be able to pursue any available remedy against the Contractor, and if RMTD commences an action in court alleging a default hereunder and obtains a judgment thereon in RMTD's favor, RMTD may recover all expenses, court costs, and attorneys' fees incurred with respect to such action.

xi. Taxes

RMTD has a governmental exemption from payment of the Retailers' Occupation Tax (both state and local), the Use Tax, and the Service Use Tax and has been issued a tax exemption identification number by the Illinois Department of Revenue. A copy of the tax exemption certificate issued by the Illinois Department of Revenue is available upon request to RMTD.

xii. DBE Objectives/Policy Statement

The Rockford Mass Transit District has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The Rockford Mass Transit District has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Rockford Mass Transit District has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Rockford Mass Transit District to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy –

1. To ensure nondiscrimination in the award and administration of DOT assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

RMTD Grants Specialist, Paula S. Hughes, has been delegated as the DBE Liaison Officer. In that capacity, the Grants Specialist is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Rockford Mass Transit District in its financial assistance agreements with the Department of Transportation.

Rockford Mass Transit District has disseminated this policy statement to the RMTD Board of Trustees and all the components of our organization. RMTD has distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts.

The distribution of this statement is included in the IFB's (Invitation for Bids), RFP's (Request for Proposals), and RFQ's (Requests for Statements of Qualifications) for all DOT-assisted contracts.



Richard W. McVinnie, Executive Director Date: February 22, 2012

CERTIFICATION of compliance with these contract terms has been executed on behalf of:

Firm: RouteMatch Software Inc.

By: Signature: 

Title: Contracts Manager

Printed Name: Chad Rabsten

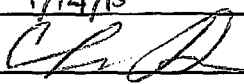
Date: 1/14/15

NON-COLLUSION CERTIFICATION

I hereby certify that I am the person responsible within my firm for the final decision as to the price(s) and amount of this proposal or, if not, that I have written authorization, enclosed herewith, from that person to make the statements set forth below on his or her behalf and on behalf of my firm.

I further attest that:

1. The price(s) and amount of this proposal/bid have been arrived at independently, without consultation, communication or agreement for the purpose of restricting competition with any other contractor, proposer/bidder or potential proposer/bidder.
2. Neither the price(s) nor the amount of this proposal has been disclosed to any other firm or person who is a proposer/bidder or potential proposer/bidder on this project, and will not be so disclosed prior to proposal/bid opening.
3. No attempt has been made or will be made to solicit, cause or induce any firm or person to refrain from proposing/bidding on this project, or to submit a proposal/bid higher than the proposal/bid of this firm, or any intentionally high or non-competitive proposal/bid or other form or complementary proposal/bid.
4. This proposal/bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary proposal/bid.
5. My firm has not offered or entered into a subcontract or agreement regarding the purchase of materials or services from any firm or person, or offered, promised or paid cash or anything of value to any firm or person, whether in connection with this or any other project, in consideration for an agreement or promise by any firm or person to refrain from proposing/bidding or to submit a complementary proposal/bid on this project.
6. My firm has not accepted or been promised any subcontract or agreement regarding the sale of materials or services to any firm or person, and has not been promised or paid cash or anything of value by any firm or person, whether in connection with this or any other project, in consideration for my firm's submitting a complementary proposal/bid, or agreeing to do so, on this project.
7. I have made a diligent inquiry of all members, officers, employees, and agents of my firm with responsibilities relating to the preparation, approval or submission of my firm's proposal/bid on this project and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in this affidavit.

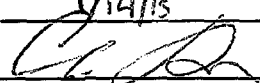
Date: 1/14/15
Signature: 
Printed Name: Chad Ralston
Title: Contracts Manager
Business Name: RaiseMatch Software, Inc.

BUY AMERICA CERTIFICATION

Certification requirement for procurement of steel, iron, or manufactured products

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The proposer/bidder hereby certifies that the proposer/bidder will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date: 1/14/15
Signature: 
Printed Name: Chad Ralston
Title: Contracts Manager
Business Name: Route Match Software, Inc.

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The proposer/bidder hereby certifies that the proposer/bidder cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date: _____
Signature: _____
Printed Name: _____
Title: _____
Business Name: _____

CONTRACT AGREEMENT

This Agreement, made and entered into on this 23rd day of December 2014, by and between
RouteMatch Software with offices at
1201 West Peachtree St NW #3300 in the city of
Atlanta, GA 30309 (hereinafter referred to as "Supplier")
and
Rockford Mass Transit District with offices at
520 Mulberry Street in the city of
Rockford, Illinois 61101 (hereinafter referred to as "RMTD")
covers all required materials, labor, equipment, administration, and supervision needed to perform the
specified work, hereinafter referred to as the Project or as the Work.

NOW THEREFORE, RMTD and the Supplier do mutually agree that for the consideration hereinafter specified, the Supplier will furnish the materials, equipment and services indicated herein subject to the terms, conditions, and general provisions set forth in this Agreement and subject to any other provisions incorporated herein by attachment, amendment, and/or reference.

Section 1 — Professional Services Provided

The Supplier agrees to perform or be responsible for the performance of all the work of this procurement including:

- A. Compliance with all the requirements of all "Contract Terms" as certified by the Supplier.
- B. Compliance with all other certifications required for this procurement, including Non-Collusion and Buy America.
- C. Providing all the necessary expertise, documentation, and finished products as defined by all RMTD specifications attached to this agreement after the execution page.

Section 2 — Material and Services Provided

The specific materials and services covered by this Agreement are identified in the Supplier's Proposal dated June 26, 2014.

Section 3 — Method of Payment and Maximum Compensation

- A. RMTD agrees to pay the Supplier the amount shown below, for:

AVL Fixed Route System: \$ 322,664.00

- B. Payment shall be made within 30 days after approval by the RMTD of an accurate and contractually acceptable invoice. RMTD will accept invoices for hardware after receipt of that hardware. For software and services, RMTD will only accept one lump sum invoice which must be issued after Software System Acceptance, which is deemed to occur thirty (30) days after Go Live and shall not be unreasonably withheld.

Section 4 — Time of Performance

All deliverables required in Section 1 of this Agreement shall be provided in accordance with the requirements of this Agreement within 240 days of the effective date of this Agreement.

Section 5 — Staffing

Within five working days after the execution of this Agreement, the Supplier agrees to submit to RMTD a list of personnel that the Supplier proposes to use in fulfilling the requirements of this Agreement. The Supplier represents that all personnel required in performing the Work under this Agreement are currently employed or shall be employed in a timely fashion so as to not adversely affect the project schedule. All the Work required hereunder shall be performed by the Supplier or by subcontractors directly under the supervision of the Supplier. The Supplier shall be responsible for verifying that all personnel performing the Work on this project are qualified and authorized under state and local law to perform such Work.

Section 6 — Cooperation with Other Consultants

The Supplier agrees to cooperate with any other consultant and/or contractor retained by RMTD.

Section 7 — Submittal Formats

All documents and maps, if any, created for this project are to be computer-generated in electronic format approved by RMTD before being provided by the Supplier as well as be provided to RMTD on paper. Any other format desired by the Supplier must be approved by RMTD before being generated by the Supplier.

Section 8 — Project Manager

A Project Manager, designated by RMTD, shall be the liaison between the Supplier and RMTD. All communication between the Supplier and RMTD shall be under the control of the Project Manager. The Project Manager shall have the right to request and receive a prompt written response to any and all questions arising during the term of this Agreement. The Work provided by the Supplier shall be subject to the review and direction of RMTD through the Project Manager.

Section 9 — Non-Performance Delay of the Supplier

The Supplier shall be liable to RMTD for reasonable expenses incurred by RMTD, including court costs, as the result of non-performance or delay by the Supplier in the performance of the Work required by the terms of this Agreement. Such liability shall be limited to the extent of the non-performance or delay not caused by persons or events beyond the control of the Supplier. In order for the Supplier to complete all Work within the time scheduled herein, the Supplier, without additional compensation, may be required to increase the number of shifts, the overtime operations, the weekly days of work, or perform any combination of said remedies.

Section 10 — Liability of the Supplier for Errors and Omissions

The Supplier shall promptly, upon notice or discovery, provide notice to RMTD of any errors or omissions in the drawings and specifications for this project. Work performed by the Supplier based on drawings and/or specifications with obvious errors shall be performed at the Supplier's expense.

Section 11 — Legal Responsibility

The Supplier shall perform all Work in conformity with the standards of reasonable care and skill expected of a firm performing such Work. The Supplier shall be responsible to RMTD for the work produced by consultants or persons retained by the Supplier, but the Supplier shall not be responsible for the consultants or persons retained or employed directly by RMTD or others. RMTD's right to review the work of the Supplier, as hereinafter provided, shall not be construed as relieving the Supplier from the professional and legal responsibility consistent with the Work required under this Agreement. The

Supplier shall perform the Work required by this Agreement in compliance with all applicable laws, statutes, ordinances, codes, orders, rules, and regulations and shall obtain any permits that may be required in connection with said Work. The Supplier shall verify that each subcontractor or anyone acting on behalf of the Supplier in any tier of subcontract to this Agreement shall perform to those same standards.

Section 12 — Insurance Coverage

Upon execution of the Agreement, and prior to the Supplier commencing any Work or services with regard to the Project, the Supplier shall carry commercial general liability insurance and the Supplier shall provide RMTD with a Certificate of Insurance that names RMTD, IDOT, and the FTA as Additional Insureds thereunder. Coverage provided to RMTD as an additional insured shall apply as primary insurance and be noncontributory with respect to any other insurance afforded to RMTD. The coverage available to RMTD, as Additional Insureds, shall not be less than:

- A. \$1,000,000 Each Occurrence, \$2,000,000 General Aggregate and \$1,000,000 Products/Completed Operations Each Occurrence, \$2,000,000 General Aggregate. Coverage must include personal and advertising injury limits. Such insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). All coverage shall be placed with an insurance company legally permitted to provide coverage in the State of Illinois. All Supplier insurance carriers must maintain an A.M. Best rating of "A" or better. Coverage shall be afforded to the Additional Insured whether or not a claim is in litigation. The insurance coverage shall be of sufficient type, scope, and duration to ensure coverage for RMTD for liability related to any manifestation date within the applicable statutes of limitation and/or repose which pertain to any work performed by or on behalf of RMTD in relation to the Project.
- B. Supplier shall give RMTD as much notice of cancellation and termination of RMTD's coverage thereunder as is reasonably possible under the circumstances. Not less than two weeks prior to the expiration, cancellation or termination of any such policy, the Supplier shall supply RMTD with a new and replacement Certificate of Insurance and Additional Insured endorsement as proof of renewal of said original policy. Said new and replacement endorsements shall be similarly endorsed in favor of RMTD as set forth above.
- C. Additionally, and prior to commencement of the Work, the Supplier shall provide RMTD with a Certificate of Insurance showing liability insurance coverage for the Supplier and any employees, agents, or Subcontractors of the Supplier for any Workers' Compensation, Employer's Liability, Automobile Liability, Umbrella/Excess Liability, and Professional Liability. In the event any of these policies are terminated, Certificates of Insurance showing replacement coverage shall be provided to RMTD. Coverages shall be no less than the following:
 - 1. Workers' Compensation and Employers' Liability Insurance: As required by law and affording thirty (30) days written notice to Contractor prior to cancellation or non-renewal (or as such as is permitted under applicable law), providing coverage of not less than \$1,000,000 for bodily injury caused by accident and \$1,000,000 for bodily injury by disease.
 - 2. Business Auto Liability Insurance: Written in the amount of not less than a \$1,000,000 combined single limit.
 - 3. Umbrella/Excess Liability Insurance: Coverage that supplements all of the above liability coverages, including the General Liability coverages in Paragraph A of this section, must have a \$3,000,000 minimum per occurrence and annual aggregate limit of liability.
- D. RMTD shall waive all subrogation rights of RMTD's insurance carriers that such carriers might have against the Supplier and against the contractors, consultants, agents, and employees of the Supplier

for damages covered by any insurance. RMTD shall require functionally equivalent waivers from the contractors, consultants, and agents of RMTD with respect to RMTD and the Supplier.

- E. The Supplier shall waive all subrogation rights of the Supplier's insurance carriers that such carriers might have against RMTD and against the contractors, consultants, agents, and employees of RMTD for damages covered by any insurance. The Supplier shall require functionally equivalent waivers from the contractors, consultants, and agents of the Supplier with respect to RMTD and the Supplier.

Section 13 — Interpretation of Agreement

RMTD shall determine the adequacy of the performance of the Supplier relative to the respective obligations and responsibilities of the Supplier as defined by this Agreement. The Supplier shall proceed diligently with the performance of this Agreement and in accordance with RMTD's decisions whether or not the Supplier has an active claim pending. Continuation of the work shall not be construed as a waiver of any rights accruing to the Supplier.

Section 14 — Changes in Scope

- A. Should a change or changes to this Agreement be desired or needed to the extent that the services to be performed by the Supplier are substantially altered, then RMTD and the Supplier shall negotiate an equitable adjustment in the compensation of the Supplier. Said change or changes, if substantial, may require re-bidding in accordance with the IDOT and FTA procedures. No change to this agreement shall be made without the written pre-approval* of RMTD, the A-E, and IDOT. (* "Pre-approval" means that requests for compensation for any work performed before receiving the written approval RMTD shall be rejected by RMTD and IDOT.)
- B. Should said changes require a reduction in the work of the Supplier, then RMTD may issue a verbal reduction request to be followed within five working days by a written request for a reduction in services by the Supplier. Immediately upon the receipt of a verbal or written request for reduction of services, the Supplier shall reduce all Supplier work effected by the request to the level requested. After receipt of such a request, the Supplier shall not incur any new obligations related to those areas that are the subject of said request without the written approval of RMTD. The Supplier shall also cancel as many outstanding obligations effected by the request as possible. RMTD will evaluate each non-cancelable obligation to determine if that obligation should be included as an eligible reimbursable expense. No damages of any nature shall be claimed against RMTD for exercising the right to reduce the scope of the work of the Supplier.

Section 15 — Independence of the Supplier

The Supplier shall have the relationship of an independent contractor to RMTD. In no event shall the Supplier or any employees, agents, or subcontractors of the Supplier be considered agents or employees of RMTD, IDOT, the State of Illinois, FTA, or USDOT. Furthermore, the Supplier agrees that no employees, agents, or subcontractors of the Supplier shall hold themselves out as, or claim to be, agents, officers or employees of RMTD, IDOT, the State of Illinois, FTA, or USDOT and will not by reason of any relationship with RMTD, IDOT, the State of Illinois, FTA, or USDOT, make any claim, demand or application to or for any right or privilege applicable to an agent, officer or employee of RMTD, IDOT, the State of Illinois, FTA, or USDOT, including but not limited to, rights and privileges concerning Workers' Compensation benefits, social security coverage, or retirement membership or credit.

Section 16 — Application of Statute of Limitations

As to all acts or failures to act by RMTD or the Supplier, any applicable statute of limitations shall commence to run and alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final payment for this Work.

Section 17 — Notices

All notices or communications pertaining to this Agreement shall be in writing and shall be sufficient when mailed or delivered to the address specified below:

To RMTD:

Richard W. McVinnie, Executive Director
Rockford Mass Transit District
520 Mulberry Street
Rockford, IL 61101

To the Supplier:

RouteMatch Software, Inc.
1201 W. Peachtree St. - Ste 3300
Atlanta, GA 30309
Attn: Contracts Manager

Section 18 — Contract Amendment

RMTD and the Supplier agree that no change or modification to this Agreement, or any Exhibits or Attachments hereto, shall be of any force or effect unless such amendment is dated, reduced to writing, executed by RMTD and the Supplier, and attached to and made a part of this Agreement. No work shall be commenced and no costs or obligations incurred in consequence of any Amendment to this Agreement or any Attachment hereto unless and until such amendment has been executed and made a part of this Agreement.

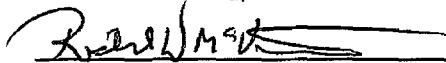
Section 19 — Additional Provisions

Any term, condition, right, covenant, or obligation (collectively, the "Original Terms") contained in that certain Paratransit/MDT Software Purchase Agreement dated March 15, 2005, by and between RMTD and Supplier (the "Original Agreement") which is not wholly unique to paratransit/demand response transportation shall apply to this Agreement as fully as if such Original Terms were expressly set forth herein. For the purposes of clarity and not of limitation, the Original Terms which, according to trade usage, relate exclusively to paratransit/demand response transportation software do not apply to this Agreement, but the balance of the Original Terms do apply to this Agreement without a requirement for any formal reinstatement or other document. Notwithstanding anything to the contrary contained herein, if there is a conflict between any express term, condition, right, covenant, or obligation of this Agreement (the "New Terms") and the Original Terms, the terms of this Agreement shall control.

IN WITNESS WHEREOF, RMTD and the Supplier have executed this Agreement as of this 23rd day of December, 2014.

RMTD of Rockford, Illinois

By:

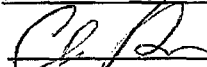


Title:

EXECUTIVE DIRECTOR

(Supplier): RouteMatch Software

By:



Title:

Chad Ralston, Contracts Manager

FIXED ROUTE AVL SPECIFICATIONS

The Fixed Route AVL/GPS System must include:

AVL/GPS System which tracks location of vehicle

Fixed Route AVL Software that seamlessly connects with Routematch Paratransit System

Fixed Route and Paratransit Software provided in a single database and single application

Must include software licenses for 41 fixed route vehicles plus 3 additional licenses for display monitors

Comprehensive Reporting to include reports for schedule adherence, operating statistics, on-time performance, vehicle location and dwell time

Advanced Dispatching integrated with Geographic Information Systems (GIS) and Schedule Adherence

Scheduling interface which allows for creation of breaks and layovers within schedules

User defined data views configured in a Dispatch Center using GPS real-time

Flexible Alert System to notify staff of headway problems, speeding, emergencies, and non-adherence to schedule or route

Alert System must also be customizable to allow for prompts to be sent via e-mail, a sound notification, or sent to the driver.

User-friendly mapping for route and detour management, real-time vehicle locations, playback for historical locations, headway status and event viewing

Mapping display of both Fixed Route and Paratransit Services – simultaneously and separately

Mapping display by route or routes selected by user

Analysis of Operations data – recognizing trends and patterns to optimize service and troubleshoot issues

Deviated Fixed Route solution to accommodate Demand Response riders and then seamlessly return to set schedules

Provide Dispatch-Driver Communications

Dashboard display of both Fixed Route and Paratransit Services – simultaneously and separately

Real-time traveler information system with instant "Where's My Bus?" information via SMS Text, email, on our webpage, and on peripheral devices at our Transfer Centers or at route stops

Real-time traveler information system must integrate with current signage at Transfer Centers

On the Vehicle:

Real-Time Navigation – turn by turn voice annunciated directions / navigation

Display of stop list

Intelligent Vehicle Logic which communicates with mobile data computer in vehicle to provide integration with On Board Peripherals which will allow for a single driver sign on to multiple peripherals including Voice Annunciators, Head Signs and Fareboxes. This must be scalable to also support future technologies such as Passenger Counters, Traffic Signal Prioritization, etc.

Two way messaging from driver to dispatch and dispatch to driver

Real-Time Traveler Information

Real-Time On Time Performance

San Diego Metropolitan Transit System

Metropolitan Transit System Policies and Procedures No. 52 for
Procurement of Goods and Services, March 17, 2016

Item 16



1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490
619.231.1466 Fax: 619. 234.3407

Policies and Procedures No. 52

Board Approval: 03/17/2016

SUBJECT:

PROCUREMENT OF GOODS AND SERVICES

PURPOSE:

To provide a uniform policy that guides the acquisition of goods and services for use at MTS.

BACKGROUND:

There is a compelling interest in ensuring that all federal, state, local, and private funds available to MTS are captured and used timely and in a manner that is compliant with federal and state procurement rules. To maximize the use of federal, state, local, and private funds and to maintain a competitive posture in seeking supplemental federal funds, MTS shall have the authority to establish and use a flexible contracting and procurement process. MTS may use any procurement method authorized for state or local agencies under state or federal law. This Policy provides the framework for what acquisition and contracting guidelines MTS shall comply with in the procurement of all of its goods and services.

This Policy applies to San Diego Metropolitan Transit System (MTS), San Diego Transit Corporation (SDTC) and San Diego Trolley Inc. (SDTI), collectively "MTS".

POLICY:

52.1 Regulatory Framework

- A. MTS's enabling legislation is codified at California Public Utilities Code §§ 120220-120238. Included in MTS's enabling legislation are various provisions regulating procurement. In particular, MTS's enabling legislation sets forth the requirements for purchasing goods and services funded by federal, state, local and private funds.
- B. As a recipient of Federal Transportation Administration (FTA) funds, MTS shall comply with all applicable FTA regulations and directives. All applicable FTA regulations and directives that MTS shall follow may be found at MTS Board Policy No. 52, Exhibit A.

- C. As a recipient of California Department of Transportation (CALTRANS) funds, MTS shall comply with applicable CALTRANS procurement requirements and standards. All applicable CALTRANS regulations and directives that MTS shall follow may be found at MTS Board Policy No. 52, Exhibit A.
- D. MTS is a political subdivision and local agency of the State of California. As such, MTS shall comply with all applicable California Government Code (Cal. Gov. Code), California Public Contract Code (Cal. Pub. Con. Code), California Labor Code (Cal. Lab. Code), California Public Utility Code (Cal. Pub. Util. Code), California Civil Code (Cal. Civ. Code) and California Code of Civil Procedure (Cal. Code of Civ. Pro.) sections that regulate how MTS shall procure goods and services. All applicable code sections that MTS shall follow may be found at MTS Board Policy No. 52, Exhibit A.

52.2 Procurement Standards

- A. MTS may contract with any department or agency of the United States of America, the State of California, or with any other public agency or any private persons or entity upon such terms and conditions as MTS finds to be in its best interest. MTS may also join other agencies in a joint procurement to issue a single solicitation and enter into a single contract with a Contractor.
- B. MTS shall include all federal, state and local requirements and clauses in its solicitations and contracts, as applicable.
- C. No procurements shall be split into multiple small contract awards merely to avoid rules applicable to full and open competitive procurements, absent efforts to foster greater opportunities for Disadvantaged Business Enterprises (DBEs) and other small business enterprises.
- D. MTS staff shall not place an order for any good or service without a properly authorized Purchase Requisition or without an approved and documented contract processed by the MTS Procurement Department. This prohibition does not include those transactions qualified as Purchase Card procurements under MTS' Financial Management Policy and those purchases under the MTS' punch-out catalog program.
- E. Prior to award of a contract, MTS shall certify and document that the price is fair and reasonable in connection with any procurement action that is within the micro purchase threshold. A price or cost analysis will be documented for procurements that exceed the micro-purchase threshold. The method and degree of analysis shall depend on the circumstances of each procurement.

- F. The Chief Executive Officer, through an internal policy or practice manual, may establish additional standards and procedures for MTS procurements.

52.3 Procurement Methods – Full and Open Competition

A. Micro-Purchases: \$3,000 or less

MTS may conduct micro-purchase procurements without obtaining competitive quotations. MTS shall solicit at least one documented quote. Any construction service that is expected to be more than \$1,000 but does not exceed \$50,000 shall be conducted in accordance with the Section 52.3 (B) of this Policy.

B. Small Purchases: More than \$3,000, but does not exceed \$100,000 for goods and services and more than \$1,000 but does not exceed \$50,000 for construction services

When the expected amount of the small purchase is more than \$3,000 but does not exceed \$100,000 for goods and services, and is more than \$1,000 but does not exceed \$50,000 for construction services, MTS shall conduct a documented competitive procurement as identified in the subsections below. MTS shall seek not less than three documented quotations/submissions through a Request for Quotes (RFQ), Invitation for Bids (IFB) or Request for Proposals (RFP) process that would permit price and other terms to be compared.

(i) Construction Services: More than \$1,000, but does not exceed \$50,000

- a. MTS may utilize an IFB or RFQ procurement method, whichever is most appropriate, and award to the lowest responsible and responsive bidder.
- b. If No Responsive Bid Received - If after solicitation of bids no responsive bids are received, the project may be performed through direct negotiations with a responsible and responsive Contractor.

(ii) Goods: More than \$3,000, but does not exceed \$100,000

- a. MTS may utilize a RFQ or IFB procurement method, whichever is most appropriate, and award to the lowest responsible and responsive bidder. For purposes of determining the lowest price, the amount of sales tax shall be excluded from the total amount of the bid received.
- b. If Lower Price Available in Open Market – If after rejection of bids, the Board of Directors determines and declares by two-

thirds vote that the goods may be purchased at a lower price in the open market, the Board of Directors may proceed to purchase the goods in the open market without further observance of Section 52.3 (B) of this Policy.

- c. If No Responsive Bid Received - If after solicitation of bids, the Board of Directors determines and declares by majority vote that it has not received a responsive bid, the Board of Directors may proceed to purchase the goods in the open market without further observance of Section 52.3 (B) of this Policy.
- d. Procurement of Prototype Equipment or Modifications - Upon a finding by two-thirds of all members of the Board of Directors that a purchase in compliance with Section 52.3 (B) of this Policy. does not constitute a method of procurement adequate for the operation of MTS facilities or equipment, the Board of Directors may direct the procurement of prototype equipment or modifications in an amount sufficient to conduct and evaluate operational testing without further observance of Section 52.3 (B) of this Policy.
- e. Source of Procurement for Replacement Goods: The Board of Directors may direct the purchase of any goods without observance Section 52.3 (B) of this Policy upon a finding by two-thirds of all members of the Board of Directors that there is only a single source of procurement and that the purchase is for the sole purpose of duplicating, repairing, or replacing goods that are in use, including upgrades or migrations of proprietary intellectual property.

- (iii) Services (Excluding Architectural, Landscape Architectural, Engineering, Environmental, Land Surveying Services and Construction Management): More than \$3,000, but does not exceed \$100,000

MTS may utilize a RFQ or RFP procurement method, whichever is most appropriate, and shall award the contract to either the lowest responsible and responsive bidder or to a responsible and responsive proposer who is determined to have provided the overall best value based on an evaluation of price and other factors.

- (iv) Architectural, Landscape Architectural, Engineering, Environmental, Land Surveying Services and Construction Project Management

Service Procurements: More than \$3,000, but does not exceed \$100,000)

Unless another method is more appropriate, MTS may utilize a Request for Statement of Qualifications (RFSQ) procurement method and shall award the contract to the most highly rated offeror, in accordance with the Cal. Gov. Code §§ 4525 et seq. or the Brooks Act if federally funded.

- C. Formal Procurements: More than \$50,000 for construction services and more than \$100,000 for goods and other services

When the expected amount of the procurement is more than \$50,000 for construction services and more than \$100,000 for goods and other services, MTS shall conduct a documented competitive procurement as identified in the subsections below. All of the below competitive procurements shall be advertised in accordance with Section 52.4 of this Policy to ensure full and open competition.

(i) Construction Services: More than \$50,000

- a. Unless another procurement method is more appropriate, MTS may utilize an IFB procurement method and shall award to the lowest responsible and responsive bidder.
- b. No Bids Received: If after solicitation of bids no responsive bids are received, the project may be performed through direct negotiations with a responsible and responsive Contractor.

(ii) Goods: More than \$100,000

- a. MTS may utilize either an IFB or a RFP procurement method, whichever is most appropriate, and shall award either to the lowest responsible and responsive bidder or to a responsible and responsive proposer who is determined to have provided the overall best value based on price and other factors. For purposes of determining the lowest price, the amount of sales tax shall be excluded from the total amount of the bid or proposal received.
- b. If Lower Price Available in Open Market – If after rejection of bids, the Board of Directors determines and declares by two-thirds vote that the goods may be purchased at a lower price in

the open market, the Board of Directors may proceed to purchase the goods in the open market without further observance of Section 52.3 (C) of this Policy.

- c. If No Responsive Bid Received - If after solicitation of bids, the Board of Directors determines and declares by majority vote that it has not received a responsive bid, the Board of Directors may proceed to purchase the goods in the open market without further observance of Section 52.3 (C) of this Policy.
- d. Procurement of Prototype Equipment or Modifications - Upon a finding by two-thirds of all members of the Board of Directors that a purchase in compliance with Section 52.3 (C) of this Policy does not constitute a method of procurement adequate for the operation of MTS facilities or equipment, the Board of Directors may direct the procurement of prototype equipment or modifications in an amount sufficient to conduct and evaluate operational testing without further observance of Section 52.3 (C) of this Policy.
- e. Source of procurement for replacement goods: The Board of Directors may direct the purchase of any goods without observance of Section 52.3 (C) of this Policy upon a finding by two-thirds of all members of the Board of Directors that there is only a single source of procurement and that the purchase is for the sole purpose of duplicating, repairing, or replacing goods that are in use, including upgrades or migrations of proprietary intellectual property.

(iii) Services (Excluding Architectural, Landscape Architectural, Engineering, Environmental, Land Surveying Services and Construction Management Services): More than \$100,000

MTS may utilize an IFB or RFP procurement method, whichever is most appropriate, and award to the lowest responsible and responsive bidder or a responsible and responsive proposer who is determined to have provided the overall best value based on price and other factors.

(iv) Architectural, Landscape Architectural, Engineering, Environmental, Land Surveying Services and Construction Project Management Services: More than \$100,000

- a. MTS may utilize a RFSQ procurement method, and shall award the contract to the most highly rated offeror, in accordance with

the Cal. Gov. Code §§ 4525 et seq. or the Brooks Act if federally funded.

- b. This section shall not apply if the Chief Executive Officer determines that the services needed are more technical in nature, involve little professional judgment and that another procurement method would better serve MTS' needs.

D. Design-Build:

When deemed appropriate, MTS may utilize a documented competitive RFP procurement method and shall award to the proposer who provides the best overall value, based on price and other factors. The award shall be to a single contractor for the design, construction and delivery of a complete and operational project.

E. Design-Bid-Build:

When deemed appropriate MTS may:

- (i) First: Utilize through a documented competitive RFP or IFB procurement method, whichever is most appropriate, a design services contract for the development of drawings and specifications and shall award the contract to lowest responsible and responsive bidder or a responsible and responsive proposer who is determined to have provided the overall best value based on price and other factors
- (ii) Second: Utilize a documented competitive IFB procurement method for the construction and delivery of a complete and operational project and award to the lowest responsive and responsible bidder.

F. Noncompetitive Procurement: Sole Source

MTS may utilize a documented Sole Source procurement method when:

- (i) The goods or services it needs are available from only one responsible and responsive source and no other goods or services will satisfy its requirements;
- (ii) A change to a contract is beyond the contract's original scope;
- (iii) A specified brand or trade name is the only article that will properly meet the needs of the Board of Directors;

- (iv) In an emergency declared by vote of two-thirds of the membership of the Board of Directors;
- (v) Immediate remedial measures to avert, alleviate, repair or restore damaged MTS property are necessary to ensure that MTS facilities or vehicles are available to serve the transportation needs of the public; or
- (vi) Otherwise authorized by local, state or federal law.

In all cases Sole Source procurements must be fully approved before award.

G. Revenue Contracts

Unless another method is more appropriate, MTS may utilize a competitive solicitation process for revenue contracts. MTS shall award a revenue contract to the candidate whose offer maximizes revenues to MTS after consideration of all technical qualifications and other criteria as applicable.

52.4 Advertising

A. Procurements which require advertising shall be published through one or more of the following sources:

- (i) Within a newspaper of general circulation in San Diego County;
- (ii) Within the a bid management site (e.g. PlanetBids); and/or
- (iii) In a local community, small business or contracting trade publication.

B. MTS may also send to contractors and bidders previously known to be interested in providing the goods or services and at least 1 DBE contractor or other small business contractor that performs the subject work, if available.

C. Any notice shall specify in the bid invitation and public notice the place bids are to be received and the time by which they shall be received.

52.5 Contract Form

All purchases shall be documented. MTS may document purchases using one of the following contract forms: Formal Contract, Purchase Order, Vendor Service Contract Form, Memorandum of Understanding, Memorandum of Agreement and purchases by Payment Card when permissible under the MTS Purchasing Card Policy.

52.6 Contract Award

The authority to approve and or execute all procurement activities shall be in accordance with MTS Board Policy No. 41 – “Signature Authority”.

52.7 Protests

- A. Content Based Protest: Protests based on the content of the procurement solicitation shall be filed with MTS Procurement Manager within 10 calendar days after the procurement solicitation is first advertised. The Chief Executive Officer's designee, the MTS Procurement Manager, shall issue a written decision on the protest prior to opening of the procurement solicitation. A protest may be renewed by refiling the protest with MTS Procurement Manager within 15 calendar days after the mailing of the notice of the intent to award.
- B. Award Protest: Any bidder may protest the intent to award on any ground not based upon the content of the procurement solicitation by filing a protest with MTS Procurement Manager within 15 calendar days after the mailing of the notice of the intent to award.
- C. Content of Protest: Any protest shall contain a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest.
- D. Opportunity to be Heard: Protestors shall have an opportunity to appear and be heard before the Board of Directors prior to the opening of the procurement solicitation in the case of protests based on the content of the procurement solicitation, or prior to final award in the case of protests based on other grounds or the renewal of protests based on the content of the procurement solicitation. The decision of the protest by the Board of Directors shall be in writing and constitutes a final administrative decision for purposes of judicial review pursuant to Cal. Code of Civ. Pro. § 1094.6
- E. Protests on Federally Funded Procurements: MTS shall notify the FTA when MTS receives a protest on a federally funded procurement and keep the FTA informed about its status. A protestor may appeal to the FTA within 5 working days of the date when the protestor receives actual or constructive notice of MTS's final decision on a protest.

52.8 Responsible and Responsive Contractors

MTS shall award contracts only to responsible and responsive contractors. The degree and complexity of the responsibility and responsiveness analysis shall depend on the procurement method utilized. The solicitation must identify all factors to be used in evaluating whether contractors are responsible and responsive.

A. Responsible: In selecting a responsible contractor, MTS staff shall consider: the contractor's capacity to perform the work required by the contract documents with respect to financial strength, resources available and experience; and the contractor's integrity and trustworthiness to complete performance of the work in accordance with the contract.

B. Responsive: MTS staff, prior to making a recommendation to award, shall ensure that all prospective contractors meet all the responsiveness requirements of the solicitation which may include, but shall not be limited to, submission of all required documentation and meeting all minimum performance qualifications.

52.9 Prequalification

MTS may prequalify contractors when there is a reasonable expectation that the procurement may involve precise specifications and performance standards.

52.10 Bonds, Retention and Rates

A. Bonding

- (i) Bidder's Security – MTS shall require the following forms of bidder's security for all construction service contracts estimated to cost more than \$50,000: cash, a cashier's check, certified check or a bidder's bond executed by an admitted surety insurer. MTS may require bidder's security for other procurements when MTS finds it necessary to provide assurance that the bidder will execute the contract as may be required.
- (ii) Payment Bond – MTS shall require that for all construction service contracts over \$25,000, a payment bond be provided by the Contractor. MTS may require payment bonds for other procurements when MTS finds it necessary to provide additional assurances that the Contractor will make payment to all people and firms supplying labor and material.
- (iii) Performance Bond – MTS shall require that for all construction service contracts over \$100,000 that are funded in whole or in part with federal funds, a performance bond be provided by the Contractor. MTS may require performance bonds for other procurements when MTS finds it necessary to provide additional assurances that the Contractor will fulfill all contractual obligations.

B. Retention

MTS shall require that for all construction contracts over \$5,000, MTS will retain at least 5% of the contract price. MTS may hold more than 5% retention if a

finding is made by the Chief Executive Officer at a public hearing on a project by project basis that an increased amount is necessary and such findings are detailed in the bid documents.

C. Prevailing Wage

All public work contracts (as that term is defined by the Cal. Lab. Code § 1771 and the federal Davis Bacon Act) valued at more than \$1,000 shall be subject to the payment of federal and/or state prevailing wage wages, whichever is higher. Public works contracts funded solely with federal funds valued at more than \$2,000 shall be subject to the payment of federal prevailing wage.

Original Policy Enacted on 6/22/2006

Policy Revised on 9/13/2007

Policy Revised on 11/18/2010

Policy Revised on 3/17/2016

Exhibit A

Statutory and Regulatory Requirements Table:

The following is a listing of the sources of laws, regulations, and guidance that MTS shall follow, depending on the procurement's funding source:

Federal Statute, Regulations, and Policies	Subject
49 U.S.C Chapter 53	Mass Transportation
49 CFR Part 18	Administrative Requirements for Grants and Cooperative Contracts
FTA Circular 4220.1F	Third Party Contracting Guidance
FTA Circular 5010.1D	Grant Management Guidelines
FTA Circular 5100.1	Bus and Bus Facilities
FTA Circular 5300.1	State of Good Repair
FTA Circular 6100.1E	Technology
FTA Circular 9030.1E	5307 Program
FTA Circular 9040.1G	Non Urbanized
FTA Circular 9045.1	New Freedom
FTA Circular 9050.1	JARC
FTA Circular 9070.1F	ADA Capital
FTA Circular 9300.1B	Capital Investment
Office of Management of Budget (OMB) Circular A-87	Cost Principles for State, Local and Indian Tribal Governments
FTA Master Agreement	Annual Terms and Conditions of FTA funded projects
FTA Certification and Assurances	Annual Agreement between MTS and FTA
Moving Ahead for Progress in the 21st Century Act (P.L. 112-141)	Transportation Law Appropriating Transportation Funds
FAR Part 31	Federal Cost Principles
2 CFR Part 200	Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards

State Laws	Sections(s)	Subject
Public Utilities Code	120220 – 120228	MTS Enabling Legislation

Civil Code	9550 et seq.	Payment Bond Requirement for Construction Projects
Civil Code	3320 – 3321	Prompt Payment and Retention to Design Professionals
Code of Civil Procedure	995.311	Verification of Admitted Surety Insurers on Bonds
Government Code	4525 et seq.	Architect & Engineering Services
Government Code	6250 – 6270	California Public Records Act
Government Code	5956 et seq.	Infrastructure Projects
Government Code	14080 et seq.	Funding from California Department of Transportation for Exclusive Mass Transit Guideway Systems
Labor Code	1720, 1720.2, 1720.3, and 1771	Public Works and Prevailing Wage
Code of Regulations	8 CCR 16000	Public Works and Prevailing Wage Cont.
Public Contract Code	1103	Responsible Bidder in Public Work Contracts
Public Contract Code	1104	Architectural & Engineering Plans and Specifications
Public Contract Code	3300	Contractor's License in Specifications for Bids
Public Contract Code	3400	Trade Name or Specific Names in Specifications for Bids
Public Contract Code	4100 - 4114	Subcontracting
Public Contract Code	5100 - 5107	Relief of Bidders
Public Contract Code	6109	Ineligible and Debarred Contractors and Subcontractors
Public Contract Code	6610	Contents of Notice Inviting Bids
Public Contract Code	7100 - 7200	Public Work Contract Clauses
Public Contract Code	9201 - 9203	Claims and Disputes
Public Contract Code	20101	Prequalification of bidders
Public Contract Code	20103.5	Effect of License Requirement on Bid

Code		
Public Contract Code	20103.6	Procurement of Architectural Design Services
Public Contract Code	20103.8	Determining the Lowest Bid
Public Contract Code	20104	Resolution of Construction Claims
Public Contract Code	20104.50	Progress Payments on Public Works
Public Contract Code	20341	Procurement of Construction Services
Public Contract Code	20342	Bidder's Security – Bid Bond Requirement for Construction Projects

Exhibit A was originally adopted on 3/17/2016.

San Diego Metropolitan Transit System

Agreement, December 17, 2014, between San Diego Metropolitan Transit
System and Steer Davies and Gleave, Inc. for website replacement services

Item 17



1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490
(619) 231-1466 • FAX (619) 234-3407

ORIGINAL

STANDARD SERVICES AGREEMENT

G1694.0-14
CONTRACT NUMBER
620.11
FILE NUMBER(S)

THIS AGREEMENT is entered into this 17th day of December 2014, in the State of California by and between San Diego Metropolitan Transit System ("MTS"), a California public agency, and the following, hereinafter referred to as "Contractor":

Name: Steer Davies and Gleave, Inc. Address: 883 Boylston Street, 3rd Floor

Form of Business: Corporation Boston, MA 02116

(Corporation, Partnership, Sole Proprietor, etc.)

Telephone: (617) 391-2300

Authorized person to sign contracts: Jon Bottom or Lisa Buchanan Director
Name Title

The attached Standard Conditions are part of this Agreement. The Contractor agrees to furnish to MTS services and materials, as follows:

The attached Standard Conditions are part of this agreement. The Contractor agrees to furnish to MTS services and materials, as follows:

Provide MTS website replacement services as set forth in the MTS Scope of Work (attached as Exhibit A), Steer, Davies, Gleave's Cost Proposal (attached as Exhibit B), in accordance with the Standard Services Agreement, including Standard Conditions Services (attached as Exhibit C), and the MTS Travel Policy 44-C (Exhibit D).

The anticipated period of performance is nine months from date of contract execution.

The total contract cost shall not exceed \$130,398.06.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM	CONTRACTOR AUTHORIZATION
By: <u>[Signature]</u> Chief Executive Officer	Firm: <u>Steer Davies & Gleave Inc.</u>
Approved as to form:	By: <u>[Signature]</u>
By: <u>[Signature]</u> Office of General Counsel	Signature Title: <u>Director</u>

AMOUNT ENCUMBERED	BUDGET ITEM	FISCAL YEAR
\$ 130,398.06	CIP1281OP	2015
By: <u>[Signature]</u> Chief Financial Officer		<u>12/10/14</u> Date

(35 total pages, each bearing contract number)

LMARQUIS-SA
SA-G1694.0-14.STEERDAVIESGLEAVE.RATKINSON
12/2/14

1255 Imperial Avenue, Suite 1000, San Diego, CA 92101-7490 • (619) 231-1466 • www.sdmts.com

Metropolitan Transit System (MTS) is a California public agency comprised of San Diego Transit Corp., San Diego Trolley, Inc., San Diego and Arizona Eastern Railway Company (nonprofit public benefit corporations), and San Diego Vintage Trolley, Inc., a 501(c)(3) nonprofit corporation, in cooperation with Chula Vista Transit. MTS is the taxicab administrator for seven cities. MTS member agencies include the cities of Chula Vista, Coronado, El Cajon, Imperial Beach, La Mesa, Lemon Grove, National City, Poway, San Diego, Santee, and the County of San Diego.



EXHIBIT A

B.1 SCOPE OF WORK FOR SERVICES

1.0 Project Overview

San Diego Metropolitan Transit System (hereafter MTS) provides public transit services (bus, trolley and taxi administration) for the greater San Diego metropolitan area.

MTS maintains a website to provide important information to assist the public in using the transit network, e.g. schedules, maps and trip planning functionality etc.

The current website averages 10,000 unique visitors per day and consists largely of static web pages containing a mix of plain text, images, PDF documents and embedded video maintained using Adobe Contribute, Dreamweaver and FTP. Due to the absence of a Content Management System (CMS), maintenance is becoming increasingly challenging.

MTS' ridership demographic is wide, from young students to senior citizens, with many users being low-income – 70 percent do not own a car, many accessing the website from a library or other public space. The website audience is comprised primarily of daily riders, occasional riders (to special events), tourists and transit advocates. The majority of these users visit the site to plan trips using the online trip planner, schedules and maps. Other users consist of job seekers, media, event and conference coordinators and organizations seeking information about advertising with MTS.

Due principally to its age, the site has a number of shortcomings, such as its haphazard organization, fixed width design, lack of dynamic content and lack of mobile device compliance.

More significantly, the website fails to comply with the standards of usability set forth in Section 508 of the Rehabilitation Act of 1973, nor does it meet the usability standards set forth in the Americans with Disabilities (ADA) Best Practices for Website Accessibility for State and Local Governments and the Web Content Accessibility Guidelines developed by the Web Accessibility Initiative of the World Wide Web Consortium (W3C).

2.0 Objectives

The objectives of this project are as follows:

- Create a website that is ADA compliant.
- Create a more contemporary, responsive and dynamic website.
- Create a browser and device agnostic website.
- Fully integrate with external applications, both in-house and third party, including trip planning and schedule applications and alert and advisory information feeds.
- Improve usability and accessibility of information for our customers as well as business and technology partners.
- Improve timeliness and efficacy of communication to the public about important issues related to Bus and Trolley services and operations.
- Enable customers to easily purchase tickets, passes (both physical and electronic) and other merchandise.
- Enable customers to easily plan trips through the provision of clear, accurate information about routes and services that meet their needs.
- Enable customers to easily contact us by providing clear address (email and physical) and telephone information and by providing an easy-to-use web form by which to submit comments.
- Design the website to be Internationalized (I18N), enabling it to be translated (Localized – L10N) into Spanish and other to-be-determined languages.

- Enable MTS' staff to access the Intranet via a secure "Extranet" portal.
- Facilitate fine recovery through the provision of a payment portal for eligible offenders.
- Reduce the overhead of maintaining the website by fully leveraging the capabilities of a Content Management System and facilitating the automatic update and expiry of information wherever possible.

This project will be a collaborative partnership in which its in-house Marketing and IT staff work closely with the vendor on all aspects of the project. The vendor shall provide all project deliverables in good quality, within the agreed timeframe, according to the project plan and at the agreed costs.

The service provider shall be responsible for overall project management in collaboration with MTS' staff.

3.0 Project Goals

1. Create a detailed Project Plan, Project Schedule, Detailed Design, Test Plans, Maintenance Agreement and Disaster Recovery (DR) Plans for the creation and support of a CMS based replacement for the current website.
2. Deploy new Development, Production and Failover environments as required to facilitate the development and implementation of the CMS based solution.
3. Following the successful completion of a Beta Test program including an agreed upon User Acceptance Test plan, support deployment to Production.
4. Provide comprehensive training and materials to both Marketing (focused on how to maintain content) and IT personnel (focused on maintenance of the CMS itself).
5. Maintain a high availability implementation including failover and redundancy.

4.0 Design goals

4.1 General

1. Build an industry best practices CMS based solution to replace MTS' current website and meet MTS' business needs.
2. Implementation technology shall be the current production version of the Drupal CMS (7 at time of writing), running on a UNIX/LINUX server hosted by AT&T. MTS' preference would be for a full Microsoft solution, including a SOL Server backend, however it is understood that for Drupal the optimal architecture is LINUX, Apache, MySql, PHP (LAMP); the vendor shall present the pros and cons of both approaches and make a recommendation.
3. Design and implement a well-engineered, robust and scalable Drupal based successor to MTS' existing website that enables easy maintenance of content by Marketing with minimal involvement of IT personnel. The appearance and structure of the website, including provision of color palette, image files etc. shall be the responsibility of MTS' Marketing personnel.
4. The website should be designed to be responsive and facilitate easy navigation with a minimum of resizing or scrolling regardless of the device on which it is being viewed.
5. The website's design, the appearance of which shall be specified by MTS' Marketing personnel, should utilize Mega Drop-down Menus.
 - a. "Breadcrumb Trail" navigation should appear above each page's content.
 - b. Secondary level navigation should be utilized, where appropriate within specific content areas.

- c. An accurate sitemap should be included and easily accessible, likely created using Drupal's XML Sitemap module.
- 6. Any and all code created to deliver this website solution should be fully commented and clearly documented.
- 7. The website design should provide Rich Site Summary (RSS) data feed enabling users to subscribe to receive information updates such as alerts, service changes etc.
- 8. The website design should be Internationalized (I18N), supporting easy Localization into non-English languages, with all this implies, i.e. no graphical text, culturally agnostic icons, text abstracted into resource files etc.
 - a. The website design should incorporate the Google Website Translator plugin in a TBD location to further facilitate display in non-English languages.
- 9. The website will need to accommodate integration of Google AdSense and a Google Site Search bar should be integrated into its header. MTS Marketing will provide further direction as it advances overall website design solutions.
- 10. The website should facilitate easy inclusion and re-sharing via social media sites such as Facebook, Twitter etc., likely through Drupal's Social Share module.
- 11. The website should include an easily maintainable event calendar that is both searchable and sortable by site visitors, in a style similar to this <http://jewishexponent.com/community/calendar/all>, perhaps by leveraging Drupal's Calendar module and related functionality.
- 12. MTS' has several web forms, including, but not limited to, those listed below. The website design allow MTS staff to easily create web forms that submit to either an email address or database.
 - a. Customer Contact Form
 - b. Compass Card Registration
 - c. Compass Card Purchase
 - d. Senior, Disabled and Medicare Card (SDM) Application
 - e. Various Permit Application
 - f. Title VI Complaint Form
 - g. Various Surveys
 - h. Fine Recovery (see Objectives)
 - i. Other registration and/or Contact forms, to be determined
- 13. The website should be browser and device agnostic and specifically compatible with these browsers:
 - a. Microsoft IE 8 and later
 - b. Mozilla Firefox v24 and later
 - c. Apple Safari v6.0.5 and later
 - d. Google Chrome v30 or later
 - e. Opera v16 or later
- 14. The website shall have had comprehensive Search Engine Optimization performed on it and shall be designed and marked up such that it displays prominently in the results of appropriate searches on Google, Bing and Yahoo! at a minimum.
- 15. The website shall incorporate appropriately secure Extranet access facilitating MTS' employee access to the Intranet.
- 16. The website should support the use of Google Analytics to allow MTS' staff to analyze website traffic and usage.
- 17. The website should support a content creation and deployment workflow and configurable User roles with differing levels of permissions, e.g. Editor, Writer, Publisher and Administrator.

18. The website should support automatic updating of links when content is reorganized and periodic detection and reporting of broken links, either through core Drupal functionality or an appropriate extension.
19. The website should support the automated expiration of articles that have a finite "shelf life" to reduce maintenance overhead.
20. The website should be designed to fully comply with current ADA requirements for usability.
21. Create and document Maintenance activities and Schedule plus Disaster Recovery plans and procedures.
22. Website design, maintenance (activities and schedule), disaster recovery plans and procedures should be fully documented.
23. Website structure (design and architecture) as well as operational processes should be fully documented.

4.2 Functional

The website will incorporate several functional components, some carried over from the existing site, such as Trip Planning, Customer Contact and some new, such as Fine Recovery. Wherever possible, MTS' desires to achieve this through third party applications, both existing and new. Consequently, the specifics of some of these integrations are to-be-determined, however they are called out here in as much detail as is currently possible to enable proposers to understand the scope and nature of the work required.

1. A very heavily used and important component of the MTS website is the trip planning function. On the new website, trip planning will be offered through the Google Maps Transit Trip Planner, which will need to be seamlessly integrated on the homepage using the Google Maps API. MTS has a proprietary Alert and Advisory application by which Operations personnel enter details, which are distributed to concerned parties via an interface to Microsoft Exchange. MTS desires to expose these messages to the public through the website and so the vendor will need to work with MTS' IT personnel to create an interface between these two systems. This will require some enhancement of the Alerting application's user interface by MTS personnel to reduce typos and improve usability, followed by collaboration with the successful vendor to implement the interface. The interface is likely to be some form of direct integration with the Exchange server, asynchronous replication, web service or scheduled FTP file transfer, the specific choice will depend on the capabilities of Drupal and MTS will require the vendor to make recommendations.
2. Like the Trip Planner, the bus and trolley timetables and schedules section of MTS' website is very heavily used and important. MTS desires that the schedule publishing process be as automated as possible, such that schedule changes are automatically pushed to the website and available for display. MTS has previously reviewed TriMet's open-source TimeTablePublisher application, but will reevaluate options for the provision of this service within the scope of this project. Consequently, again the specifics of this integration are to-be-determined, however it is very likely to be some type of Publisher-Subscriber model or asynchronous file transfer. The chosen solution and specific details of the interface mechanism to be supplied as soon as a selection has been made.
3. MTS desires to introduce functionality to enable Customers to obtain real-time arrival and departure information for buses, using the Bus Stop number or location, see this example at Portland's TriMet agency,

<http://trimet.org/arrivals/index.html> – this realtime data is provided by MTS' in the form of an XML feed that complies with the General Transit Feed Specification (GTFS).

4. MTS' website currently supports and provides access to applications, a functionality that should be supported in the future and to include additional applications. Some categories of citations issued to certain types of offenders are eligible for a program that preempts a court hearing by early payment of a fine. MTS desires to include a payment portal in the website to enable offenders to easily pay their fine using Visa and Mastercard credit and debit cards for which backend infrastructure will be required to enable Code Compliance staff to cancel citations that have been paid. The specifics of this system will become apparent during analysis and design, but it is likely to require a database table or tables and report or possibly email integration.
5. MTS desires to include a visually and architecturally refreshed version of the online store to enable Customers to purchase tickets, passes and other merchandise. Currently the store uses PayPal Advanced and Mal's eCommerce and the probability is that continued usage of these would be required in the new site.
6. MTS has a proprietary application, Customer Response Center (CRC) for managing customer feedback received by phone, email, postal mail and the Customer Contact web form. The existing mechanism by which Customer comment records are transferred from the website to the CRC application is unwieldy and slow and the field population is overly manual and cumbersome. Although MTS desires that the website implement the Customer Contact form functionality, we require that it submit directly to the CRC database instead of writing to a local database on the ISP's server and having records transferred in batches by a web service every 2 hours. Furthermore MTS requires that the form be redesigned to leverage drop-down lists and enforcement of mandatory fields etc. to optimize the form completion process for our Customers.
7. MTS' website currently supports third party portals to ADP (<https://www1.apply2jobs.com>), Planetbids (<http://www.planetbids.com>) and Compass Card (<https://compasscard.511sd.com>). These portals support MTS' recruiting and procurement activities and our customers' Compass Card management needs. MTS requires that the new website should continue to fully integrate with these third party portals.
8. MTS receives requests from independent developers for access to our real-time transit data, currently MTS is only sharing this data with Google via the GTFS feeds, but is developing the infrastructure to make such data publically available. MTS requires that the new website provide for the submission of access requests and that such requests be routed to a configurable party, likely via email integration, for review and approval.

5.0 Scope of Work

- 5.1 **Analyze and Document Existing Website Structure and Functionality**
Conduct a study to analyze the structure and business requirements, fulfilled by MTS' current website and prepare a document describing the structural and functional requirements with a view to re-implementing (not reproducing) the current and new structure and functionality as a Drupal CMS based solution.

Deliverables:

- a) A formal document describing the current structural and functional requirements at a level of detail sufficient enough to allow re-implementation.

5.2 Design and Document Drupal CMS Based Replacement

Collaborate with MTS' Marketing and IT staff to design an enterprise grade solution based on the Drupal CMS Platform to meet the structural and functional requirements approved in 5.1 and deliver a formal design document, to include properly sized development and production environments accounting for current usage and anticipated future growth. MTS Marketing staff will provide design concepts and direction for the layout and will work with the developer to ensure best practices are utilized in the look and feel of the website design.

Deliverables:

- a) A formal document or documents describing and specifying the proposed solution, said documentation to include, but not be limited to, such things as structure and hierarchy diagrams, data and workflow diagrams, wire frame and high fidelity mock-ups, XML schemas etc.

5.3 Implement the Drupal CMS Based Website

Set up a development environment and install Drupal platform and components per the approved design in step 5.2 and create a comprehensive Test Plan to fully exercise the components of the solution.

Deliverables:

- a) A functional Drupal development environment that meets the design, regulatory, structural and functional requirements per the approved deliverables under Items 5.1 and 5.2.
- b) Comprehensive Test Plan(s) to fully exercise structural and functional components of the solution, accounting for functional, performance and integration testing.

5.4 Quality Assurance of Drupal CMS Based Website

Carry out navigation, functional and performance tests, completeness checks (especially of links) and industry-standard quality assurance processes to verify the security and integrity of the new website, its interfaces and components and ensure that they meet the requirements as stated in the approved requirements document from 5.1.

Deliverables:

- a) Completed copy(s) of Test Plan(s) delivered in 5.3 demonstrating successful coverage of all functional and non-functional requirements accounting for functional, performance and integration testing.
- b) 5.5 Promote the Drupal based website to Production

Deploy the new website and its components to Production, in parallel with the existing site, in order to engage in a period of Beta testing.

Deliverables:

- a) Fully functional Drupal based website.
- b) Comprehensive site-specific documentation covering all technical and operational details.

5.6 Transition to Drupal based website and decommissioning of existing site

After an agreed upon period of successful parallel operation of both websites, transition the sdmmts.com domain to the new website and dismantle the existing site.

5.7 Disaster Recovery and Backup Plan

Liaise with MTS' IT staff to create an appropriate backup plan accounting for scope, frequency, schedule, size, location and type (full, incremental etc.) and create a Disaster Recovery plan, review this with MTS' IT staff and execute a full test of the Disaster Recovery process including restore-from-backup.

Deliverables:

- a) Documented recommendations for disaster recovery and backup plans for the Drupal based infrastructure
- b) Successfully demonstrate the implemented recovery and backup process.

5.8 Training

Provide three types of training on the new Drupal platform to MTS personnel as follows:

- Drupal CMS training for MTS' IT staff to facilitate administration and infrastructure support.
- Drupal CMS training for MTS' IT staff to facilitate Drupal CMS modification or development.
- Drupal CMS training for MTS' Marketing staff on design, theme and content.
- MTS Marketing staff shall also be trained to edit the design and layout via Dupal.

Deliverables:

- a) Trained MTS staff
- b) Training documentation
- c) Training completion certificates / reports

5.9 Maintenance and Support

Provide ongoing telephone and e-mail support with the possibility of on-site assistance if issues cannot be resolved over phone or remotely for all Drupal components developed or implemented by the vendor.

Deliverables:

- a) Support and Service Level Agreements (SLAs) including escalation plans.

6.0 Project completion

Upon the successful completion of the tasks and deliverables listed in the Scope of Work portion of this document, the project will be deemed complete. Each task will be evaluated by MTS staff for completeness and acceptance.

7.0 Progress Billing

Payment will be progress-based and linked to the achievement of agreed upon project milestones.

MTS reserves the right to seek penalties for late delivery or underperforming deliverables.

Project Initiation Payment

Analyze and Document Existing Website Structure and Functionality

Design and Document Drupal CMS Based Replacement

2nd Payment

Implement the Drupal CMS Based Website

Quality Assurance of Drupal CMS Based Website

3rd Payment

Promote the Drupal based website to Production

Transition to Drupal based website and decommissioning of existing site

4th Payment

Disaster Recovery and Backup Plan

Training

5th Payment

Maintenance and Support

Final Payment (Following 30 Day Holdout)

EXHIBIT B

SECTION F.2 COST/PRICING FORMS (REVISED 4/30/14)

RFP TITLE AND MTS DOC. NO.: MTS Website Replacement Project, MTS Doc. No. G1694.0-14

ITEM #	DESCRIPTION	HOURS	RATE	TOTAL
1	Analyze and Document Existing Website Structure and Functionality	100	\$132.23	\$13,223.00
2	Design and Document Drupal CMS Based Replacement	150	\$132.23	\$19,834.50
3	Implement the Drupal CMS Based Website	250	\$132.23	\$33,057.50
4	Quality Assurance of Drupal CMS Based Website	212	\$132.23	\$28,032.76
5	Promote the Drupal based website to Production	45	\$132.23	\$5,950.35
6	Transition to Drupal based website and decommissioning of existing site	41	\$132.23	\$5,421.43
7	Disaster Recovery and Backup Plan	24	\$132.23	\$3,173.52
8	Training	20	\$132.23	\$2,644.60
9	Maintenance and Support	100	\$132.23	\$13,223.00
10	*Other Direct Costs: Proposer to identify costs and amounts. (MTS may ask for a breakdown of the costs.) i. Flights ii. Accommodation iii. Subsistence iv.			\$5,405.00
11	CA Sales Tax – 8% (based on line # 10, if applicable)			\$432.40
12			TOTAL COST:	\$130,398.06

Please note that hourly rate is fully inclusive of direct expenses.

PROPOSER ACCEPTS RESPONSIBILITY FOR ACCURACY AND PRESENTATION OF THE ABOVE NUMBERS.

****Estimated quantities are for proposal purposes only. The quantities do not reflect guaranteed usage by MTS.**

NOTE: ALL PROPOSERS MUST COMPLETE PROPOSAL FORMS AS PROVIDED, FAILURE TO DO SO WILL DEEM THE PROPOSAL NON-RESPONSIVE.

**RETURN THIS FORM WITH YOUR PROPOSAL
RETAIN OTHER PAGES FOR YOUR RECORDS**

EXHIBIT C

STANDARD CONDITIONS SERVICES

1. INDEPENDENT CONTRACTOR

Contractor hereby declares that it is engaged in an independent business and agrees that in the performance of this Agreement it shall act as an independent contractor and not as an employee of MTS. Contractor has and hereby retains full control of all the employment, compensation, and discharge of all employees of Contractor assisting in its performance hereunder. Contractor shall be fully responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding tax, and all other laws and regulations governing such matters. Contractor shall be responsible for its own acts and those of its agents and employees during the term of this Agreement. MTS shall be responsible for its own acts and those of its agents and employees during the term of this Agreement. Except as otherwise specifically provided, as an independent contractor, Contractor is solely responsible for determining the means and methods of performing the services described in the scope of work. Contractor shall perform the work contemplated with resources available within its own organization.

2. INSURANCE

Contractor will include the contract number on all insurance-related correspondence, i.e., the insurance certificate itself.

All policies required shall be issued by companies who are licensed or approved to do business in the State of California and hold a current policyholder's alphabetic and financial-size category rating of not less than A-VI, in accordance with A.M. Best.

MTS utilizes the services of a third party insurance monitoring company. As a condition of contract award, Contractor shall submit any required insurance policies to the third party monitoring company of MTS' choosing.

A. COVERAGE REQUIRED - ALL CONTRACTS

(1) Liability

- (a) Commercial General Liability At all times during this contract and, with respect to Products and Completed Operations Liability, for twelve (12) months following the acceptance of the work by MTS, Contractor agrees to maintain Commercial General Liability Insurance utilizing Insurance Services Office (ISO) coverage form CG0001, edition date 10/01 or later, or an equivalent form and with insurance companies acceptable to MTS. The coverage shall contain no restricting or exclusionary endorsements with respect to the performing of services described in the scope of work.

All such policies shall name in the endorsement San Diego Metropolitan Transit System (MTS), San Diego Trolley, Inc. (SDTI), San Diego and Arizona Eastern Railway (SD&AE), San Diego and Imperial Valley Railroad (SD&IV), and San Diego Transit Corporation (SDTC), their

directors, officers, agents, and employees as additional insureds as their interests may appear.

- (b) Automobile Liability At all times during this contract, Contractor agrees to maintain Automobile Liability Insurance for bodily injury and property damage including coverage for all owned, nonowned, and hired vehicles.
- (c) Workers' Compensation/Employer Liability At all times during this contract, Contractor agrees to maintain Workers' Compensation and Employers' Liability Insurance in compliance with the applicable statutory requirements. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver.

B. ADDITIONAL COVERAGES REQUIRED (AS INDICATED)

☐ (1) Owner-Provided Builder's Risk
PROVIDED

MTS will provide Builder's Risk Insurance on a special form basis, excluding the perils of earthquake and flood, at a limit of not less than the full replacement value of the work and covering the work and all materials and equipment to be incorporated therein, including property in transit elsewhere, and insuring the interests of the Contractor, subcontractors, materialmen, and MTS, SDTI, SD&AE, SD&IV, SDTC, MTS's contractor for design, and MTS's contractor for construction management. However, Contractor is responsible for the portion of any loss that is within the deductible amount of this Builder's Risk Insurance, which is currently at \$50,000 but is subject to change.

☐ (2) Railroad Protective or Equivalent
REQUIRED

Any exclusions relating to performance of operations within the vicinity of any railroad, bridge, trestle, track, roadbed, tunnel, underpass, or crossing must be deleted. Option: purchase separate Railroad Protective Liability Policy as required.

☐ (3) Professional Liability
REQUIRED

At all times during this contract, and for twelve (12) months following acceptance of work by owner, Contractor agrees to maintain Professional Liability Insurance with respect to services or operations under this Agreement.

☐ (4) Pollution Legal Liability
REQUIRED

At all times during this contract, and for twenty four (24) months following, Contractor agrees to maintain Pollution Legal Liability Insurance with respect to

services or operations under this Agreement. The extended discovery period must be no less than twenty four (24) months.

☐ (5)
REQUIRED

Contractor Equipment

At all times during this contract, Contractor agrees to maintain Contractor's Equipment Insurance on a special form basis covering equipment owned, leased, or used by Contractor. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver. Contractor hereby releases and holds harmless MTS for any loss or damage to its equipment.

☐ (6)
REQUIRED

Installation Floater

At all times during this contract, Contractor agrees to maintain Installation Floater Insurance on a special form basis covering property owned or provided by Contractor. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, SD&IV, and SDTC, and the policy form must permit and accept such waiver. Contractor hereby releases and holds harmless these entities for any loss or damage to its property.

☐ (7)
REQUIRED

Garage Keeper's Legal Liability & Automobile Portion

At all times during this contract, Contractor agrees to maintain Garage Keeper's Legal Liability as well Automobile Portion which covers the risk of loss or damage to MTS vehicles while in the care, custody or control of Contractor. Automobile portion shall cover the Contractor in the event of a vehicle accident while they are driving a MTS vehicle, which results in a third party claim of physical damage or bodily injury.

☐ (8)
REQUIRED

Construction Work Agreements

- (a) Contractor agrees to utilize ISO coverage forms CG2010, 10/85 or ISO coverage forms CG2010 and CG2037, or equivalent forms, to comply with the additional Insured requirement stated in section 2.A.(1)(b).
- (b) Contractor agrees to provide a Designated Project Aggregate Limit Endorsement (per project aggregate) utilizing form CG2503 or equivalent Form.

☐ (9)
REQUIRED

Crime Fidelity Insurance

At all times during this contract, Contractor agrees to maintain Crime Fidelity Insurance with respect to services or operations under this agreement. The coverage should include the following:

- Employee dishonesty/theft
- Theft, disappearance and destruction on the premises
- Theft, disappearance and destruction while in transit
- Forgery/alteration

☐ (10) Umbrella or Excess Liability (if required to meet liability limits above)

REQUIRED

Contractor agrees that any Umbrella or Excess Liability Policy utilized to provide the required limits of liability shall contain coverage at least as broad as that provided by the General Liability Policy, and be written for a term concurrent with the General Liability Policy.

☒ (11) Primary and Non-Contributory Insurance

REQUIRED

Contractor agrees that all general liability coverages required under this insurance section are PRIMARY and that any insurance of MTS, SDTI, SD&AE, SD&IV, and SDTC shall be excess and noncontributory (endorsement required).

C. MINIMUM POLICY LIMITS REQUIRED

Combined Single Limit (CSL)

Commercial General Liability (Per Occurrence):	\$1,000,000
(General Aggregate)	\$2,000,000
(Completed Operations & Products Aggregate)	\$2,000,000
Automobile Liability: (Combined Single Limit)	\$1,000,000
Worker's Compensation:	<u>Statutory Limits</u>
Employer's Liability per Accident /or Disease:	\$1,000,000

Additional Coverages (as indicated under Section B, Additional Coverages Required):

<input type="checkbox"/> B (1) Builder's Risk	Replacement Cost
<input type="checkbox"/> B (2) Railroad Protective	\$ _____
<input type="checkbox"/> B (3) Professional Liability	\$ _____
<input type="checkbox"/> B (4) Pollution Liability	\$ _____
<input type="checkbox"/> B (5) Contractor Equipment	Replacement Cost
<input type="checkbox"/> B (6) Installation Floater	Replacement Cost
<input type="checkbox"/> B (7) Garage Keeper's Legal Liability	\$ _____
(Combined Single Limit (CSL) Per Occurrence)	
<input type="checkbox"/> B (8) Construction Work Agreements	\$ _____

☐ B (9) Crime Fidelity Insurance

\$ _____

☐ B (10) Umbrella or Excess Liability
(if required to meet liability limits above)

\$ _____

D. NOTICE OF POLICY CHANGES

Contractor shall not amend or cancel the insurance policy and coverage required by this Agreement without providing MTS with at least thirty (30) days prior written notice. Contractor shall notify MTS within ten (10) days of insurer-initiated material amendments or cancellations to the insurance coverage required by this Agreement. Under no circumstances shall these notice provisions be deemed a waiver of the insurance requirements set for herein. Any material changes in or cancellation of the insurance policy on file with MTS pursuant to Section 2(E) will result in an immediate stop work order until proof of substitute coverage meeting the requirements of this Agreement is provided to MTS. In the alternative, in MTS' sole discretion, MTS retains the right to declare Contractor in default and immediately terminate this Agreement if the insurance coverage required by this Section 2 is cancelled, otherwise lapses or fails to meet the coverage limits at any time, and for any duration, during the term of this Agreement.

E. EVIDENCE REQUIRED

Within ten (10) working days following receipt of notice that a contract has been awarded, Contractor shall have provided the MTS Contracts Specialist with satisfactory certification by a qualified representative of the Insurer(s) that Contractor's insurance complies with all provisions in this insurance section.

F. SPECIAL PROVISIONS

The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of said insurance by MTS, SDTI, SD&AE, SD&IV, and SDTC, or their insurance Contractor(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.

MTS reserves the right to withhold payments to Contractor in the event of material noncompliance with the insurance requirements outlined above.

3. TERMINATION OF AGREEMENT

A. TERMINATION FOR CONVENIENCE

Performance under this agreement may be terminated by MTS in accordance with this clause in whole or, from time-to-time, in part, whenever MTS shall elect. Any such termination shall be effected by delivery to Contractor of a Notice of Termination specifying the extent to which performance under this agreement is terminated, and the

date upon which such termination becomes effective. Upon receipt of any such notice, Contractor shall, unless the notice requires otherwise:

- (1) immediately discontinue performance on the date and to the extent specified in the notice;
- (2) place no further orders for materials other than as may be necessarily required for completion of such portion of the agreement that is not terminated;
- (3) promptly make every reasonable effort to either obtain cancellation on terms satisfactory to MTS of all orders to Contractor's suppliers to the extent they relate to the performance of that portion terminated, or upon MTS concurrence assign to MTS those orders; and
- (4) assist MTS, upon request, in the maintenance, protection and disposition of property acquired by MTS under this agreement.

If claimed in writing within thirty (30) calendar days after Notice of Termination, MTS will pay to Contractor an equitable adjustment to include (without duplication of any item):

- (1) all amounts due and not previously paid to Contractor for goods completed in accordance with this agreement prior to such notice;
- (2) a reasonable amount for any goods and materials then in production; provided that no such adjustment be made in favor of Contractor with respect to any goods which are Contractor's standard stock;
- (3) costs of settling and paying supplier's claim arising out of the canceled orders; and
- (4) a reasonable profit for costs incurred in the performance of that portion terminated; provided, however, that if it appears that Contractor would have sustained a loss on the entire agreement had it been completed, no profit shall be included.

The total sum to be paid to Contractor under this clause, shall not exceed the total order price as reduced by the amount of payments otherwise made, and as further reduced by the order price of that portion not terminated, and will not include any consideration for loss of anticipated profits on the terminated portion all claims for which seller agrees to waive.

B. TERMINATION FOR DEFAULT

In case of Contractor breach or failure to perform, MTS reserves the right to terminate the contract for default. MTS may award the contract to the next lowest responsive, responsible Proposer, solicit new bids, or pursue any other remedy authorized by law.

In addition to any remedy authorized by law, money due to the Contractor under and by virtue of contract, as shall be considered necessary by MTS, may be retained by MTS until disposition has been made of such suits or claims for damages. The retention of money due to the Contractor shall be subject to the following:

- (1) MTS will give the Contractor ten (10) days notice of its intention to retain funds from any partial payment, which may become due to the Contractor prior to acceptance by MTS of the contract. Retention of funds from any payment made after acceptance may be made without such prior notice to the Contractor.
- (2) No retention of additional amounts out of partial payments will be made if the amount to be retained does not exceed the amount being withheld from partial payments.
- (3) If MTS has retained funds, and it is subsequently determined that MTS is not entitled to be indemnified and saved harmless by the Contractor in connection with the matter for which such retention was made, MTS shall be liable for interest earned on the amount retained for the period of such retention.

MTS may terminate the contract by serving a notice of termination on the Contractor. Notice shall set forth the manner in which the Contractor is in default, and provide the Contractor with ten (10) day's time to cure the default to the satisfaction of MTS. This cure period may be adjusted if the parties so agree in writing. If MTS determines after the cure period that the default is not cured, MTS will issue a "show cause" letter to the Contractor requesting from the Contractor reasons why this contract should not be terminated. If MTS does not find that the Contractor has demonstrated sufficient reason for its failure to cure, the contract shall be deemed terminated. The Contractor shall only be paid the contract price for supplies received and accepted, or services performed in accordance with the manner set forth in the contract. If MTS determines that the Contractor had an excusable reason for not performing such as a strike, fire, flood, or other events, which are not the fault of, or beyond the control of the Contractor, MTS may allow the Contractor to continue work or terminate the contract for convenience.

4. INDEMNITY

As between MTS and Contractor, Contractor is deemed to assume responsibility and liability for, and Contractor shall indemnify and hold harmless, MTS, SDTI, SDTC, SD&AE, SD&IV and any and all of its directors, officers, agents or employees from and against any and all claims, loss, damage, charge, or expense, whether direct or indirect, which MTS, SDTI, SDTC, SD&AE, SD&IV or such directors, officers, agents or employees may be put or subjected, by reason of any damage, loss, or injury of any kind or nature whatever to persons or property caused by or resulting from or in connection with any negligent act or action, or any neglect, omission, or failure to act when under a duty to act on the part of Contractor or any of its officers, agents, servants, employees or subcontractors in its or their performance under this Agreement. Each party's maximum aggregate liability to the other or anyone claiming through the other party for any and all claims, demands, actions, causes of action, suits and proceedings arising out of or related to this Agreement, whether or not or as matters of strict or absolute liability, shall be limited to an amount equal to the Total Fee payable to the Consultant by MTS. The Consultant's indemnification obligations to MTS will remain during the term of the contract. In addition to any other remedy authorized by law, so much of the money due Contractor under this Agreement as shall be considered necessary by MTS may be retained until disposition has been made of any claim for damages.

5. ASSIGNABILITY

- (a) By MTS. This contract is assignable, in whole or in part, to any other government agency, including the North County Transit District and/or the San Diego Association of Governments and/or the Metropolitan Transit System. The party wishing to exercise the assignment (also known as a "piggyback") shall perform an independent cost estimate to determine fair and reasonable pricing, and shall enter into its own contract with the vendor based upon the terms and conditions of this Request for Proposal. Any assignment or piggyback shall comply with Federal Transit Administration (FTA) requirements if applicable. MTS shall have no responsibility or liability for any such assignment or piggyback.
- (b) By Contractor. Any attempt by Contractor to assign, subcontract, or transfer all or part of this Agreement shall be void and unenforceable without MTS' prior written consent; which consent shall not be unreasonably withheld. Any such consent shall not relieve Contractor from full and direct responsibility for all services performed prior to the date of assigning, subcontracting, or transferring this Agreement.

6. SUBCONTRACTORS

Any contract in excess of \$25,000, entered into as a result of this contract, shall contain all of the provisions stipulated in this contract to be applicable to subcontractors, including, but not limited to, provisions pertaining to costs, records, and payment methods.

7. NOTICES

All notices or other communications to either party by the other shall be deemed given when made in writing and deposited in the United States Post Office, addressed as follows:

To MTS:

San Diego Metropolitan Transit System (MTS)
Attention: Chief Executive Officer
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490

To Contractor:

As shown on front page.

8. CONSIDERATION PAID

MTS shall reimburse the Contractor for actual costs (including labor costs, employee benefits, overhead, and other direct costs) incurred by the Contractor in performance of the work, in an amount not to exceed \$ 130,398.06 exclusive of any fixed fee. Actual costs shall not exceed the estimated wage rates and other costs set forth in the Contractor's proposal.

In addition, MTS shall pay the Contractor a fixed fee of \$0.00. Said fixed fee shall not be altered unless there is a significant alteration in scope, complexity, or character of the work to be performed.

Fees and all other charges will be billed monthly as the work progresses, and the net amount shall be due at the time of billing.

Total expenditures made under this contract, including the fixed fee, shall not exceed the sum of \$ 130,398.06.

Payment will be made as set forth in this Agreement; however, payments may be withheld or portions thereof may be deducted or setoffs may be made against Contractor if Contractor is not performing work in accordance with the applicable provisions of this Agreement. The time for payment of invoices or for accepting any discounts offered shall run only from the date of receipt of correct invoices with required certification documents by MTS.

Reimbursement for transportation and subsistence costs shall be in accordance with MTS Board Policy No. 44.

Equipment purchases shall be made in accordance with 49 CFR, Part 18.32.

9. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

MTS's Equal Employment Opportunity Program for Contractors, MTS Policy No. 25, is part of this Agreement (a copy can be obtained from MTS's Clerk of the Board). A Certificate of Compliance and a Workforce Report form signed by the Contractor is a condition for the award of this contract.

Each Contractor who provides MTS labor, equipment, materials and services of \$50,000 or more per year with fifty (50) or more employees shall have, maintain, and submit an Equal Employment Opportunity (EEO) Plan to the Director of Human Resources and Labor Relations for MTS each year of the contract, and a Workforce Utilization Report on or before January 1 and July 1 for each year of the contract.

The objective of this plan is to assure that the Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Contractor agrees to take action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, or national origin. 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.

With respect to construction activities, the Contractor shall comply with all applicable EEO requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of 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), and any federal statutes, executive orders,

regulations and federal policies that may in the future affect construction activities undertaken in the course of the Project.

10. COST PRINCIPLES

The Contractor agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, shall be used to determine the allowability of individual items of cost.

The Contractor also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments.

Any costs for which payment has been made to the Contractor that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments, are subject to repayment by the Contractor to MTS.

11. NOTICE OF POTENTIAL CLAIM FOR OUT-OF-SCOPE WORK

The Contractor shall not be entitled to additional compensation for out-of-scope work unless he has given MTS a written notice of potential claim for any such work. The written notice of potential claim shall set forth the reasons for which the Contractor believes additional compensation will or may be due, the nature of the out-of-scope work involved, and, insofar as possible, the amount of the potential claim. The notice must be given to MTS prior to the time Contractor shall have performed the work, if based on an act or failure to act by MTS or in all other cases within fifteen (15) days after the happening of the event, thing, occurrence, or other cause, giving rise to the potential claim.

It is the intention of this section that any claim for out-of-scope work be brought to the attention of MTS at the earliest possible time in order that matters related to any such work can be settled in a prompt manner. The Contractor hereby agrees that he shall have no right to additional compensation for any claim for out-of-scope work for which no written notice of potential claim as herein required was filed.

12. LITIGATION EXPENSES

Should litigation be necessary to enforce any term or provision of this Agreement, or to collect any portion of the amount payable under this Agreement, then all litigation and collection expenses, witness fees, court costs, and attorney's fees shall be paid to the prevailing party.

13. EXCLUSIVE USE

The services hereunder are provided for the exclusive use of MTS and such services, data, recommendations, proposals, reports, design criteria, and similar information provided by Contractor, are not to be used or relied upon by other parties except as authorized by MTS.

14. **DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION (*applies to federally funded contracts only*)**

This project is subject to Title 49, Code of Federal Regulations part 26 (49 C.F.R. 26), entitled "Participation by Disadvantaged Business Enterprises (DBEs) in Department of Transportation Financial Assistance Programs." MTS' DBE program has an aspirational goal of 4.1% participation by certified DBE's over the Fiscal years 2013 to 2015 time period. In order to help MTS achieve its federally mandated overall DBE goal, MTS encourages the participation of DBEs as defined in 49 C.F.R. 26 in the performance of contracts financed, in whole or in part, with federal funds. Contractor is also encouraged to use services offered by financial institutions owned and controlled by DBEs. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

In order to ascertain whether its overall DBE goal is being achieved, MTS is tracking DBE participation on all federal-aid contracts. Therefore, all successful proposers are required to report the DBE status of all participants after award of any contract. If only a portion of any contract will be performed by a certified DBE, then the portion of work performed and associated contract price shall also be reported. If the proposed prime contractor is not a certified DBE, MTS encourages the proposer to outreach to DBEs for subcontracting opportunities on this project. There is no specific DBE goal for this project; participation of DBEs is not a condition of execution of this Agreement.

Contractor shall be fully informed in respect to the requirements of the DBE regulations. The DBE regulations in their entirety are incorporated herein by this reference (see 49 USC 26; 49 CFR 26). Contractor's attention is directed to the following matters:

- A. A DBE must be a small business concern as defined pursuant to Section 3 of U.S. Small Business Act and relevant regulations promulgated pursuant thereto.
- B. A DBE may participate as a prime contractor, subcontractor, joint-venture partner with a prime or subcontractor, vendor of materials or supplies, or as a trucking company.
- C. A DBE joint-venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks, and profits of the joint venture commensurate with its ownership interest.
- D. A DBE must perform a commercially useful function; i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing, and supervising the work.
- E. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:
 - 1. Caltrans' "Civil Rights" Web site at: <http://www.dot.ca.gov/hq/bep>.

2. Caltrans' DBE Directory This Directory may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815, Telephone: (916) 445-3520.

F. When reporting DBE participation, the Contractor may count the cost of materials or supplies purchased from DBEs as follows:

1. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
2. If the materials or supplies are purchased from a DBE regular dealer, count 60 percent (60%) of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph.
3. If the DBE is neither a manufacturer nor a regular dealer, count only the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.
4. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

G. When reporting DBE participation, the Contractor may count the participation of DBE trucking companies as follows:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.

2. The DBE must itself own and operate at least one (1) fully licensed, insured, and operational truck used on the contract.
3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
6. For the purposes of paragraph 14(G), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
7. Prior to the fifteenth of each month, the Contractor shall submit documentation to MTS showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to MTS showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement. The Contractor shall also submit to MTS documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month.

If a DBE subcontractor is decertified during the life of the project, the decertified subcontractor shall notify the Contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the project, the subcontractor shall notify the Contractor in writing with the date of certification. The Contractor shall furnish the written documentation to the Engineer.

15. PROMPT PAYMENT

No retainage will be held by the agency from progress payments due to the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with MTS' prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies

specific in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor, or subcontractor in the event of a dispute involving late payment, or nonpayment by the contractor, or deficient subcontractor's performance, or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

16. RECORDS RETENTION

The Contractor shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract including, but not limited to, the costs of administering the contract. The Contractor shall make such materials available at its respective office at all reasonable times during the Agreement and for three (3) years from the date of final payment under the contract. MTS, the state, the State Auditor, or any duly authorized representative of the federal government shall have access to any books, records, and documents of the Contractor that are pertinent to the contract for audit examination, excerpts, and transactions, and copies thereof shall be furnished if requested.

17. COVENANT AGAINST CONTINGENT FEES

Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Contractor, to solicit or secure this Agreement, and that she or he has not agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, MTS shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the Agreement a price or consideration, or otherwise recover the full amount of such fee, percentage, brokerage fee, gift, or contingent fee.

18. OWNERSHIP OF DOCUMENTS

Tracings, plans, specifications, and maps prepared or obtained under the terms of this Agreement shall be delivered to and become the property of MTS. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under this Agreement shall be made available, upon request, to MTS without restriction or limitation on its use.

19. TIME

The Contractor acknowledges that timely performance is an important element of this Agreement. Accordingly, the Contractor shall put forth its best professional effort to complete its services in accordance with the agreed-upon schedule.

20. ENTIRE AGREEMENT

This Agreement is the entire agreement of the parties and no attempted modification shall be binding unless in writing and signed by MTS and the Contractor. All questions pertaining to the

validity and interpretation of this Agreement shall be determined in accordance with the laws of California applicable to contracts made to be performed within the state.

21. NONDISCRIMINATION BY CONTRACTOR

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor 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 MTS deems appropriate.

22. DISPUTES, CLAIMS, AND RESOLUTION

MTS and the Contractor agree that every effort shall be made to resolve any dispute arising under this Agreement informally through their designated representatives. If the informal efforts are unsuccessful, then either party may request mediation by submitting a written request signed by an officer with the authority to bind the Contractor or MTS. Within five (5) business days of the request of any party, the parties shall mutually agree on the person or alternative dispute resolution agency to conduct the mediation. If the parties are unable to agree on the person or alternative dispute resolution agency to conduct the mediation, the initiating party may arrange for the office of the American Arbitration Association in downtown San Diego, California, to perform the mediation. The initiating party shall then schedule the mediation so that it is conducted within fifteen (15) business days of the mediator's appointment. The costs of the mediation and fees of the mediator, if any, shall be borne by the requesting party. Any dispute not resolved through the mediation may proceed to litigation in a court of competent jurisdiction in the County of San Diego, State of California, unless the parties agree in writing to submit the dispute to binding arbitration.

Should the Contractor suffer any injury or damage to person or property because of any alleged act or omission of MTS, or if any of Contractor's employees, agents, or others for whose acts the Contractor is legally liable suffers any injury or damages to person or property because of any alleged act or omission of MTS, a written claim for damages shall be filed with the MTS Office of General Counsel in accordance with the provisions of California Government Code section 900 et seq.

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

23. DUTY TO CLARIFY OBVIOUS AMBIGUITY

The Contractor is required to seek clarification of any obvious ambiguity contained in the contract documents. Failure to do so will result in an interpretation of the ambiguous provision favorable to MTS should a dispute later arise concerning that provision.

24. PREVAILING WAGE

Work to be performed by Contractor in accordance with this Contract may be a "public work" under Labor Code § 1720, et seq. If Contractor will receive federal funds, this Contract may also be subject to the payment of prevailing wages pursuant to the Davis-Bacon Act, 40 U.S.C. § 3141 et seq., and other federal laws. It is the sole responsibility of Contractor to ensure that all workers who perform work pursuant to this Contract are paid the correct rate of prevailing wages.

When working on a federally funded project, Contractor shall ensure that all workers entitled to the payment of prevailing wages receive the higher of the applicable State or federal prevailing wage.

MTS has obtained from the Director of the California Department of Industrial Relations general prevailing wage determinations for the locality in which work is being performed. These determinations are on file and available at MTS' offices located 1255 Imperial Avenue, Suite 1000, San Diego, California 92101, and are available from the Department of Industrial Relations on the internet at www.dir.ca.gov. Federal prevailing wage rates are available from the U.S. Department of Labor on the internet at www.access.gpo.gov.

25. ROYALTIES AND PATENT FEES

The Contractor shall pay all royalties and patent fees, and shall defend all suits and claims for infringements of any patent rights, and shall hold MTS harmless from loss on account thereof. If however, the Contractor has information that the procedures or articles specified are an infringement of a patent, the Contractor shall be responsible for any loss unless said information is promptly given to MTS by Contractor.

26. PATENT RIGHTS

A. General.

If any invention, improvement, or discovery of MTS, or any of its third party contractors, is conceived or first actually reduced to practice in the course of, or under this Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, MTS is required to notify FTA immediately and provide a detailed report.

B. Federal Rights.

Unless the Federal Government later makes a contrary determination in writing, the rights and responsibilities of MTS, third party contractor, subrecipient and the Federal Government pertaining to that invention, improvement, or discovery will be determined in accordance with applicable federal laws, regulations, including any waiver thereof. Unless the Federal Government later makes a contrary determination in writing, MTS, irrespective of its status or the status of any subrecipient or any third party contractor at any tier (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit

organization, institution of higher education, individual, etc.), MTS shall transmit to FTA those rights due the Federal Government in any invention resulting from that third party contract described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business firms Under Government Grants, Contracts, and cooperative Agreements," 37 C.F.R. Part 401.

27. RIGHTS IN DATA AND COPYRIGHTS

A. Definition.

The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Grant Agreement or Cooperative Agreement. Examples include, but are not limited to: computer software, engineering drawings and associated lists; specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to Project administration.

B. Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the Grant Agreement or Cooperative Agreement:

1. Except for its own internal use, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public.
2. This restriction on publication, however does not apply to an Agreement with an institution of higher learning.

C. Federal Rights in Data and Copyrights. In accordance with 49 C.F.R. § 19.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the "subject data" described in the following subsection 1 and 2. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright's owner's consent, the Federal Government may not extend its federal license to other parties.

1. Any subject data developed in the Grant Agreement or Cooperative Agreement, or under a third party contract or subagreement financed by the Grant Agreement or Cooperative Agreement, whether or not a copyright has been obtained; and
2. Any rights of copyright to which MTS, a subrecipient or third party contractor purchases ownership with federal assistance.

D. Special Federal Rights for Planning, Research, and Development Projects. When FTA provides financial assistance for a planning, research, development or a Demonstration Project, it is FTA's general intention to increase

transportation knowledge, rather than limit the benefits of the Project to participants in the Project. Therefore, unless FTA determines otherwise, the Recipient of FTA financial assistance to support a planning, research, development, or a Demonstration Project agrees that in addition to the rights in data and copyrights of Subsection C of this Section, FTA may make available to any FTA recipient, subrecipient, third party contractor, or third party subcontractor, either FTA's license in the copyright to the subject data derived under the Grant Agreement or Cooperative Agreement, or a copy of the subject data first produced under the Grant Agreement or Cooperative Agreement. If the Project, which is the subject of the Grant Agreement or Cooperative Agreement, is not completed for any reason whatsoever, all data developed under that Project shall become subject data as defined in Subsection A of this Section and shall be delivered as the Federal Government may direct. This Subsection D of this Section, however, does not apply to adaptations of automatic data processing equipment or programs for MTS' use whose costs are financed with Federal transportation funds for capital projects.

- E. Hold Harmless. Unless prohibited by state law, upon request by the Federal Government, Contractor agrees to indemnify, save, and hold harmless MTS, the Federal Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this project, the Grant Agreement or Cooperative Agreement. Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of Federal Government.
- F. Restrictions on Access to Patent Rights. Nothing contained in this section on rights in data, shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- G. Application to Materials Incorporated into Project. The requirements of Subsections B, C and D of this Section, do not apply to material furnished by Contractor, and incorporated into the work carried out under this project, the Grant Agreement or Cooperative Agreement, provided that Contractor identifies the incorporated material at the time of delivery of the work.

28. ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES

The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; 49 U.S.C. § 5301(d); and the following federal regulations including any amendments thereto:

- A. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

- B. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- C. U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 38;
- D. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- E. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- F. U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- G. 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;
- H. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;
- I. FTA Regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- J. Any implementing requirements FTA may issue.

29. METRIC SYSTEM

As required by U.S. DOT or FTA, Contractor agrees to use the metric system of measurement in its Project activities, in accordance with the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. §§ 205a note; and any U.S. DOT or FTA regulations, guidelines, and policies. To the extent practicable and feasible, Contractor agrees to accept products and services with dimensions expressed in the metric system of measurement.

30. SUBSTANCE ABUSE

Pursuant to the rules and regulations of the Department of Transportation, Contractor will be required to comply with all applicable drug and alcohol testing requirements, including the amendments to 49 C.F.R. parts 655.

As a condition of this Contract, the following are the Contractor's Drug and Alcohol Testing Obligations:

- A. Contractors Certification: Contractor certifies that it will comply with all applicable drug and alcohol testing requirements provided by law, including, but not limited

to, the drug and alcohol testing requirements set forth in the Department of Transportation's regulations.

- B. Indemnification of MTS: Contractor agrees to indemnify, defend and hold harmless MTS, SDTI and SDTC, and their directors, employees and agents from and against any loss, damage, expense and liability that MTS, SDTI or SDTC, may incur as a result of Contractor's failure to comply with any applicable drug and alcohol testing obligations.
- C. Survival of MTS' Indemnification Rights: The rights and obligations contained in "B" (Indemnification of MTS) will survive any termination or expiration of this Agreement.
- D. Failure to comply with Drug and Alcohol Testing Obligations May Result in Termination of Contract: If, at any time during the period of this Agreement, Contractor fails to comply with any applicable drug and alcohol testing requirements, MTS will consider such failure a material breach of this Agreement, and MTS may terminate this Agreement immediately.

31. IDENTIFICATION OF PERSONNEL/SECURITY

MTS shall provide Contractor personnel who enter upon MTS property with "Contractor Identification Badges." All personnel shall display these badges prominently upon their persons while on MTS properties. MTS will allow only properly certified personnel of the Contractor on its properties. MTS shall have the right to require the Contractor to conduct background checks on its employees and to remove from MTS properties an employee MTS considers incompetent, careless, or who constitutes a security risk or safety hazard. The Contractor's personnel must have appropriate documentation, as determined by the Contract Administrator, to gain access to MTS properties. The Contract Administrator will advise the Contractor in writing of necessary documentation and identification required to gain access to MTS properties based upon the Federal Department of Homeland Security threat level in effect from time-to-time, and subject to any additional security requirements mandated by the Federal Department of Homeland Security, the Federal Transit Administration, or any other federal or state agency.

32. NONWAIVER

Failure of MTS to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights or remedies provided herein, or by law, or to properly notify Contractor in the event of breach, or the acceptance of payment for any goods hereunder, or review of design, shall not release Contractor from any of the warranties or obligations of this agreement, and shall not be deemed a waiver of any right of MTS to insist regardless when shipped, received, or accepted or as to any prior or subsequent default hereunder, nor shall any revision of this agreement by MTS operate as a waiver of any of the terms hereof. A requirement that a Contractor's document be submitted for or subject to "authorization to proceed," "approval," "acceptance," "review," "comment," or combinations of such words or words of like import shall mean, unless the context clearly indicates otherwise, that Contractor shall, before implementing the information in the document, submit the document, obtain

resolution of any comments, and obtain written authorization from MTS to proceed, and shall mean that a complete check will be performed. Authorization to proceed shall not constitute acceptance or approval of design details, calculations, analyses, test methods, or materials developed or selected by Contractor and shall not relieve Contractor from full compliance with contractual obligations.

LMARQUIS-SA
SA-G1694.0-14.STEERDAVIESGLEAVE.RATKINSON
12/2/14

Attachments: Certificate of Compliance

**CERTIFICATE OF COMPLIANCE
WITH MTS EQUAL OPPORTUNITY PROGRAMS AND DBE CONTRACTOR INFORMATION FORM**

I hereby certify that, in performing under contract(s) or purchase order(s) awarded by the San Diego Metropolitan Transit System (MTS), I will comply with the provisions of MTS Equal Employment Opportunity Program, and rules and regulations adopted pursuant thereto, Title VI of the Civil Rights Act of 1964, the California Fair Employment Practices Act, and any other applicable federal and state laws and regulations relating to equal employment opportunity, including laws and regulations hereinafter enacted.

DBE subcontractor participants are listed below, the successful bidder must execute and return this form even if no DBE participation will be reported:

Company Name and Address	Description of Work	Dollar Amount

If 100% of item is not to be performed or furnished by DBE, describe exact portion of item to be performed or furnished by DBE. I agree to make a good-faith effort to meet the goals of this plan as part of my contractual obligations to MTS.

Date: _____

Firm: Steer Davies & Gleave Inc

By: _____

Signature

Title: Director

EXHIBIT D

**Travel Guidelines Applicable to
MTS Contractors**

No. 44-C

SUBJECT:

TRAVEL EXPENSE GUIDELINES APPLICABLE TO MTS CONTRACTORS

PURPOSE:

To provide travel expense guidelines for MTS Contractors in accordance with MTS policies.

GUIDELINE:

- 44.1 Contractors. This policy applies to all MTS Contractors and their subcontractors or authorized agents when travel expenses are stated as a line item with a prospective or current Contractors' quote, bid, proposal, or other offering. These guidelines are not intended to imply or authorize additional travel related not expressly authorized in a contract with MTS. The following expense guidelines apply to any requests for travel reimbursement submitted to MTS with a Contractor's invoice. All travel related expenses intended to be invoiced to MTS should have written approval or agreement with MTS prior to incurring such expenses.
- 44.2 Expense Report. Invoices including requests for travel reimbursement shall include an expense report for the travel expenses incurred and billed to MTS. All expenses should be itemized, including items the Contractor may have paid for in advance (e.g., airfare, or other travel expenses) so that the report provides a complete record of all expenses.
- 44.3 Receipts. Itemized receipts for expenditures must be attached to the Expense Report for all expenses where a receipt is practically attainable (mandatory, unless a written satisfactory explanation is provided for expenses in excess of \$10). Such written explanations may be subject to review and approval of MTS. Hotel charges must be evidenced by an itemized hotel bill. A credit card receipt is not sufficient.
- 44.4 The following expenditure guidelines should be observed as upper limits unless particular circumstances reasonably dictate otherwise, and prior MTS approval is obtained:
- a. Upper Limits. Upper limits for meals, hotels, and similar costs will be updated annually (Exhibit A, Travel Cost Rates). The same rates apply to MTS employee travel.
 - b. Air Travel. Air travel is to be coach class for the most direct route. Travelers are encouraged to take advantage of the minimum 14-day advance ticket pricing.
 - c. Personal Auto Use. In the event that a private auto is used for the trip, mileage will be paid in accordance with the current IRS Mileage Reimbursement Rates. Maximum reimbursement shall not exceed the cost of a comparable coach airfare to the same location.
 - d. Ground Transportation. Contractors are encouraged to utilize public transportation where available.

- e. Parking. MTS will reimburse the lesser of the parking cost for a personal auto left at the airport or the cost of a shuttle service or cab to and from the airport.
- f. Rental Car. In the event a rental car is required, MTS will only reimburse for the least expensive compact-size vehicle. MTS will not reimburse for rental car insurance coverage.
- g. Meals (While in Travel Status). Meals, including tip, shall generally average no more than the maximum rate approved and published annually in Exhibit A. **Alcohol consumed with a meal is not reimbursable.** The amount per day applies to each 24-hour day of travel.
- h. Hotel. Travelers will be reimbursed for the cost of a moderate and reasonably priced single-occupancy hotel room. The maximum reimbursement is limited to the rate approved and published annually in Exhibit A.
- p. Cancellation Penalties. In the event a Contractor representative is unable to travel and nonrefundable travel payments have been made, the Contractor is responsible for all prepaid deposits or cancellation penalties for airfare, hotel deposit, or any other such items, unless the inability to travel/attend is the result of a late cancellation or schedule change by MTS.
- q. Nonallowable Expenses. MTS will not provide any reimbursement for personal entertainment expenses, alcoholic beverages, travel expenses for family members, movies in hotels, personal items, charitable contributions, air travel insurance, or any other expenses not deemed necessary for business purposes.

MTS will not provide reimbursement for expenses incurred for the purpose of attending political events. An event shall be considered "political" if it is held for the purpose of supporting, opposing, or raising money to support or oppose any candidate, ballot measure, or political party.

MTS will not provide any reimbursement for expenses incurred with any private club that discriminates on the basis of race, gender, religion, sexual orientation, or other invidious criteria in its membership policy.

POLICY.44.TRAVEL EXPENSE POLICY

Attachments: 2012 Reimbursement Rates

Original Guideline approved on Aug 15, 2012.

EXHIBIT A
TRAVEL COST RATES

Hotel Maximum

Small/Medium US Cities	\$	170.00
Large US Cities/International	\$	220.00

Average Daily Meal Maximum

Small/Medium US Cities	\$	65.00
Large US Cities/International	\$	80.00

Mileage Reimbursement Rate

<http://www.irs.gov/newsroom/article/0,,id=250882,00.html>

As set by the IRS	\$.56
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Notes

1. These are maximum rates. Rates must be reasonable and necessary under the circumstances and will customarily be lower.
2. Small/Medium US Cities are defined for this rate structure as those with less than 1 million persons in the metropolitan area.
3. Large US Cities are defined for this rate structure as those with more than 1 million persons in the metropolitan area.
4. The Mileage Rate is directly tied to the rate set by the IRS and will be revised more frequently than annually if done so by the IRS.

Stark Area Regional Transit Authority

Request for Proposals, 2010-09, Communication System Engineering

Item 18

Project

NAME AND REMIT TO ADDRESS MUST APPEAR BELOW

SUBMITTED BY:

Company Name: _____

Remit to Address: _____

P.O. Box: _____

City: _____ **State:** _____ **Zip:** _____

Telephone Number: _____

Email Address: _____

Federal Tax ID No.: _____

Failure to sign on this page as indicated shall render your proposal ineligible for award consideration. Your signature indicates that you have read, understand and hereby agree to be bound by all terms, conditions, specifications and requirements contained herein.

Date: _____

By: _____

Authorized signature by Officer of the Company

Type or print name shown above

Title of Officer Signing

Name of Company

Monday, June 28, 2010

Prospective Proposers:

Re: **COMMUNICATIONS SYSTEM ENGINEERING PROJECT**

The Stark Area Regional Transit Authority (SARTA) transmits herewith a Request for Proposals (RFP) for the procurement referenced above.

The DBE percentage goal for this procurement is ten percent (10%).

Proposals for this procurement will be received until **4:00 p.m., SARTA Time, Wednesday, July 28, 2010**, at the location noted below. Proposals submitted by mail should, therefore, be mailed in ample time to arrive at SARTA before the actual due date. SARTA shall not be liable for checking mail immediately prior to the time of opening. Likewise, it is the responsibility of the proposer to verify the receipt of any email. Any Proposals received after the prescribed deadline **will not be considered.**

Proposals shall be submitted to:

The Stark Area Regional Transit Authority
1600 Gateway Blvd SE
Canton, OH 44707
Attn: Charles Koppes, Procurement Administrator

To ensure proper identification and handling, mark in the lower left-hand corner of the envelope: **2010-09 COMMUNICATIONS SYSTEM ENGINEERING PROJECT**

All communications regarding this procurement, including requests for clarification, shall be directed to:

Charles Koppes, Procurement Administrator
Phone: (330) 477-2782, ext.541
Fax: (330) 454-5476
Email: ckoppes@sartaonline.com

For its own best interests, SARTA reserves the right to accept any Requests for Proposals or to reject any and all proposals.

A pre-bid meeting will be held on July 12, 2010 at 2:30 pm in SARTA's Board Room.

All necessary instructions are included in this RFP and should be followed with care.

The advertisement is schedule to run in the Repository on June 26 & 27, 2010, The Cleveland Plain Dealer on June 26 & 27, 2010 and the Akron Reporter on June 26, 2010.

Charles W. Koppes, Procurement Administrator
Attachments

INSTRUCTIONS TO OFFERORS

Responses to this Request for Proposals shall be made in accordance with the following requirements. All information, which is proprietary in nature, should be marked as such. SARTA reserves the right to make an award without further discussions or to reject any and all proposals when it is considered in the best interest of SARTA to do so.

Form of Response

Sealed proposals shall be determined in **two distinct volumes, a technical proposal and a pricing/cost proposal**. To permit an equitable and expedient review process, every offeror shall use the same form and order of proposal. One (1) original (marked "Original") and four (4) copies of the proposal shall be submitted. The format shall be an 8.5" x 11" booklet which will allow the pages to open fully and to lie flat. No foldout sheets shall be used. The contents will be organized as follows:

A. TECHNICAL PROPOSAL

1. FRONT COVER

Show title as follows:

**COMMUNICATIONS SYSTEM ENGINEERING PROJECT
2010-09**

STARK AREA REGIONAL TRANSIT AUTHORITY

**(NAME OF FIRM OR FIRMS OFFERING PROPOSAL)
TECHNICAL PROPOSAL**

2. TRANSMITTAL LETTER

Address to:

Charles W. Koppes
Procurement Administrator
Stark Area Regional Transit Authority
1600 Gateway Blvd SE
Canton, OH 44707

The letter shall identify the firm or firms participating in the proposal among them, and identify by name, title address, telephone and facsimile number of the individual(s) who will represent the offeror in negotiating with SARTA.

3. EXPERIENCE

- a. Provide examples of relevant experiences with projects comparable in size and scope. Provide a statement listing other current and pending work of similar nature which represents a commitment of staff resource of each firm participating in the proposal. For each such project, state the dollar value yet to be earned by the participating firm. The purpose of this statement is to allow and evaluation of commitments, which might affect capacity to perform the work of SARTA.
- b. Provide a statement describing the form of organization under which the work will be performed. If a corporation, State where it is chartered. If not chartered in Ohio, provide an affidavit executed by a corporate officer stating that the corporation is certified under provisions of the Revised Code of Ohio to do business within the State of Ohio. Not to exceed five pages.

4. REFERENCES

Provide a statement listing the names, titles, firms, contact persons, addresses and telephone number of responsible owner's representatives for recent projects on which accounts similar to those proposed were provided by your firm.

5. STAFFING

Provide a plan for staffing the work, provide resumes of key personnel, including management plan to control this project, special equipment or facilities needed.

6. TECHNICAL PROPOSAL

- a. In the Request for Proposal, SARTA seeks solid information about the offeror's capacity to provide the services SARTA requires. Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective response to this solicitation are not desired and may be construed as an indication of the offeror's lack of cost consciousness. Elaborate art work, expensive paper and bindings, and expensive visual and other representation aids are neither necessary nor wanted.
- b. The technical proposal, which will be important in the selection for award of a contract, should be specific and complete, and your proposal should demonstrate a thorough understanding of the requirements of the Scope of Services. Legibility, clarity and completeness of the technical approach are important. **The technical proposal should not contain any reference to costs or prices.**
- c. The proposal should respond to all questions identified in Scope of Services, and include all Required Documentation identified in Paragraph 8 below.

7. AUTHORIZED NEGOTIATORS

Provide a statement identifying persons who will represent the offeror in contract negotiations as follows:

"The Offeror represents that the following persons are authorized to negotiate on its behalf with SARTA in connection with this request for proposals:
(list names, titles and telephone numbers of the authorized negotiators)."

8. REQUIRED SUBMITTALS

The attachments/enclosures included in this Request for Proposals and are to be completed, signed and returned as part of the proposal.

B. PRICING/COST PROPOSAL

1. Front Cover

Show title as follows:

**COMMUNICATIONS SYSTEM ENGINEERING PROJECT
2010-09**

STARK AREA REGIONAL TRANSIT AUTHORITY

**(NAME OF FIRM OR FIRMS OFFERING PROPOSAL)
PRICING/COST PROPOSAL**

2. Form of Response

One (1) original (marked "Original") and four (4) copies of the proposal shall be submitted. Section II – Scope of Services must be priced on the basis described therein. To comply with

federal regulations, SARTA will require each proposer to provide cost data to support its price, prior to the start of negotiations. This cost data should be submitted in a format which allow for analysis of individual elements of cost as it corresponds to the required services.

C. PROCEDURAL

1. CLARITY AND COMPLETENESS

SARTA seeks solid information about the proposer's capability to perform the services required. Unnecessarily elaborate brochures or other presentations beyond that required to provide a complete and effective response to this solicitation are not desired and may be construed as an indication of the proposer's lack of understanding of these requirements and cost consciousness. The proposal is expected to fully address all the requirements of the Scope of Services, without resort to elaborate artwork, expensive paper, bindings, or visual and other document aids. The proposal should also include a project completion schedule that includes milestone dates that are clearly defined.

2. CONFIDENTIAL DATA

Offerors which include in their proposals data that they do not wish disclosed to the public, for any purpose or used by SARTA except in conjunction with this solicitation shall:

a. Mark the title page with the following legend:

This proposal includes data that shall not be duplicated, used, or disclosed in whole or in part, for any other purpose other than in conjunction with this solicitation. If the contract is awarded, SARTA shall have the right to duplicate, use or disclose any data submitted if required or deemed necessary as a part of the said contract, this restriction does not limit SARTA's right to use such data if it is obtained from another source without restriction. The data subject to this restriction are contained in pages (insert identification of pages).

b. Mark each page or sheet identified on the title page legend:

Use or disclosure of data on this page (sheet) is subject to the restrictions on the title page of this proposal.

Please note that SARTA will use its best efforts to comply with and enforce such restrictions. However, SARTA is subject to the Ohio Public Records Act and the Federal Freedom of Information Act, either of which may limit its ability to protect such data. SARTA shall use its best efforts to notify affected proposers of any such requests made pursuant to the Acts within a time which shall allow the proposer an opportunity to seek protection of such information against disclosure.

3. SUBMITTAL DATE

Proposals will be received up to but no later than **4:00 p.m., SARTA Time, Wednesday, July 28, 2010**, or such other time as may be established by an addendum to this Request for Proposals issued by the Procurement Administrator. Hand-delivered proposals shall be deposited with the receptionist in lobby of SARTA's Gateway Facility located at 1600 Gateway Blvd S.E., Canton, Ohio 44707.

4. AMENDMENT TO SOLICITATION

Any Amendment or modification to this Request for Proposals shall be by addendum issued by the Procurement Administrator. Any such addendum shall be acknowledged by each offeror as part of the proposal on the forms provided. All terms and conditions of this solicitation not modified by such an addendum shall remain unchanged.

5. MODIFICATION OR WITHDRAWALS OF PROPOSALS

- a. Any modification of a proposal, except a modification resulting from a request for "best and final offers," will not be considered
- b. Notwithstanding the provisions of Paragraph (a) above, a late modification of an otherwise successful proposal that makes its terms more favorable to SARTA will be considered and may be accepted.
- c. Proposals may be withdrawn by written notice or facsimile confirmed by delivery of the original within 48 hours of the facsimile notice at any time prior to award.

6. PROTEST PROCEDURES

Protests of procurement actions may be filed before bids or proposals are received, after announcement of a proposed award, and after action by the Board of Trustees. Protests before bids or proposals are received may address the adequacy or fairness of the solicitation documents. If an award of a federally-funded project will be made during the pendency of a protest, the Director of Finance & Administration must notify the FTA of the protest prior to the award. Protests after announcement of a proposed award may address the basis for selection or rejection of a bidder or proposer. Protests following action by the Board of Trustees may address only the procedure by which the Board accepted the bid or proposal. The protestor must have a substantial economic interest in the procurement. Protests shall be in writing, and in sufficient detail to permit an evaluation and response. Protests shall be decided by the Executive Director whose decision shall be final.

7. TYPE OF CONTRACT

SARTA contemplates awarding a contract based on the final agreed upon services performed. The Stark Area Regional Transit Authority is a political subdivision of the State of Ohio; as a result, this procurement is governed by all applicable provisions of State law and regulation, as well as SARTA's own Policies and Procedures.

8. CONTRACT AWARD

Award of a contract will be contingent upon successful negotiation of all matters at issue.

SARTA intends to award a contract to the proposer or proposers whose offer is deemed most advantageous to SARTA, cost and other factors considered; such an award will be made in accordance with the intent of the solicitation, to provide SARTA with the required services in a timely manner at a reasonable cost.

SARTA reserves the right to (1) reject any and all offers as it considers in its best interest; (2) accept an offer other than that lowest in price; and (3) waive informalities and minor irregularities in proposals. SARTA may award a contract on the basis of initial offers received; therefore each initial proposal should contain the proposer's best terms from a financial and technical viewpoint. Financial data other than hourly personnel rates submitted in connection with a proposal will not be incorporated in any resulting contract. However, the contract price will be subject to reduction if cost or pricing data furnished is incomplete, inaccurate or not current.

9. INSURANCE

The Contractor shall purchase and maintain for the life of this contract the following minimum insurance coverages. The Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all requirements stated herein. All coverages shall be written on an "occurrence" basis.

- a. Commercial General Liability insurance in the amount of \$500,000 combined single limit each occurrence for bodily injury or property damage.
Policy to include:
- Liability coverage shall contain a hold harmless provision that to the fullest extent permitted by law, the contractor agrees to defend indemnify and hold harmless SARTA, its officials, agents, employees and volunteers.
- b. Automobile Liability Insurance in the amount of \$500,000 combined single limit for each accident for bodily injury and/or property damage. Said policy shall apply to all owned, leased, hired and non-owned vehicles used in connection with the work.
- c. Statutory Workers' Compensation coverage in compliance with all applicable state workers' compensation laws to cover all employees furnishing labor under the terms of this contract and under the control of the Contractor. Employees' Liability coverage in the amount of \$500,000 per accident/\$500,000 per employee for disease will also be included, either under the Workers' Compensation policy or under the Commercial General Liability policy (Stop Gap) referenced in a. above. In Ohio: a copy of a certificate of premium payment from the industrial commission and Bureau of WC, or a copy of the Certificate of Employer's Right to Pay Compensation Directly.
- d. General Requirements: The contractor shall not commence work herein until it has obtained the required insurance and has received written approval of such insurance by SARTA. It shall furnish evidence of such insurance in the form of a certificate (Accord or similar form). The certificate shall provide the following:
- In the event the insurance should be changed or cancelled, such change or cancellation shall not be effective until 30 days after SARTA has received written notice of such change or cancellation from the insurance company. Such notice shall be mailed by certified mail, return receipt requested, to SARTA care of the Procurement Administrator.
 - Name SARTA as an additional insured for liability coverages under "a." and "b." above for claims arising out of operations in conjunction with the contract
 - Contain a waiver of subrogation in favor of SARTA.
 - Specific reference to all deductibles and Self Insured Retentions (SIR)
- An insurance company having less than an A-X rating by The A. M. Best Company will not be considered acceptable. All certificates are subject to acceptance by SARTA. SARTA shall be entitled to receive a full copy of the insurance policy/policies upon request and reserves the right to review financial statements and approve any deductibles or SIR.
- e. Approval by SARTA: Approval of the insurance by SARTA shall not relieve or decrease the liability of the contractor hereunder. It is to be understood that SARTA does not in any way represent that the insurance or the limits of insurance specified herein are sufficient or adequate to protect the Contractor's interests or liabilities.
- f. In the event Contractor neglects, refuses or fails to provide the insurance required under the Contract documents, or if such insurance is canceled for any reason, the owner shall have the right, but not the duty to procure the same, and cost thereof shall be deducted from moneys then due or thereafter to become due to Contractor.

10. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the submission of a Quote or execution of any 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 to ensure that applicants are employed and that employees are treated during their employment without regard to their race, religion, color, sex, age, or national origin. 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. The contractor shall further agree to insert a similar provision to all subcontracts, except subcontracts for standard commercial supplies or raw materials.

11. REQUIREMENTS FOR PERSONS WITH DISABILITIES

In executing the subsequent contract, the contractor agrees to comply with all applicable requirements of 49 USC § 5301(d), which states the Federal policy that elderly persons and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The contractor also agrees to comply with all applicable requirements of Section 504 of the Rehabilitation Act of 1973 as amended, 29 USC § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers Act of 1968, as amended, 42 USC §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with all applicable requirements of the following regulations and any subsequent amendments thereto:

- a. US DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
- b. US DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;
- c. Joint US Architectural and Transportation Barriers Compliance Board (US ATBCB)/US DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38;
- d. US DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;
- e. US DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
- f. US General Services Administration (US GSA) regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19;
- g. US Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
- h. US Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F; and
- i. US ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 CFR Part 1194; and
- j. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609;
- k. Any implementing requirements FTA may issue.

Failure by the contractor to carry out these requirements is a material breach of the subsequent contract, which may result in the termination of that contract or such other remedy as SARTA deems appropriate.

D. RFP EVALUATION CRITERIA

It is the desire of SARTA to select a company that will provide the best overall service during the contract term. Accordingly, the following criteria (listed in no particular order) will be considered to select the most qualified company to serve our needs. "Points Awarded" shall be determined by each member of SARTA's Enterprise Resource Planning Team through scoring all submitted Requests for Proposals for each category, taking the average score.

- Pricing Proposal
- Project Team – Experience and Structure
- Quality & Responsiveness to submittal
- Prior Performance/Experience – Specific to Transit
- Client References

1. **PRICING PROPOSAL**

Is defined as the net overall cost.

2. **PROJECT TEAM – EXPERIENCE AND STRUCTURE**

Is defined as the demonstration of the understanding and practical application experience possessed by the individuals working on this project with projects of similar specifications and scope as well as the project team reporting structure and organization.

3. **QUALITY & RESPONSIVENESS TO SUBMITTAL**

Is defined as the thoroughness and completeness of the submittal of all criteria requested.

4. **PRIOR PERFORMANCE /EXPERIENCE – SPECIFIC TO TRANSIT**

Is defined as the demonstration of the understanding and practical application experience possessed by firm with transit projects of similar specifications and scope.

5. **CLIENT REFERENCES**

Is defined as the listing of past clients and their contact information for whom similar projects were performed and completed, and that SARTA can contact for direct input on their satisfaction with work of a similar nature.

SCOPE OF SERVICES REQUIRED

SARTA is seeking the assistance of a Consultant to provide professional consultant services for the implementation of a communications system located at SARTA's Gateway Blvd. main office and within SARTA's fleet of buses and vehicles. The system being sought will include as a priority, an interface to the current or proposed radio communication system and a procurement of CAD software for channel operations. Future ITS applications such as AVL, APC and IVR are interests to SARTA and the proposed system must have the ability to expand into these capabilities either through a phased approach or future project.

Activities for this proposal shall include, but not be limited to:

- A. Conduct employee and SARTA passenger interviews or surveys to ascertain needs and benefits of CAD and ITS solutions. Also, from this assessment, develop a list of needs and prioritized project goals.
- B. Prepare technical specification based on these project goals for the purchase of a Communications/CAD System in the form of a Request for Proposal (RFP). Include and prepare documents required to accompany the technical specification including terms and conditions specifically for an Intelligent Transportation System (ITS). Include a phased approach as needed from assessments completed.
- C. Conduct analysis of radio frequencies currently being used as well as opportunities for other frequencies to be used both for voice and data for this project. Coincide all research with current FCC/FTA regulations and standards and any changes that are scheduled for the future.
- D. Make recommendations based on best option for SARTA from these findings and assist in procurement of any necessary licenses or equipment.
- E. Conduct Bidder's conference and answer questions related to the RFP.
- F. Assist with evaluation of contractor's RFPs and make recommendations to SARTA's Project Team.
- G. Assist in conducting contract negotiations with selected contractor.
- H. Review selected contractor's contract and offer professional, technical input as necessary.
- I. Create and maintain project schedule, working closely with the contractor and project team, making sure project is running as smoothly as possible.
- J. Conduct periodic field observation visits consistent with the stage of implementation to observe work progress and ensure that quality of work is consistent with the contract documents and are meeting local codes and guidelines. Details or level of field visits shall be worked out in conjunction with SARTA's Project Manager.
- K. Conduct regular project meetings, prepare reports, and communicate information to SARTA's Project Manager and Project Team.
- L. Review all necessary supplemental drawings, design reviews, specifications, and interpretations, as submitted by contractor or SARTA.
- M. Assist with the review of contractor proposals, quantities, and cost of labor and materials and ensure they are consistent with project contract.
- N. Review all proposals for changes to the project and ensure they are consistent with project cost and time line.
- O. Assist SARTA in preparing all contract modification documentation for the project.
- P. Review application/diagram architecture of the installed communication systems at SARTA keeping in compliance with regulatory and National ITS Architecture policies and guidelines as submitted by contractor.
- Q. Develop financial and budgeting plans to understand current and future implications of the Communications and ITS project on SARTA's financials.
- R. Conduct all work throughout project in accordance with current FTA regulations and updated FTA ITS standards.

FEDERALLY REQUIRED & OTHER MODEL CONTRACT CLAUSES

FLY AMERICA (WHERE APPLICABLE)

The Contractor 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 Contractor 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 Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

ENERGY CONSERVATION

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

CLEAN WATER

1. The Contractor 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 Contractor agrees to report each violation to SARTA and understands and agrees that the SARTA will endeavor, in turn, to report each violation to FTA and the appropriate EPA Regional Office. Notwithstanding the above however, nothing contained herein will relieve Contractor of its obligations regarding notices under any applicable law, regulation or ordinance.
2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

AUDIT AND INSPECTION OF RECORDS

Pursuant to 49 CFR 18.39(i)(11), the Contractor shall permit the authorized representatives of SARTA, the FTA Administrator or, U.S. Comptroller General and the State of Ohio to inspect and audit all its books, data, accounts, documents, papers, records of the Contractor relating to this Contract and its performance hereunder until the expiration of three (3) years after final payment under this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until SARTA, the FTA Administrator, the Comptroller General, the State of Ohio, the government of Stark County, Ohio or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that SARTA and the State of Ohio or any of their duly authorized representatives shall, until the expiration of three years after final payment under the subcontractor, have access to and the right to examine any pertinent books, documents, papers, and records of such subcontractor involving transactions related to this Contract or the work performed in connection herewith. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding \$5,000.00 and (2) subcontracts or purchase

orders for public utility services at rates established for uniform applicability to this general public.

FEDERAL CHANGES

Contractor 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 bid documentation or in any grant or funding documentation between SARTA and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

CLEAN AIR

1. The Contractor 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 Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

NO OBLIGATION BY FEDERAL GOVERNMENT

1. SARTA and Contractor 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 the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. The Contractor 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.

PROGRAM FRAUD & FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

1. The Contractor 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 the work under this Contract. Upon execution of this Contract, the Contractor 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 Contractor 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 Contractor to the extent the United States Federal Government deems appropriate.
2. The Contractor 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 the 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 Contractor, to the extent the Federal Government deems appropriate.
3. The Contractor 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

TERMINATION OF CONTRACT

1. **Termination for Convenience.** SARTA may terminate this Contract, in whole or in part, at any time by written notice to the Contractor when it is in the government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to SARTA to be paid the Contractor. If the Contractor has any property in its possession belonging to SARTA, the Contractor will account for the same, and dispose of it in the manner SARTA directs.
2. **Termination for Default.** If the Contractor does not perform in the manner called for in the Contract, or if the Contractor fails to comply with any other provisions of the Contract, SARTA may terminate this Contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the Contract.
3. **Preservation of Goods.** If this Contract is terminated while the Contractor has possession of SARTA goods or items to be procured under this Contract, the Contractor shall, upon direction of SARTA, protect and preserve such goods or items until surrendered to SARTA or its agent. The Contractor and SARTA shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute Clause.
4. **Opportunity to Cure.** SARTA in its sole discretion may, in the case of a termination for breach or default, allow the Contractor five (5) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to SARTA's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within five (5) after receipt by Contractor of written notice from SARTA setting forth the nature of said breach or default, SARTA shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude SARTA from also pursuing all available remedies against Contractor and any of its sureties for said breach or default.

5. **Waiver of Remedies for Any Breach.** In the event that SARTA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by SARTA shall not limit SARTA's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if:
 - a. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
 - b. the Contractor, within five (5) days from the beginning of any delay, notifies SARTA in writing of the causes of delay. If in the judgment of SARTA, the delay is excusable, the time for completing the work shall be extended. The judgment of SARTA shall be final and conclusive on the parties, but subject to appeal under the Disputes Clauses.
 - c. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

DEBARRED BIDDERS

By signing the enclosed debarment certification, the contractor hereby attests that neither the contractor, nor any officer or controlling interest holder of contractor, is currently, or has been previously, on any debarred bidders list maintained by the United States government.

CIVIL RIGHTS REQUIREMENTS

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 Contractor 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 Contractor 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, Age** - 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 Contractor 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 activities undertaken in the course of the work under this Contract. The Contractor 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 Contractor 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 Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor 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 Contractor 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 Contractor agrees to comply with any implementing requirements FTA may issue.
3. The Contractor 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.

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

Before entering into any subsequent contract, SARTA must receive the initial certifications from the contractor that they have complied with the requirements of 49 CFR Part 26. The contractor agrees for the term of this Request for Quotes and the subsequent term of any

contract awarded hereunder to continue to comply with said requirements, including, but not limited to establishing annual overall goals and submit said goals for FTA approval.

Without limiting the forgoing, Contractor and SARTA agree as follows:

1. Any subsequent 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. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 10 %.
2. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this project. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of any subsequent DOT-assisted contract. Failure by the contractor to carry out these requirements would be a material breach of any subsequent contract, which may result in the termination of the contract or such other remedy as SARTA deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
3. If awarded the contract, the Contractor is required to pay its subcontractors performing work related to this project for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from SARTA. In addition, the Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this project is satisfactorily completed.
4. Under any subsequent contract, the contractor must promptly notify SARTA, whenever a DBE subcontractor performing work related to this project 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 contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of SARTA.

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 4220.1E, 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 Contractor shall not perform any act, fail to perform any act, or refuse to comply with any SARTA requests which would cause SARTA to be in violation of the FTA terms and conditions. In addition, Contractor 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 bid documentation or in any grant or funding documentation between SARTA and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

BREACHES AND DISPUTE RESOLUTION

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by SARTA's Executive Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by SARTA, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in

writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between SARTA and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which SARTA is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by SARTA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

LOBBYING

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors 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.

ADDENDUM ACKNOWLEDGEMENT

(Must be submitted with proposal)

This acknowledgment form serves to confirm that the Respondent has reviewed, complied and/or accepted all Addendum(s)/Amendment(s) to the _____.

Please list all Addendum(s)/Amendment(s) below.

Addendum#

Name of Company
Representative

Signature of Authorized

Date

Print Name

**THIS PAGE TO BE COMPLETED ONLY BY DISADVANTAGED BUSINESS ENTERPRISE
CONTRACTORS**

DBE AFFIDAVIT

State of _____

County of _____

I hereby declare and affirm, that I am the _____
(TITLE)

and authorized representative of _____
(NAME OF FIRM)

whose address is _____.

I hereby declare and affirm that I am a Disadvantaged Business Enterprise as defined by the Ohio DBE Unified Certification Program specifications and that I will provide information requested by SARTA to document this fact.

I do solemnly declare and affirm, under the penalties of perjury, that the contents of the aforementioned document are true and correct and that I am authorized, on behalf of the above firm, to execute this affidavit.

(Signature of Affiant)

(Date)

On this ____ day of _____, 20____, before me the above named officer appeared, known to be _____ and the person described in the foregoing Affidavit and that he/she did execute the same in the capacity therein stated and for the purpose stated.

IN WITNESS THEREOF, I hereunto set my hand and official seal,

(Notary Public)

My Commission Expires

The following must be executed by the DBE who is being used as a subcontractor:

LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR

The undersigned intends to perform work in connection with the Ohio DBE Unified Certification Program specifications as:

____ an individual ____ a corporation
____ a partnership ____ a joint venture

The disadvantaged status of the undersigned is confirmed on the attached Affidavit of Disadvantaged Business Enterprise. The undersigned is prepared to perform the following described work in connection with the above project (specify in detail particular work items or parts thereof to be performed):

_____ at the following cost(s) _____.

The following commencement and completion date is projected.

PROJECTED WORK ITEM(S) _____

PROJECTED COMMENCEMENT DATE _____

PROJECTED COMPLETION DATE _____

____% of the dollar value of the subcontract will be sublet and/or awarded to the non-disadvantaged Contractors and/or non-disadvantaged suppliers. The undersigned will enter into a formal agreement for the work with you conditioned upon the execution of a contract with SARTA. No agreement has been entered into between the above-named bidder and the DBE subcontractor wherein the below-named bidder DBE subcontractor has promised not to provide subcontracting quotations to other bidders and proposers.

DBE Business: _____ Date: _____

Name: _____ Phone: _____

Address: _____ Fax: _____

City/State/Zip: _____ Email: _____

Name of Officer for DBE Firm _____

Signature of Authorized Official _____

Title of Officer for DBE firm _____

CERTIFICATE OF DBE ASSURANCE

In connection with the contract to be awarded as a result of the invitation to bid issued by SARTA:

I hereby certify that I am the _____
(TITLE)
and duly authorized representative of _____
(NAME OF FIRM)
whose address is _____

I do hereby assure SARTA that I have read and am familiar with the requirements for disadvantaged business participation by companies contracting with SARTA and that it is the intention of the undersigned to meet such DBE goals.

I understand that SARTA has established a goal of 10% Disadvantaged Business Enterprise participating on this contract. I further understand that these goal percentages are based on the total dollar value of the awarded contract.

I hereby further assure SARTA that the undersigned will cause to be completed and submit with this bid the following documents: DBE Affidavit and the Letter of Intent to Perform as a Sub-Contractor.

Prior to the execution of the contract, I understand that this company may not remain in completion unless the required documents are submitted or this company has met the DBE requirements as defined in this bid specification.

NAME OF PRIME CONTRACTOR

SIGNED BY

TITLE

SCHEDULE D

CERIFICATION OF CONTRACTOR REGARDING UNAVAILABILITY OF A DISADVANTAGED BUSINESS ENTERPRISE

PROJECT NAME _____

PROJECT NUMBER _____

NOTE: The bidder must prepare one of these forms for each DBE contract made where the DBE was found not to be ready, willing, or able to perform the work solicited. If the bidder was unable to obtain the DBE signature, the form must be completed to the best of the bidder's ability, indicating the reason for the absence of the DBE signature.

I, _____, _____
(PRIME OR GENERAL CONTRACTOR) (TITLE)

of _____, certify that on _____
(NAME OF FIRM) (DATE)

I contacted the following DBE Contractor to obtain a bid for work items to be performed on the above-captioned contract.

FORM OF BID SOUGHT, I.E., DBE CONTRACTOR WORK ITEMS SOUGHT, UNIT PRICE, MATERIALS AND LABOR, LABOR ONLY, ETC.

To the best of my knowledge and belief, said DBE Contractor was unavailable (exclusive of unavailability due to lack of agreement on price) for work on this project, or unable to prepare a bid, for the following reason(s):

SIGNATURE: _____ DATE: _____

_____ was offered an opportunity to bid

on the above-identified work on _____ by _____
(DATE) (SOURCE)

The statement asserted above by the company, which contacted me, is a true and accurate account of why I did not submit a bid on the project.

SIGNATURE OF DBE: _____ DATE: _____

SCHEDULE D-1 GRANT RELIEF FOR BIDDERS

If a bidder finds it impossible fully to meet the DBE goal of this contract, the bidder must include Schedule "D" Certification of Contractor Regarding Unavailability of DBE, accompanied by documentation showing that all reasonable good faith efforts were made toward fulfilling the goal. The request and description of good faith efforts are required in affidavit format. Suggested reasonable efforts should include, but not limited to:

- (1) Attendance at the pre-bid conference if scheduled.
- (2) The Contractors general affirmative action policies regarding the utilization of DBE's.
- (3) The advertisement in trade association newsletters and DBE-oriented and general circulation media, for specific sub-bids that would be at least equal to the percentage contract goal for DBE Utilization.
- (4) Notification of DBE Contractor Assistance agencies in writing before bid is due.
(Lists of qualified DBE's can be found at the Ohio DBE UCP website)
- (5) Direction negotiation with DBE for specific sub-bids; the action taken must be reported in such a fashion as to include all the following items:
 - (a) A detailed statement of the efforts to negotiate with DBEs who were contacted; a description of the information provided to DBEs regarding the plans and specifications for the portions of the work to be performed; a detailed statement of the reasons why additional prospective agreements with DBEs, if needed to meet the stated goal, were not reached.
 - (b) A detailed statement of the efforts made to select portions of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the stated goal.
 - (c) As to each DBE contacted but which the bidder considers to be not qualified, a detailed statement of the reason(s) for the bidder conclusion.
 - (d) As to each DBE contacted which the bidder considers to be unavailable, an Unavailability Certificate (Schedule D) signed by the DBE; or a statement from the bidder that the DBE refused to give such written certification after reasonable request and a statement from the bidder of the reasons for the bidder's conclusion.
- (6) Efforts made by the Contractor to expand its search for DBEs beyond usual geographical boundaries to a reasonable area.

- (7) If the Contractor is a distributor or manufacturer where it can be shown that the opportunity for DBE participation does not exist in work under this contract efforts must include an exhaustive research into the DBEs potential in the roles of sub-supplier, transport, engineering, distribution, or any other roles contributing to the production and delivery as specified in the contract.

**AFFIDAVIT CONCERNING CONFLICTS OF INTEREST
AND NONCOMPETITIVE PRACTICES**
STARK AREA REGIONAL TRANSIT AUTHORITY
(D.B.A.. SARTA)

STATE OF _____

ss.

COUNTY OF _____

The undersigned, being first duly sworn, on oath states on behalf of the Contractor:

A. Conflict of Interest

That the Contractor, by entering into this Contract with SARTA to perform or provide work, services, or materials to SARTA, has thereby covenanted, and by this affidavit does again covenant and assure that it has no direct or indirect pecuniary or proprietary interest and that it shall not acquire any such interest which conflicts in any manner or degree with the services required to be performed under this Contract and that it shall not employ any person or agent having any such interest. In the event that the Contractor or its agents, employees, or representatives hereafter acquire such a conflict of interest, it shall immediately disclose such interest to SARTA and take action immediately to eliminate the conflict or to withdraw from this Contract, as SARTA may require.

B. Contingent Fees and Gratuities

That the Contractor, by entering into this Contract with SARTA to perform or to provide services or materials for SARTA, has thereby covenanted and by this affidavit does again covenant and assure:

1. That no person or selling agency except bona fide employees or designated agents or representatives of the Contractor have been employee or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and
2. That no gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor or any of its agents, employees, or representatives to any official member, Board Member, or employee of SARTA or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending or the making of any determination with respect to the performance of this Contract.

Company Name

By

Title

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public

In and for the State of _____, residing in the

County of _____.

DECLINE PROPOSAL/BID FORM

(Fill out this form only if you would **NOT** like to submit a proposal)

STARK AREA REGIONAL TRANSIT AUTHORITY
(d.b.a. SARTA)

Proposal/Bid #: _____

Proposal/Bid Title: _____

Proposer/Bidder Company Name: _____

Address: _____

Telephone Number: _____

Contact Person: _____

Reason for not submitting a Proposal in response to this solicitation;

Thank you for your assistance.

Please return this form to: Procurement Administrator

NON-DISCRIMINATION AFFIDAVIT

STARK AREA REGIONAL TRANSIT AUTHORITY (d.b.a. SARTA)

STATE OF _____}

COUNTY OF _____}

_____, being first duly sworn and deposes and says:

1. That he/she is the _____ (President or other official title) of _____ (Company, Partnership, or Corporation) organized, and existing under any by virtue of the laws of the State of _____, and in whose behalf he/she makes this affidavit:
2. That _____ does not and will not discriminate in its employment practices because of race, ancestry, color religion, sex, age, national origin, physical or mental disability, or veteran status, as defined and required by law.
3. That _____ further understands this contract, purchase order or agreement is subject to the Urban Mass Transportation Act of 1964, as amended (49 USC 1601, ETSEQ.); and shall be subject to all rules and/or regulations issued pursuant thereto regarding nondiscrimination in federally assisted programs of the United States Department of Transportation (ODOT).
4. That any listed persons, firms or corporations have interest in this proposal/bid as subcontractors; that this proposal/bid is offered without any connection or without collusion or fraud, and also that no member of the trustees, head of any department or bureau, or employee therein, or any employee of the authority, is directly or indirectly interested therein.
5. That they acknowledge receipt herein of the Stark Area Regional Transit Authority Procurement Policy and agree to abide by its rules, whether or not herein specifically itemized.

Company, Partnership or Corporation name

President or other Official

Subscribed and sworn to before me, this _____, day of _____,

20 _____.

Notary Public in and for the County of

_____, State of _____

My commission expires on the _____ day of _____, 20 _____.

NON-COLLUSION BIDDING CERTIFICATE

STARK AREA REGIONAL TRANSIT AUTHORITY
(d.b.a. SARTA)

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid, each party certifies as to its own organization, under penalty of perjury, that to the best knowledge and belief:

1. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition as to any other matter relating to such prices with any other bidder or with any other competitor.
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder prior to opening, directly or indirectly to any other bidder or competitor.
3. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not submit a bid for the purpose of restricting competition.

Company Name

Signature of Company Official

Title

Date

SECURITY COMPLIANCE CERTIFICATION

STARK AREA REGIONAL TRANSIT AUTHORITY
(d.b.a. SARTA)

The Proposer/Bidder hereby agrees that the Board of Trustees of the Authority has the right to reject any or all bids and to waive informality in any bid and that the Bidder shall not dispute the correctness of the quantities used in computing the lowest bid.

By execution below, Bidder hereby offers to furnish equipment, goods, and or services as indicated herein:

Bidder: _____

Company Name _____

Business Street Address _____

City, State, Zip _____

Signature of Authorized Company Official & Title

Telephone Numbers, Voice and Fax _____

GOVERNMENT BUSINESS AND FUNDING CONTRACTS
In accordance with section 2909.33 of the Ohio Revised Code

**DECLARATION REGARDING MATERIAL ASSISTANCE/NONASSISTANCE TO A TERRORIST
ORGANIZATION**

This form serves as a declaration of the provision of material assistance to a terrorist organization or organization that supports terrorism as identified by the U.S. Department of State Terrorist Exclusion List (see the Ohio Homeland Security Division website for a reference copy of the Terrorist Exclusion List).

Any answer of “yes” to any question, or the failure to answer “no” to any question on this declaration shall serve as a disclosure that material assistance to an organization identified on the U.S. Department of State Terrorist Exclusion List has been provided. Failure to disclose the provision of material assistance to such an organization or knowingly making false statements regarding material assistance to such an organization is a felony of the fifth degree.

For the purposes of this declaration, “material support or resources” means currency, payment instruments, other financial securities, funds, transfer of funds, and financial services that are in excess of one hundred dollars, as well as communications, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

LAST NAME		FIRST NAME		MIDDLE INITIAL
HOME ADDRESS				
CITY	STATE	ZIP	COUNTY	
HOME PHONE ()		WORK PHONE ()		

COMPLETE THIS SECTION ONLY IF YOU ARE A COMPANY, BUSINESS, OR ORGANIZATION

BUSINESS/ORGANIZATION NAME			
BUSINESS ADDRESS			
CITY	STATE	ZIP	COUNTY
PHONE NUMBER ()			

DECLARATION

In accordance with division (A)(2)(b) of section 2909.32 of the Ohio Revised Code

For each question, indicate either "yes," or "no" in the space provided. Responses must be truthful to the best of your knowledge.

1. Are you a member of an organization on the U.S. Department of State Terrorist Exclusion List?
☐ Yes ☐ No
2. Have you used any position of prominence you have with any country to persuade others to support an organization on the U.S. Department of State Terrorist Exclusion List?
☐ Yes ☐ No
3. Have you knowingly solicited funds or other things of value for an organization on the U.S. Department of State Terrorist Exclusion List?
☐ Yes ☐ No
4. Have you solicited any individual for membership in an organization on the U.S. Department of State Terrorist Exclusion List?
☐ Yes ☐ No
5. Have you committed an act that you know, or reasonably should have known, affords "material support or resources" to an organization on the U.S. Department of State Terrorist Exclusion List?
☐ Yes ☐ No
6. Have you hired or compensated a person you knew to be a member of an organization on the U.S. Department of State Terrorist Exclusion List, or a person you knew to be engaged in planning, assisting, or carrying out an act of terrorism?
☐ Yes ☐ No

In the event of a denial of a government contract or government funding due to a positive indication that material assistance has been provided to a terrorist organization, or an organization that supports terrorism as identified by the U.S. Department of State Terrorist Exclusion List, a review of the denial may be requested. The request must be sent to the Ohio Department of Public Safety's Division of Homeland Security. The request forms and instructions for filing can be found on the Ohio Homeland Security Division website.

CERTIFICATION

I hereby certify that the answers I have made to all of the questions on this declaration are true to the best of my knowledge. I understand that if this declaration is not completed in its entirety, it will not be processed and I will be automatically disqualified. I understand that I am responsible for the correctness of this declaration. I understand that failure to disclose the provision of material assistance to an organization identified on the U.S. Department of State Terrorist Exclusion List, or knowingly making false statements regarding material assistance to such an organization is a felony of the fifth degree. I understand that any answer of "yes" to any question, or the failure to answer "no" to any question on this declaration shall serve as a disclosure that material assistance to an organization identified on the U.S. Department of State Terrorist Exclusion List has been provided by myself or my organization. If I am signing this on behalf of a company, business or organization, I hereby acknowledge that I have the authority to make this certification on behalf of the company, business, or organization referenced on page 1 of this declaration.

X

Signature

Date

**CERTIFICATION REGARDING DELINQUENT TAXES
(5719.042 ORC)**

_____, hereby affirms under oath, pursuant to Ohio Revised Code Section 5719.042, that at the time the proposal/bid was submitted, my company (was) (was not) charged with delinquent Personal proerty taxes on the General List of Personal Property for Stark County, Ohio.

If such charged for delinquent personal property tax exists on the General Tax List of Personal Property for Stark County, Ohio, the amount due and penalties and interest shall be set forth below.

A copy of this statement shall be transmitted to the Stark County Treasurer within thirty (30) days of the date it is submitted. A copy of this statement shall aslo be incorporated into the contract between the Stark Area Regional Transit Authority and _____ and no payment shall be made with respect to any contract unless such statement has been so incorporated as a part thereof.

Delinquent Personal Property Tax \$ _____
(If none insert "0")

Penalties \$ _____

Interest \$ _____

By: _____

Title: _____

Subscribed and sworn to before me _____
Notary Public

This ____ day of _____, 20____, in and for the State of _____,
residing in the County of _____.

Notary Signature

My Commission Expires

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions (as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)).
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

**CERTIFICATION OF PRIMARY PARTICIPATION REGARDING DEBARMENT,
SUSPENSION, & MATTERS OF RESPONSIBILITY**

FTA C2015.1 4/28/89

The primary Participant (potential contractor for third party contract) _____ certifies to the best of its knowledge and belief, that it and its principals:

1. Are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of these offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions(s) (Federal, State, or local) terminated for cause or default.

(If the primary participant (applicant for potential third party contract) is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certificate.)

The primary participant (applicant for a third party contract), _____ certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. section 3801 ET SEQ are applicable thereto.

Signature and Title of Authorized Official

Date

SPECIFICATION COMPLIANCE CERTIFICATE

STARK AREA REGIONAL TRANSIT AUTHORITY (d.b.a. SARTA)

The _____ (Supplier, Manufacturer's name) hereby certifies that the equipment, services, or goods supplied by _____ (Supplier, Manufacturer's name) will comply with all specifications, the special requirements, attachment forms, amendments, or items approved by SARTA on specification request and approval form. Equipment, goods, and or services delivered to SARTA which does not comply with the aforementioned specifications will be considered unacceptable and grounds for liquidated damages assessment or performance bond evocation, and/or contract termination for default.

Company Name

Signature of Company Official

Title

Date

Stark Area Regional Transit Authority

Software License Agreement, undated, between Stark Area Regional
Transit Authority and Avail Technologies, Inc.

Item 19

EXHIBIT 4

Avail Technologies End-User Software License Agreement

Avail Technologies, Inc. and SARTA

THIS SOFTWARE LICENSE AGREEMENT (the "Agreement") is made and entered into effective as of _____, 2012 (the "Effective Date"), by and between Avail Technologies, Inc., a Pennsylvania corporation ("Avail") and Stark Area Regional Transit Authority (aka SARTA) ("Licensee"). [Hereinafter each may be referred to as a "Party" or collectively as the "Parties"].

WHEREAS, Avail is the owner of the Software (as defined below) which is licensed to Licensee under and pursuant to the terms of this Agreement and all referenced Exhibits; and

WHEREAS, Licensee, desires to obtain a license to use the Software solely in its business operations on the terms and conditions set forth in this Agreement; and

WHEREAS, Licensee and Avail have entered into a contract ("Contract") for equipment, software, and services, to which this Exhibit is attached for the reason of defining the licensing terms for Avail's software; and

NOW, THEREFORE, for and in consideration of the premises and mutual covenants set forth herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

A. LICENSE TO USE SOFTWARE.

1. Description and Term.

In consideration of the payment of the license fees set forth in the Contract, and subject to termination as provided below, Avail grants to Licensee a perpetual, nonexclusive, nontransferable license for the authorized number of Users and Vehicles (101) (as provided in Section 2 below or in an Amendment to this Agreement signed by the Parties) to use Avail fixed route CAD software (the "Software") and all of its associated documentations (the "Documentation").

THE SOFTWARE IS COPYRIGHTED AND LICENSED (NOT SOLD). AVAIL DOES NOT SELL OR TRANSFER TITLE TO, OR ANY OWNERSHIP INTEREST IN, THE SOFTWARE OR DOCUMENTATION TO LICENSEE. LICENSEES LICENSE OF THE SOFTWARE WILL NOT COMMENCE UNTIL LICENSEE HAS EXECUTED THIS AGREEMENT AND AN AUTHORIZED REPRESENTATIVE OF AVAIL HAS RECEIVED, APPROVED AND EXECUTED A COPY OF IT AS EXECUTED BY LICENSEE.

The obligations of the Parties under and pursuant to this section shall become effective as of the date Licensee first uses the Software for commercial purposes and shall remain in effect for so long as Licensee uses such Software and provided and so long as Licensee is not in breach of or default under this Agreement or this Agreement has not been terminated pursuant to Exhibit A, Licensee may continue to use the Software.

2. Scope of Permitted Use.

- (a) Avail AVL Server, Departure Estimator, Internet Access, DataPoint, and Dispatcher Workstation - Licensee agrees that it may allow up to 5 of its designated employees or computers (Users) access to the software and may manage up to 101 vehicles in the Software.
- (b) Licensee may use the software on any hardware it elects., provided it does not exceed the number of devices and vehicles as set forth above, and without limiting any other right set forth herein, Licensee may move copies of the Software from one computer to another and one vehicle to another, so long as at any time during the Term hereof it does not exceed the use of 5 computers/ employees and 101 vehicles.

3. Scope of License Rights; Restrictions.

- (a) The license granted to Licensee under this Agreement entitles Licensee to use, and Licensee agrees to use, the Software and Documentation (solely as set forth in this Section 3(a) (i) through 3 (a) (iv):
 - (i) Store, install and access the Software, in machine readable form, through an internal network, or access the Software via the Internet, but in either case only for use by that number of users specified and only for the purpose of serving the internal needs of the business of Licensee;
 - (ii) In support of Licensee's authorized use of the Software, store the Software's machine-readable instructions or data in, transmit it through, and display it on machines associated with the computer(s) properly running a licensed copy of the Software;
 - (iii) Make 2 copies of the Software in machine-readable, object code form, for nonproductive backup purposes only, and,
 - (iv) Use the Documentation solely to assist Licensee in its authorized use of the Software.
- (b) The license granted to Licensee under this Agreement does not grant to Licensee the right to, and Licensee acknowledges and agrees that it does not have the right to and that it will not:
 - (i) copy (except as expressly permitted in Section 3(a)(iii) above), change, disassemble, decompile, reverse engineer, sublicense, assign, timeshare, sell, give away, loan, rent, lease, transfer (electronically or otherwise), display, disclose, or provide any third party with access to or use of, the Software; directly or indirectly create or attempt to create software that emulates the Software; prepare derivative works of the Software: or separate the components of the Software;
 - (ii) copy or provide any third party with access to or use of any of the Documentation without the prior written consent of Avail, which consent will not be unreasonably withheld;
 - (iii) transfer any of Licensee's rights or obligations under this Agreement without the express, advance, written consent of an officer of Avail, and then only if: (i) Licensee keeps no copies of the Software or Documentation; (ii) Licensee transfers Licensee's entire rights and obligations under this Agreement in or to the Software and Documentation; and, (iii) the transferee agrees in writing to the terms and conditions of this Agreement, after which

time Licensee will no longer have the right to use the Software. Any attempted transfer or assignment of any of Licensee's rights or obligations under this Agreement shall be null and void unless it is in full compliance with this Section 3(b)(3);

- (iv) remove any proprietary or copyright legend from any material contained in or on the Software or the Documentation;
- (v) publish or disclose to any third party any reports or the results of any benchmark tests run on the Software or its components; or,
- (vi) use any trademarks or service marks of Avail.

4. Limited Warranty and Limitation of Warranties.

- (a) Subject to the conditions and limitations set forth herein, Avail warrants for a period of (60 months) immediately following the System Acceptance of the Software (the "Warranty Period") that the Software will substantially conform in all material respects to the specifications set forth in the Contract. Subject to the provisions and limitations set forth herein, Avail will correct any such nonconforming Software if Licensee has notified Avail of such nonconformity in writing within the Warranty Period. Unless otherwise obligated under a warranty and support Agreement or the Contract, Avail shall not be obligated to correct, cure or otherwise remedy any such nonconformity in the Software if Licensee has not reported to Avail the existence and nature of such nonconformity within the Warranty Period, and such nonconformity cannot be verified.
- (b) The limited warranty set forth in Section 4(a) above does not apply to any Software that has been repaired or modified by persons other than Avail or its authorized agents, or that has been installed by Licensee or any of its independent contractors other than Avail. The foregoing warranty is conditioned upon the proper use of the Software in accordance with the terms and conditions of this Agreement and with Avail's User Manual and any other written instructions provided by Avail to Licensee, and in an operating environment in compliance with the specifications and requirements as set forth in this Agreement. Avail makes no warranty that the operation of the Software will be uninterrupted or error free, or that all Software defects will be corrected.
- (c) Avail makes no warranty that the software will operate with all applications, utilities, or other memory resident programs, however, as Avail has specifically detailed to Licensee certain hardware and related software with which and in connection with which the Software will work, Avail hereby expressly represents and warrants to Licensee, that the Software will work with the following hardware, software and applications:
- (d) Avail shall not be responsible for any obsolescence of the Software for any reason. Furthermore, Avail assumes no responsibility for the use of superseded, outdated or uncorrected versions of the Software under this Agreement, but may have additional obligations under the Contract or the Warranty and Support Agreement. Additionally, Avail agrees to at least maintain support for the Software the T-2 version of the Software, which shall be defined as two versions prior to the most current version offered for sale to the public.
- (e) Without limiting any other provisions herein, the warranties provided herein are in addition to any warranties otherwise set forth in the Contract and/or the Warranty and Support Agreement.

Stark Area Regional Transit Authority

Warranty and Support Agreement, undated, between Stark Area Regional
Transit Authority and Avail Technologies, Inc.

Item 20

EXHIBIT 5

Avail Technologies Warranty Policy

Warranty and Support Agreement

THIS AGREEMENT ("AGREEMENT"), by and between the Stark Area Regional Transit Authority, located at 1600 Gateway Blvd SE Canton, OH 44707, hereinafter called "SARTA", and AVAIL TECHNOLOGIES, INC., a corporation, located at 2026 Sandy Drive, State College, PA 16803, hereinafter called "AVAIL", collectively referred to as the "PARTIES", shall become effective the date of the last required signature for the Contract.

WHEREAS, AVAIL has licensed to the SARTA certain systems as specified in the Software License Agreement of near or even date herewith (the "License Agreement") and the SARTA wishes to have AVAIL perform maintenance services on the software and associated hardware of the licensed systems pursuant to the following terms and conditions and the terms and conditions of the License Agreement:

1. Description and Term

a. Systems Covered

The materials covered in this Agreement are the hardware and software required for deployment of the AVAIL Intelligent Transportation System (ITS). The software which includes AVAIL's OmniPoint Software Suite ("Software"), is defined and more fully described in, and subject to, the signed Software License Agreement, as updated with any improvements or modifications furnished to SARTA hereunder;

b. Sites

1. Stark Area Regional Transit Authority, located at 1600 Gateway Blvd SE Canton, OH 44707

c. Term

The initial term shall be for 5 year(s), commencing upon the Support Date as defined in the License Agreement. The Agreement shall be reviewed by SARTA and AVAIL for any renewal of term at least sixty (60) days prior to the expiration of the current term.

2. Definitions

a. "Specifications" shall mean the documentation to which the Software must conform as set forth in the license Agreement;

b. "Error" shall mean a material and reproducible failure of the Software to function in conformity with the Specifications.

3. AVAIL Responsibilities

During the term of this Agreement, AVAIL shall provide the following support measures.

AVAIL shall provide:

A. The Standard Level of Support of which there are two response measures (see EXHIBIT B2):

1. General Provision:

- a. Telephone hot line access for problem and error reporting and response of diagnostic services;
- b. AVAIL shall staff their Call Center during regular business hours (see EXHIBIT B2). In case of a support call, AVAIL will want to collect the pertinent information. In the event that AVAIL cannot answer the initial call, a voicemail service shall be operative as a backup system;
- c. AVAIL shall provide 24/7 Urgent Care support

2. Routine Care - loss of a function or item is non-operational but the system as a whole is operational:

- a. AVAIL shall respond to the call within three (3) business hours;

- b. The problem will be entered into the AVAIL tracking system, entering the Caller's Name, Property Name and Contact Phone Number;
- c. AVAIL shall keep SARTA advised of a plan for resolution of the error as soon as practical;
- d. If the error occurs after AVAIL business hours, the Caller shall still leave a voice message with the same information as listed above.

3. Urgent Care - System is non-functional has suffered a severe outage:

- a. AVAIL will respond to a call within one (1) hour;
- b. Upon receipt of the call, the Support Team will immediately begin to assess the error and begin the process of resolving the problem. Resolution shall be conveyed to the SARTA as soon as practical;
- c. The error will be entered into the AVAIL tracking system;
- d. On-site response to SARTA's requests for remedial support and diagnostic repair services in response to shall be pursuant to Section 9 a.2.b of this Agreement.

B. The Support Services shall also include:

- 1. Any patches or new releases of all or part of the Software which substantially rectify Errors or other defects in the then-current release of the Software which are made generally available by AVAIL to SARTA including revised documentation;
- 2. Any new versions of all or part of the Software which are made generally available by AVAIL to SARTA shall be pursuant to Section 5 of this Agreement.

4. SARTA Responsibilities

SARTA shall give AVAIL, the SARTA's full cooperation to facilitate proper and prompt performance of the Support Services and any Additional Services that the PARTIES agree to deploy.

SARTA shall use good faith commercially reasonable effort to:

- a. Provide a key technical contact who shall be familiar with the Software to provide adequate information and feedback in order to facilitate problem reporting and resolution and be aware of the terms and conditions under which AVAIL Systems provides after hours support;
- b. Promptly notify AVAIL of any Error in the Software after becoming aware of the same;
- c. Provide information as reasonably requested by AVAIL to effectively diagnose Errors which could include a detailed description of the issue in text format, an explanation of what the user was doing when the issue occurred, any error messages that the system returned, screen shot images of the error, the current status of the system, a determination if the system is functional, and a state retrieval, if requested, provided however that if SARTA in good faith and using reasonable effort cannot provide such information, that will not relieve Avail of its obligations to troubleshoot and resolve the error
- e. Permit AVAIL to take such reasonable steps as AVAIL shall consider necessary to remedy any Errors;
- f. Allow AVAIL prompt and reasonable access to:
 - 1. The Software and ITS Server system through a Virtual Private Network (VPN) in case of primary server hardware failure and access to other 3rd party systems such as the communications network provider, as described in the IT/IS Vendor Guidelines as presented in the contract.
 - 2. SARTA's physical sites, at the locations specified in the Support Plan of this Warranty Agreement (Exhibit B2).
- g. Provide a safe and secure work environment at the Site(s) for AVAIL's authorized personnel performing Support Services and Additional Services on-site.

SARTA shall not permit any person other than authorized AVAIL personnel to diagnose Errors, make Corrections, or in any way modify the Software. Any work, repair, replacement, Remedial Support, Emergency Support, or Correction necessary as a result of SARTA's violation of this provision shall be considered Additional Services.

5. New Versions, New Point Releases, Enhancements, Patches

AVAIL shall notify and make available to SARTA all Point Releases, Enhancements and Patches to the software for the current software version at no cost to SARTA. The nature and extent of the elements to be included or covered in any New Version or Point Release shall be determined solely by AVAIL.

New Versions, Point Releases and Patches will be made available to SARTA at no additional charge other than the costs for additional hardware, integration, testing, provided SARTA is current in its payment for Support Fees. Upon notification, SARTA shall have six (6) months from receipt of such notice to authorize AVAIL to deliver the product. All New Versions, Point Releases, Enhancements or Patches, provided to SARTA shall be considered Software for purposes of the Software License Agreement and this Warranty Agreement.

AVAIL agrees to provide to SARTA a Standard Level of Support (Standard Support) for the Software and any subsequent Version to which SARTA has elected to upgrade, during the full term of this Agreement (including all renewals) through the end of this contract or any subsequent extension of Maintenance and Support Services, provided that the SARTA has paid the applicable Support Charges hereunder as and when they become due. AVAIL agrees that its failure to continue to provide such support shall constitute a material breach of this Agreement.

6. Support Services

- a. The SARTA shall pay the Warranty Support charges set forth in Contract Services (Section 4.2) of the Contract. SARTA will receive technical support for the term of this Contract;
- b. Provided SARTA has paid the applicable Warranty and Support Fees in Contract Services (Section 4.2 of the Contract), AVAIL shall support the Hardware and Software as set forth in this Agreement;
- c. **Corrections** - For a period of twelve months following the release of a new version, AVAIL will use reasonable efforts to support any previously released version of that Software program. AVAIL shall advise SARTA as soon as practical, of the intention to discontinue support services of any version of AVAIL software currently in use by SARTA. AVAIL shall also maintain this requirement for the subcontractors they use for this Project;
- d. AVAIL shall have no obligation to correct problems which are traced to any SARTA errors, modifications, enhancements, software or hardware;
- e. **New Version and New Point Release** - As soon as practicable, AVAIL will inform SARTA of any information relating to any New Versions and New Point Release during the term of this Agreement. New Versions and New Point Releases will be provided at no additional charge for the licensing, provided SARTA has paid the Support Fees for the period including the date on which such New Release becomes generally available. New Versions will be provided at the SARTA's request. Cost shall be established by AVAIL's taking into consideration its then-current standard upgrade charges for such New Version, provided however, that Avail shall not charge SARTA a higher cost for the same than any other customer of Avail's in North America. In the event SARTA has elected not to pay the Support Fees, SARTA may obtain a license of a New Version or New Release by paying the aggregate annual Support Fees which would otherwise have been due from the date SARTA for discontinued Support Services to the date such New Version or Release becomes generally available.
- f. **Enhancement or Patch** - As soon as practicable, AVAIL will provide SARTA information relating to any software Enhancement or Patch during the term of this Agreement. Enhancements shall be negotiated and agreed to in writing, between the Parties, prior to any work beginning on the requested task. A patch shall be provided at no additional charge for install and deployment, if SARTA has paid the Support Fees for the period including the date on which such patch becomes generally available. All efforts shall be made by SARTA to provide AVAIL access to the individual Software server through the VPN process. Any Enhancement or Patch provided to SARTA shall be governed by all of the terms and provisions of this agreement.

In the event that AVAIL provides any Additional Services requested and approved by SARTA, AVAIL shall invoice for such Additional Services based upon its then-current time and material rates provided however, that Avail shall not charge SARTA a higher cost for the same than any other customer of Avail's in North America. SARTA shall pay all approved charges for such Additional Services within ninety (90) days from the date of invoice. Charges for Additional Services may include fees for labor, materials, hardware components, shipping, software, documentation, and/or other products or services and associated expenses, including reasonable travel expenses in-

curred by AVAIL when providing Additional Services at SARTA's request, all to the extent the same have been approved by SARTA.

Additional Maintenance and Support (M&S), which shall follow the completion of the five (5) year Warranty (period which has been pre-paid) may be extended for an agreed upon timeframe by the PARTIES. The cost would be at AVAIL's then-current standard M&S Fees for as long as AVAIL offers such support provided however, that Avail shall not charge SARTA a higher cost for the same than any other customer of Avail's in North America. Additionally, in connection with any fees for such support any applicable annual increases shall be the lesser of the increase in the CPI-U index for the prior year or 2%. The intent is to make payment of the applicable M&S fees in advance of each anniversary of the completion date. If SARTA purchases M&S for any copy of the Software, it must purchase M&S for all copies of such Software unless SARTA has discontinued the use of *certain software* within the ITS Project;

7. Travel Expenses

Travel expenses associated with AVAIL meeting its obligations for services covered by this Agreement shall not be SARTA responsibility. It is the hope and intention of the parties that Avail will be able to trouble shoot and resolve issues remotely and through technological means, however, if on-site work becomes necessary to resolve the error and for Avail to meet its obligations under this Agreement, then the costs of such travel shall be borne by Avail, not SARTA. For work outside of the scope of the warranty provided for herein, SARTA will reimburse the AVAIL for any reasonable out-of-pocket expenses deemed appropriate and as pre-approved by SARTA's staff assigned to this project, including airfare, travel to and from SARTA's site, lodging, meals and shipping, as may be necessary in connection with the duties performed *for such out of scope work* by AVAIL (if any). Appropriate expenses shall be limited to those incurred on *site* visits associated with the performance of this Agreement which shall *receive prior approval from* SARTA. AVAIL shall submit requests for *reimbursement* to SARTA. Such requests shall be accompanied by documentation substantiating the expense. Invoices for these expenses shall be presented to SARTA by the AVAIL within fifteen (15) days of the end of the month.

For pre-approved out of scope work, SARTA shall reimburse AVAIL for lodging and travel expenses as follows:

- a. Hotel: As incurred - not to exceed \$150.00 per day, per employee. For lodging purposes during a site visit.
- b. Air Travel: AVAIL must obtain SARTAs prior approval (either written or verbal) for any ticket that exceeds \$500.00. AVAIL shall only be reimbursed for Coach air rates, unless previously approved by SARTA. The AVAIL shall make reasonable efforts to book all air travel at least two weeks in advance of their intended departure date.
- c. Airport Transportation: As incurred - not to exceed \$50.00 for each one-way transportation. Expense shall be for standard transportation to departure airport and from arrival airport (i.e. cab, shuttle, etc.).
- d. Auto Rental: As incurred - not to exceed \$75.00 per day, per employee. Mileage is not a reimbursable item. Auto rental is not reimbursable for AVAIL and its employees located in Wichita, Kansas.
- e. Meals: As incurred - not to exceed \$51.00 per Diem, per employee, if employee is required to spend the night in Canton, OH. No other expenses are reimbursable, unless mutually agreed to by both parties hereto.

NOTE - Reimbursement rates may be adjusted from time to time as released by the GSA per diem rate board.

8. Confidentiality

The Confidentiality provision of the Software license Agreement is hereby incorporated by reference into this Agreement.

9. Warranty

AVAIL represents to SARTA that all services provided to SARTA hereunder will be performed in a workmanlike manner.

AVAIL warrants the installed and accepted system to be free from defects for a period of five (5) years following the approved Thirty (30) Day Operational Period. This warranty includes the software and hardware listed below *for* this entire term.

If during the five (5) year period of this Warranty and Support Agreement, any software or device of the System were to become obsolete, AVAIL agrees to work with SARTA to provide a replacement device and to ensure its downward compatibility with the rest of the deployed system.

These warranties are in addition to and shall not limit the application of any warranty otherwise set forth in the Contract between SARTA and AVAIL for Automatic Vehicle Location/ Computer Aided Dispatch and Related Intelligent Transportation Systems (the "Contract") and/or the Avail CAD/ AVL Software License Agreement (the "License").

Warranty and Support Components are:

a. Software (includes all applicable license fees):

CommandPoint Dispatch	5
CommandPoint Relay	1
CommandPoint TALE	1
CommandPoint VRS	1
CommandPoint WING	1
Control Point - Fixed Route	46
ControlPoint - Paratransit	42
ControlPoint - Supervisor	13
DataPoint	1
InfoPoint Sign Controller	1
InfoPoint Departure Estimator	1
InfoPoint Web – Public License	1
InfoPoint Web – Private License (CS use)	1
OmniPoint Database	1
OpenPoint WLAN	1
VitalPoint	1
Trapeze PASS MON	1
MapInfo - Professional	1

b. System Support:

a. AVAIL will provide remote and, if necessary, on-site system support as per Section 9.a.2.b, for the term specified in this Agreement, for all software initially provided by AVAIL for sustaining the accepted system configuration;

1. Phone and Remote Diagnostic system Support:

a. AVAIL will provide consultation to SARTA's Key Technical Contact to:

1. Facilitate remote troubleshooting and solution implementation;
2. Acquire and review data logs for problem identification via remote access line;
3. Provide problem analysis and possible resolution;
4. SARTA must maintain remote access capability for AVAIL to diagnose reported software and systems problems. Remote access will be via a VPN connection 5. AVAIL can, at SARTA's request, assist in arranging for service and support of non-warranted components (i.e. SARTA's LAN interface to the Communications system and Installation / Removal services). AVAIL will not be responsible for the service call or system repair costs. Such costs will be billed to SARTA.

c. Hardware

Vehicle Logic Unit –IEB	101
Vector 9000	101
Mackenzie DADS Annunciator	88
Sunrise Next Stop Sign	88
InfoDev APC System	88
Data Display Wayside Signs – LCD Indoor	2
Data Display Wayside Signs – 1-Line LED Outdoor	2
Data Display Wayside Signs – 3-Line LED Outdoor	6
Data Display Wayside Signs – Push Button Audio	10

1. Products deemed defective will be repaired and/or replaced at no additional cost for parts, material and labor. Products will be replaced, instead of repaired, at AVAIL discretion, provided that if Avail attempts repair once and the same component or part subsequently needs repair again, Avail will replace.

2. Swap out Services:

a. SARTA is responsible for swap-out services as required for all installed equipment including:

1. In-vehicle equipment;
2. Wireless modem;
3. Wireless LAN;
4. Wayside Sign Component modules.

b. Swap-out service excludes removal of equipment, replacement with spare and shipping to a designated repair point. Any item returned to AVAIL must follow AVAIL's RMA procedures;

1. SARTA is responsible for shipping cost to AVAIL or designated repair point. AVAIL will return ship to SARTA at AVAIL expense.

3. Exceptions:

a. Non-technical hardware items such as racks, cables, connectors, mounts, handsets, speakers, antennas, sign audio buttons, KVM switches, network switches, memory storage media, panels and punch blocks are wear items and are not covered under extended warranty;

b. AVAIL is not responsible for:

1. Products that are not used and serviced according to the training and instructions provided by AVAIL;
2. Products that have been altered, repaired or modified without prior consent from AVAIL;
3. Products damaged by any third party equipment or intervention, force of nature or other conditions not In AVAIL's control;
4. Products damaged due to SARTA's negligence or abuse.
5. Cost, loss or damages resulting from the use of AVAIL supplied products, including but not limited to, loss of time, inconvenience and loss of production;
6. Shipping and shipping related costs of products mailed to AVAIL;
7. Costs associated with parts, materials and labor provided by SARTA's Maintenance personnel.

c. AVAIL may evaluate items not covered under Warranty and an assessment will be provided to SARTA. If SARTA agrees with the assessment, SARTA will be charged for the labor to complete the evaluation, shipping and shipping related costs, parts and materials used and repair labor. If SARTA disagrees with the assessment, the matter will be resolved pursuant to the Disputes sec-

tion of the Agreement. . All labor outside of the scope of this agreement is charged at AVAIL's prevailing rates for the required skill level provided however, that Avail shall not charge SARTA a higher cost for the same than any other customer of Avail's in North America.

4. Time and Material Charges for Non-Warranted Hardware Repairs or Support:

- a. To maintain system support coverage, all systems hardware must be returned to AVAIL for repair or approved for repair by AVAIL at a specified repair facility;
- b. Any returned unit may be repaired or replaced at the sole discretion of AVAIL;
- c. AVAIL will charge a minimum of one (1) hour for each issue or return with subsequent increments billed at one-quarter (1/4) hour intervals;
- d. Charges for non-warranted repair / replacement or support will include the prevailing Preferred Customer rates} which are:
 1. Technician - Eighty-One dollars (\$81) per hour;
 2. Engineer - One-hundred forty two dollars (\$142) per hour.
- e. Travel and associated travel labor costs for on-site work (if required) are not included and will be invoiced to SARTA at Travel costs shall be pursuant to Section 7 of this Warranty Agreement. An estimate of on-site costs will be provided to SARTA prior to any travel expenses being incurred.

d. Installation

Vehicle Installation 60 Days

THE WARRANTY SET FORTH IN THIS AGREEMENT IS A LIMITED WARRANTY. THE HARDWARE AND SOFTWARE, INCLUDED UNDER THE INITIAL INSTALLATION, NEW VERSIONS, POINT RELEASES, ENHANCEMENTS OR PATCHES, ARE SUBJECT TO THE REPRESENTATIONS, WARRANTIES, INDEMNIFICATIONS, LIMITATIONS AND DISCLAIMERS SET FORTH IN THE LICENSE AGREEMENT.

10. Limitation of Liability

- a. IN NO EVENT SHALL EITHER PARTY'S LIABILITY FOR ANY REASON AND UPON ANY CAUSE OF ACTION UNDER THE SOFTWARE LICENSE AGREEMENT EXCEED THE FEES PAID BY SARTA TO AVAIL COLLECTIVELY UNDER THIS AGREEMENT, THE CONTRACT AND THE LICENSE; THE LIMITATIONS IN SECTION 10 HOWEVER WILL NOT APPLY TO AVAIL'S INDEMNITY OBLIGATIONS HEREIN OR IN THE CONTRACT OR THE LICENSE, OR TO ANY LOSSES SUFFERED BY LI- CENSEE DUE TO AVAIL'S INTENTIONAL, MALICIOUS OR GROSSLY NEGLIGENT ACTIONS.
- b. ASIDE FROM THE PROVISIONS OF THE SOFTWARE LICENSE AGREEMENT (ATTACHMENT A) AVAIL AND THE CONTRACT NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF PROFITS, ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES.
- c. The PARTIES shall not rely upon and shall not grant any means of remedy arising from any statement, representation, warranty or understanding of any person other than as expressly set out in this Agreement, the Contract or the License.

11. Termination

- a. Notwithstanding the foregoing, all provisions hereof relating to confidentiality, proprietary rights, nondisclosure, indemnity and limitations of liability shall survive the termination of this Agreement. In the event of termination under this paragraph, SARTA will not be entitled to any refund of any portion of the fees paid to AVAIL under this Agreement, unless AVAIL:
- b. Materially breaches this Agreement and fails to cure such breach within thirty (30) days after notice from SARTA;
- c. Delivers a notice that the Software has been declared obsolete or withdrawn from sale;
- d. Otherwise discontinues providing Standard Level of Support for the OmniPoint Software Suite:

I. AVAIL shall refund to SARTA an amount equal to the aggregate Support Charges paid by SARTA for the time during which the Standard Level of Support services was not provided to SARTA.

EXHIBIT B2

Support Plan

Problem Resolution Standards (w/ 24-7 Support)

Level	Definition	Target Action
Routine Care	<ul style="list-style-type: none">• Production use of the system is possible, but a business function is disabled and no workaround exists;• This category also applies to problems which severely impact the progress of an implementation project where no workaround exists.	<ul style="list-style-type: none">• Initial response within three (3) business hours;• Resource assigned within a day and remains assigned until resolution;• Activity to resolve problem during business hours;• Target Resolution: 72 hours.
Urgent Care	<ul style="list-style-type: none">• Business Critical – Production use of the system is not possible;• No communication with vehicles and no workaround exists;• SARTA requires resolution urgently do to financial, legal and public risk exposure.	<ul style="list-style-type: none">• Initial response within one (1) hours;• Resource assigned immediately and remains assigned until resolution;• Immediate activity to resolve problem;• Target Resolution: 24 hours.

Reporting Process:

1. Contact the Call Center and register problem with system - (814)-234-3394 (Xtn 50);
2. If no answer at Call Center be sure to leave caller name, property name and contact phone number, description of problem; 24-7 Customers are provided with a unique code to access after hours support.
3. Alternate contact:
 - a. Fax - (814)-234-3393;
 - b. E-mail- support@availtec.com.

Business Hours:

1. Monday through Friday;
2. 7:30 AM to 6:30 PM EST;
3. National holidays excluded.

Work Flow:

Upon receipt of an issue, AVAIL support staff will begin documentation of the issue. The documentation shall record all pertinent information that has been received either by telephone or email. Following completion of the gathering of information regarding the problem, AVAIL support staff will categorize the issue and communicate the target action back to SARTA contact.

Once a problem has been identified, AVAIL support staff will work with AVAIL or third party engineering staff to determine an appropriate solution SARTA to make arrangements for implementation. In the event that the solution cannot be tested and implemented within the timeframe that was initially communicated to SARTA, AVAIL support staff will attempt to implement a workaround for SARTA while pursuing resolution. In all cases, AVAIL will attempt to minimize the amount of time necessary to resolve the issue.

If AVAIL personnel cannot recreate the problem in the lab configuration, additional information may be required from SARTA. This may include but is not limited to screen shots in .bmp or .jpg format and/or retrieval of files from the affected software.

AVAIL will endeavor to resolve any system problems remotely through use of a Virtual Private Network (VPN). If both parties deem it necessary to travel to SARTA premises to resolve the problem, the on-site engineering /technical support services are included in this agreement. The cost for the travel and living expenses shall be agreed upon between the PARTIES. The engineering / technical support services rendered will be billed to SARTA if it is determined while on site that the problem resolution was not due to AVAIL's inability to re-create and resolve the problem remotely.

Tri-County Metropolitan Transportation District of Oregon (TRIMET)

Contracting Rules, issued February 20, 2008, amended August 9, 2010,
and October 22, 2014

Item 21

**TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF OREGON
(TRIMET)
CONTRACTING RULES**

Issued: February 20, 2008

**Amended: August 9, 2010,
October 22, 2014**

A handwritten signature in cursive script, appearing to read "Neil McFarlane", is written over a horizontal line.

Neil McFarlane, General Manager
October 22, 2014

TRIMET CONTRACTING RULES

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1. SCOPE

1.1 Statutory Authority

These Rules are adopted in accordance with ORS 279A.050, 279A.065 and 279A.070 to establish the rules of public contracting procedure TriMet will use for its public contracts, and in accordance with 279A.070 and ORS 279C.105, to create procedures for the screening and selection of persons to perform personal services contracts as designated by the TriMet Contract Review Board (TCRB) under TCRB Rule VI (F).

1.2 Attorney General's Rules Inapplicable

The Attorney General's Model Contract Rules adopted under ORS 279A.065 do not apply to TriMet, except the Model Contract Rules adopted under ORS 279A.065(3) for construction manager/general contractor services. The TriMet Contract Review Board Rules and these Rules apply to TriMet public contracts.

1.3 Statutory Requirements Not Reiterated

TriMet is subject to public contracting requirements under the Public Contracting Code. Those requirements generally are not reiterated in these Rules but apply as if fully set forth herein unless otherwise provided.

1.4 Federal Requirements

TriMet is subject to certain contracting requirements when a particular contract is supported with federal funds. Those requirements are not reiterated in these Rules. Conflicts between these Rules and a federal requirement imposed by a federal statute, rule, circular or grant agreement shall be resolved in favor of the federal requirement, in accordance with ORS 279A.030.

1.5 Procurement Guidelines

TriMet's General Manager or the General Manager's designee may establish and modify from time to time written or unwritten procurement guidelines consistent with these Rules.

1.6 Effective Date and Effect

These Rules take effect October 22, 2014 and supersede the Contracting Rules dated February 20, 2008, as amended August 9, 2010, and any conflicting applicable procedures or practices, including but not limited to TriMet's existing Personal Services Contracting Procedures.

2. DEFINITIONS

The definitions in the Public Contracting Code as defined below apply to these rules. In addition, unless the context clearly requires a different meaning:

"Addendum" means a written document issued by TriMet to change an Invitation to Bid or a Request for Proposals, or other solicitation document if identified as such.

"Bid" means a competitive sealed bid submitted in response to a written Invitation to Bid in accordance with ORS Chapter 279B or Chapter 279C.

“Bidder” means a person that submits a bid in response to an Invitation to Bid.

“CM/GC Contract” means a contract for construction manager/general contractor services.

“Construction Manager/General Contractor Services” means construction-related services that a contracting agency procures by means of an alternative contracting method under ORS 279C.335 and that:

(A) Include a construction manager/general contractor’s:

(1) Functioning as a member of a project team that includes the contracting agency, the architect or engineer that designs the public improvement under a separate contract with the contracting agency and other contractors and consultants; and

(2) Reviewing and analyzing a design for a public improvement in order to:

(a) Suggest changes in the design that minimize potential errors, delays, unexpected costs and other problems during construction;

(b) Recommend means by which the contracting agency may achieve the functions of the public improvement or a component of the public improvement safely, reliably, efficiently and at the lowest overall cost;

(c) Improve the value and quality of the public improvement; and

(d) Reduce the time necessary to complete the public improvement; and

(B) May include, depending on the specific terms of the public improvement contract and on whether the contracting agency decides to proceed with construction, a construction manager/general contractor’s:

(1) Devising a schedule for constructing the public improvement;

(2) Estimating construction, materials, labor and other costs for the public improvement;

(3) Establishing a fixed price, a guaranteed maximum price or other maximum price;

(4) Constructing portions of the public improvement and subcontracting portions to other contractors;

(5) Coordinating and overseeing the construction process; or

(6) Performing other services related to constructing a public improvement in accordance with the terms of the public improvement contract.

(C) "Construction manager/general contractor services" does not include services related to constructing a public improvement under the terms of:

- (1) A public improvement contract that a contracting agency awards on the basis of a competitive bidding process that does not require an exemption under ORS 279C.335;
- (2) A public improvement contract that results from a design-build procurement, as defined in rules the Attorney General or a contracting agency adopts under ORS 279A.065, and that is exempt from the competitive bidding requirement under ORS 279C.335;
- (3) An energy savings performance contract;
- (4) A public improvement contract for a transportation project that:
 - (a) Is exempt from the competitive bidding requirement under ORS 279C.335;
 - (b) Requires the contractor to construct the project according to plans and specifications that a design professional provides under a separate contract with the contracting agency and without significant participation from the contractor; and
 - (c) The contracting agency awards on the basis of the contracting agency's evaluation of:
 - (i) The contractor's qualifications, the price to perform the work on the project and the amount of time the contractor will take to perform the work; or
 - (ii) The contractor's qualifications, past experience with similar projects, the price to perform the work on the project and the contractor's planned approach to the project; or
 - (iii) A public improvement contract that is otherwise exempt or excepted from the competitive bidding requirement under ORS 279C.335.

"Design-build contract" means a contract with a single entity for both the design and construction of a public improvement.

"Emergency" means circumstances that: (A) Could not have been reasonably foreseen; (B) Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and (C) Require prompt execution of a contract to remedy the condition.

"Invitation to Bid" means all documents, whether attached or incorporated by reference, used for soliciting bids.

"Offer" means a response to a solicitation.

"Offeror" means a person submitting an offer.

"Personal services" means those services designated as personal services by the TriMet Contract Review Board at Rule VI (F) Personal Services.

"Proposal" means a written competitive sealed proposal submitted in response to a written Request for Proposals issued under ORS 279B.060 or ORS Chapter 279C.

"Proposer" means a person that submits a proposal in response to a Request for Proposals.

"Public contract" means a sale or other disposal, or a purchase, lease, rental or other acquisition, by a contracting agency of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement.

"Public Contracting Code" or "Code" means ORS Chapters 279A, 279B and 279C.

"Public Improvement" means a project for construction, reconstruction, or major renovation on real property by or for TriMet. Public improvement does not include: (1) Projects for which no funds of TriMet are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or (2) Emergency work minor alteration, ordinary repair or maintenance necessary in order to preserve a public improvement.

"Quotation" or "quote" means a small or intermediate procurement price quote or proposal.

"Request for Proposals" means all documents, whether attached or incorporated by reference, used for soliciting competitive sealed proposals.

"Solicitation" or "Solicitation Document" means an Invitation to Bid or a Request for Proposals, unless the terms are not capitalized in which case the terms "solicitation" or "solicitation document" shall refer to any document issued to invite offers.

"Technical proposal" means a written proposal, submitted in response to a request for technical proposals issued by TriMet, describing the proposer's qualifications and the specific goods the proposer would offer or the specific methodology the proposer would use to provide services to satisfy TriMet's needs.

3. PROCUREMENT METHODS

3.1 General Principles

TriMet Contracting Rules are intended to fully implement the Public Contracting Code and to maximize TriMet's flexibility to utilize the most appropriate procurement procedures consistent with the policy stated at ORS 279A.015. Nothing in these Rules shall be deemed to limit TriMet's authority and powers permitted under the Code, including any limitation on TriMet's discretion and authority to utilize any solicitation process permitted or directly authorized by the Code.

3.2 Exempt Public Contracts

If no procurement method is specified by the Code or by the TriMet Contract Review Board, a public contract may be awarded based upon any method permitted under the Code and by these Rules, including but not limited to competitive negotiation. An exempt public contract may be awarded based upon competitive bidding or competitive negotiation if TriMet determines that, notwithstanding the exemption, an award based upon competitive bidding or competitive negotiation would be in TriMet's best interests.

3.3 Emergency and Sole Source Procurements

3.3.1 Emergencies

The General Manager or his or her designee may enter into or authorize others to enter into emergency procurements of goods or services, including construction work that is not defined as a public improvement under ORS 279A.010. The Procurement and Contracts Department shall document the nature of the emergency and describe the method used for the selection of the particular contractor.

An emergency procurement of construction services other than a public improvement shall be conducted in a manner to ensure competition that is reasonable and appropriate under the emergency circumstances. TriMet shall set a solicitation time period that TriMet determines to be reasonable under the emergency circumstances and may issue written or oral requests for offers or make direct appointments without competition in cases of extreme necessity. All other emergency contract awards may be made by any commercially reasonable means under the circumstances.

3.3.2 Sole Source

Determination of sole source applicability shall be made in writing by the Director of Procurement and Contracts or the Manager of Contracts, or his or her designee(s), in accordance with ORS 279B.075, unless the contract is exempted under the Code or by the TriMet Contract Review Board.

3.4 Two-Step Bidding

TriMet may solicit technical proposals from prospective bidders, evaluate those proposals, and solicit bids only from those prospective bidders whose technical proposals demonstrate that the prospective bidder would be able to satisfy TriMet's minimum requirements for the goods or services in question. If technical proposals are solicited, the solicitation shall be advertised in the same manner as an Invitation to Bid; the advertisement of the solicitation of technical proposals shall be deemed to satisfy all advertisement requirements of ORS Chapter 279B and these Rules. Bids may be solicited, without further advertising, directly from those prospective bidders whose technical proposals demonstrate that they satisfy the minimum requirements established in TriMet's request for technical proposals. Bids received in a two-step bidding process shall be evaluated in the same manner as other bids.

3.5 Negotiation When All Bids Exceed Estimate

Pursuant to ORS 279C.340, TriMet may negotiate with the lowest responsible bidder submitting a responsive bid if all responsive bids from responsible bidders exceed TriMet's cost estimate. This rule is applicable only to contracts for public improvements. If a written cost estimate was not prepared prior to bidding, the amount budgeted for the contract shall be deemed the cost estimate for the purposes of this Rule. TriMet may negotiate under this Rule only if TriMet has determined that it would not be in TriMet's best interest to cancel the procurement, revise the specifications, and solicit new bids based upon the revised specifications.

3.6 Design-Build Contracts

If TriMet determines that contracting with a single entity for both design and construction of a public improvement is in TriMet's best interest, TriMet may award a design-build contract. Design-build contracts may be awarded through competitive negotiation or as otherwise authorized in accordance with applicable requirements.

Federally funded procurements involving design-build services shall include preparation of a written determination and findings for the contract file that details whether construction or design services are predominant. Based upon the findings, the appropriate procurement methodology (qualifications based or non-qualifications based) shall be used.

3.7 Construction Management/General Contractor (CM/GC) Contracts

If TriMet determines that contracting with a single entity for both construction management and construction of a public improvement is in TriMet's best interest, TriMet may award a CM/GC contract. CM/GC contracts may be awarded through competitive negotiation or as otherwise authorized in accordance with applicable requirements.

3.8 Unsolicited Proposal Policy

An unsolicited proposal is a written offer which may meet TriMet strategic goals and requirements and entail the performance of a proposed task, service, or effort, initiated and submitted to TriMet by a prospective offeror without solicitation by TriMet. The Unsolicited Proposal policy for Public-Private Partner Infrastructure Projects is contained at Appendix "A." The Unsolicited Proposal Policy for all other types of projects is contained at Appendix "B."

3.9 Cooperative Procurements

TriMet may participate in, sponsor, conduct, or administer Cooperative Procurements as set forth in ORS 279A.200 through 279A.225.

4. PREQUALIFICATION OF BIDDERS/PROPOSERS

4.1 Generally

TriMet, in its sole discretion, may require bidders, proposers or other offerors to prequalify before being eligible to submit bids, proposals or other offers for a class of public contracts or for a particular public contract. All prequalifications under this section, of both bidders and proposers, shall be in accordance with the applicable sections of the Code and these Rules. If prequalification is required, the opportunity to prequalify shall be advertised in the same manner as a solicitation document for the class of public contracts or the particular public contract would be advertised under applicable statutes and these Rules.

4.2 Disqualification

Disqualification of a previously prequalified bidder, proposer or other offeror shall be in accordance with these Rules and applicable provisions of the Code regarding prequalification and disqualification.

4.3 Additional Advertising Not Required

Subject to Rule 4.4 below, bids, proposals or other offers may be solicited for a particular contract from bidders, proposers or other offerors prequalified for that particular contract, or for a class of contracts including that particular contract, without additional advertising.

4.4 Qualification Periods

For federally funded procurements, if the product or service for which a prequalification list has been established is advertised, TriMet will permit potential bidders or offerors to qualify during the solicitation period provided the potential bidder or offeror can do so during the solicitation period.

5. ADVERTISEMENT

Advertisements of Invitations to Bid and Requests for Proposals shall be published when required by statute, and any other time TriMet concludes that advertisement is desirable. An advertisement, other than for a public improvement contract estimated to cost more than \$125,000, shall be deemed sufficient for the purposes of the applicable statutes and these Rules if it appears once in the Oregonian or the Daily Journal of Commerce, or if it appears electronically in a commercially reasonable manner. Nothing in this section shall be deemed to prevent TriMet from satisfying the advertisement requirements of applicable statutes and these Rules by publishing an advertisement once in any newspaper of general circulation in the Portland metropolitan area. An advertisement for a public improvement contract estimated to cost more than \$125,000 shall be deemed sufficient if it appears once in the Daily Journal of Commerce or a similar trade newspaper of general statewide circulation. TriMet may publish an advertisement more than once, and, in addition to publication designed to satisfy the requirements of applicable statutes and these Rules, may publish one or more advertisements in any local, regional, or national publication deemed by TriMet to be appropriate for the particular procurement. A notice of advertisement issued for an Invitation to Bid or Request for Proposals subject to ORS Chapter 279B shall be posted at least 7 days prior to the Solicitation closing date, unless the Director of Procurement and Contracts or the Manager of Contracts determines that a shorter time period is necessary in TriMet's best interests.

6. DISTRIBUTION OF SOLICITATION DOCUMENTS

TriMet normally distributes solicitation documents by making them available for electronic downloading through its vendor/contractor registration system. TriMet may distribute solicitation documents by other means, including by handing them to individuals who appear at the office of TriMet's Procurement and Contracts Department or via U.S. Mail or by fax or express mail, if TriMet determines in its sole discretion that other means are appropriate under the circumstances. TriMet may, but is not obligated to, deliver a solicitation document by other means to a particular prospective offeror if that prospective offeror requests delivery by the other means and pays the additional cost of the other means of delivery.

7. PROSPECTIVE BIDDERS AND PROPOSERS LISTS

Prospective offerors should register on-line in TriMet's Vendor/Contractor Registration system, which may be accessed through a link on the agency's internet website homepage at www.TriMet.org. Registration facilitates email notification to the vendor/contractor of contracting opportunities. Vendor/Contractor Registration is subject to the terms and conditions at www.TriMet.org. Vendors are responsible for entering and maintaining their correct email address in the system. E-mail notification services through the Vendor/Contractor Registration system are not guaranteed and users are ultimately responsible for reviewing postings to the site.

Prospective offerors who are interested in a particular procurement, but do not have computer access, may still receive a solicitation document by non-electronic means described in Contract Rule No. 6, above; however, TriMet does not maintain interested vendor listings outside of the Vendor/Contractor Registration system described above. A vendor who requests a solicitation document through non-electronic means is responsible for ensuring that TriMet's Procurement and Contracts Department has accurate address and contact information.

8. PREBID AND PREPROPOSAL CONFERENCES

8.1 Generally

TriMet may hold a prebid or preproposal conference to hear and respond to questions. Such a conference may include a site inspection, if relevant. If the time and place of a prebid or preproposal conference are not stated in the Invitation to Bid or Request for Proposals, all prospective bidders or proposers on the list maintained by TriMet's Procurement and Contracts Department shall be notified of the time and place. Notification may be by telephone, fax, e-mail, or in writing, at TriMet's option.

8.2 Mandatory

TriMet may require attendance at a prebid or preproposal conference as a condition precedent to the submission of a bid or proposal. TriMet may refuse to open a bid from a bidder who failed to attend a mandatory prebid conference, and may refuse to open or decline to evaluate a proposal from a proposer who failed to attend a mandatory preproposal conference. TriMet may, but is not obligated to, arrange for a subsequent prebid or preproposal conference if requested by one or more prospective bidders or proposers who were unable to attend a scheduled, mandatory prebid or preproposal conference for a reason determined by TriMet to be commercially reasonable under the circumstances. If a subsequent prebid or preproposal conference is arranged, all prospective bidders or proposers on the Procurement and Contracts Department list shall be notified in advance and allowed to attend.

8.3 Limited Effect

Statements and other information from TriMet employees at a prebid or preproposal conference do not effect any change in the Invitation to Bid or the Request for Proposals, or the contracts that may arise from them. Changes in the Invitation to Bid or the Request for Proposals may be effected only by a written addendum issued by TriMet. Bidders and proposers may rely only upon the Invitation to Bid or the Request for Proposals, with any changes made by addendum, to establish all of the procurement requirements and all contract provisions other than those established by the bid or proposal.

8.4 Change Requests

A prospective bidder or proposer who wants to propose a change to the Invitation to Bid or the Request for Proposals should submit a written request, even if the change was requested during a prebid or preproposal conference. The request should be submitted in accordance with any instructions in the Invitation to Bid or the Request for Proposals. If TriMet fails to respond to a change request made during a prebid or preproposal conference, or to a written change request, the request shall be deemed denied. If TriMet responds to a change request, the response may be in the form of an addendum issued to all prospective bidders or proposers, with no specific response to the requestor.

9. SPECIFICATION OF PARTICULAR PRODUCTS

9.1 TriMet may utilize a brand name or equal specification when use of the brand name or equal describes the standard of quality, performance, functionality and other characteristics of the product needed by TriMet, in which case offerors may substitute equivalent products. The Invitation to Bid or Request for Proposals may require substitutions to be approved by TriMet prior to the submission of offers. TriMet shall approve a substitution if the substitute product has all of the salient features of the expressly or implicitly required product. This provision does not apply to products or classes of products that are exempt under ORS 279B.215(2) or 279C.345(2).

9.2 For public contracts subject to ORS 279B.215, TriMet may expressly or implicitly require a particular product by brand name and disallow any substitution of the specified product when a written determination has been made by the Director of Procurement and Contracts or the Manager of Contracts that doing so meets the requirements of ORS 279B.215(2).

9.3 For public contracts subject to ORS Chapter 279C.345, TriMet may expressly or implicitly require a particular product by brand name and disallow any substitution of the specified product when exempted by the TriMet Contract Review Board Rule under ORS 279C.345(2).

10. ADDENDA

10.1 Requirement

A solicitation document may be changed only by a written addendum issued by TriMet.

10.2 Acknowledgment Required

An offeror must timely acknowledge in writing receipt of all addenda issued by TriMet. Failure to acknowledge receipt of an addendum may cause a bid to be rejected as nonresponsive or may cause a proposal to be rejected, depending upon the nature and content of addenda which were not acknowledged. Acknowledgment of receipt of an addendum most often will be part of the bid or proposal, but may be separate from the bid or proposal, and need not be sealed. TriMet shall accept a written acknowledgment of receipt of an addendum by any commercially reasonable means, including but not limited to fax and email. Acknowledgment of receipt of an addendum to an Invitation to Bid is timely only if it is received in a manner and at a time that would make it timely if it were a bid.

10.3 Distribution and Receipt

Addenda may be distributed by U.S. mail, fax, hand delivery, electronic or other commercially reasonable means. Failure to receive an addendum to a solicitation does not excuse

failure to acknowledge receipt of the addendum, even if the failure to receive was through no fault of the prospective bidder or proposer, and even if the failure to receive was the fault of TriMet. TriMet, in its sole discretion, may extend the deadline set for receipt of bids or proposals to allow a bidder or proposer time to acknowledge receipt of an addendum.

11. METHOD OF SUBMITTING OFFERS

11.1 Bids/ Proposals

Unless otherwise specifically provided by the Solicitation Document bids must be submitted in writing on the form(s) provided by TriMet or a reasonable facsimile which does not in any way alter the content of the form issued by TriMet. Proposals must be submitted in the format prescribed by TriMet. Bids, proposals or other offers may be submitted electronically if expressly authorized as a means of submission in the solicitation document. A bid or proposal shall be considered timely submitted if it is delivered to the Director of Procurement and Contracts, the Manager of Contracts, or the Director's designee by the deadline stated in the solicitation document.

11.2 Small and Intermediate Procurement Quotes/Informal Proposals

Small and Intermediate procurement quotes/informal proposals permitted under the Code may be submitted by any commercially reasonable method, including but not limited to fax, unless TriMet has specified in the solicitation document that only certain methods of submission may be used, or that certain methods of submission may not be used. Electronic data interchange and email shall be considered a commercially reasonable method of submission only if it is expressly authorized in the solicitation document.

TriMet may follow the procedures set forth at ORS 279B.065 (Small Procurements not exceeding \$10,000), at ORS 279B.070 (Intermediate Procurements exceeding \$10,000 but not exceeding \$150,000) and at ORS 279C.412 (public improvement contracts estimated not to exceed \$100,000), and procedures established by the Director of Procurement and Contracts or the Manager of Contracts. However, all federally funded contracts exceeding \$100,000 must be procured utilizing formal procurement procedures conforming to Federal Transit Administration (FTA) Circular 4220.1F, and in such cases the informal procedures authorized by ORS 279B.070 do not apply.

11.3 Timeliness

Offerors are responsible for ensuring their offers are timely. TriMet may decline to consider a late offer, even if the offer is late because of a delay in TriMet's internal handling of mail or documents or because TriMet's receiving equipment was unavailable. If TriMet declines to consider an offer because it was not timely, the offer will be returned unopened to the offeror.

11.4 Completeness

Offerors are responsible for ensuring TriMet receives their offers in a complete, legible, ungarbled form. TriMet may decline to consider an offer that is incomplete, illegible, or garbled, even if the problem is caused by TriMet's hardware or software.

11.5 Electronic Submission

Offers submitted electronically must bear a facsimile signature, provided that the requirement for a facsimile signature is excused when the solicitation document expressly

authorizes electronic data interchange, e-mail, or another electronic submission method by which facsimile signatures generally cannot be transmitted. A solicitation document expressly authorizing electronic submission of offers may specify methods for establishing the authenticity of offers.

12. BID/ WITHDRAWAL/MODIFICATION

At any time before the deadline for receipt of bids, a bidder may withdraw its bid without consequence. The withdrawal must be by someone with the necessary authority, and must be a signed writing. TriMet may release the unopened bid to the bidder or an authorized representative of such bidder, after voiding any date and time stamp. TriMet shall make a written record of the bid withdrawal.

At any time before the deadline for receipt of bids a bidder may modify its bid in writing. A bidder shall prepare and submit any modification to its bid to TriMet as provided in Rule 11, unless otherwise specified in the Invitation to Bid. Any modification must include the bidders' statement that the modification amends and supersedes the prior bid in accordance with instructions in the Invitation to Bid.

13. BID OPENING

13.1 Generally

Bids shall be opened at the time and place designated in the Invitation to Bid, subject to any changes made by addendum. The TriMet employee who will open bids shall confirm at or shortly after the specified deadline for receipt of bids, and before opening the first bid, whether any additional bids have been timely received at the location stated in the Invitation to Bid. If no additional timely bids have been received, the TriMet employee shall promptly proceed to open the first bid. If additional timely bids have been received, the TriMet employee shall delay the bid opening until those bids can be delivered to the place bids are to be opened. Subject to any exemptions under Oregon public records statutes, bids shall be available for public inspection only after TriMet has finished evaluating them for responsiveness.

13.2 Postponement

The time for opening bids may be postponed at any time for TriMet's convenience or if TriMet determines that postponement would be in TriMet's best interest. Bids shall be opened in a place designated by TriMet that is open to the public at the time bids are opened. TriMet may change the place bids will be opened at any time. A bid opening postponement or relocation shall be communicated orally or by a posted sign to anyone who appears at the previously designated time and place for the bid opening. If time permits, a bid opening postponement or relocation shall be communicated to all prospective bidders on the list maintained by TriMet's Procurement and Contracts Department by mail, fax, email, or any other commercially reasonable means.

14. PROPOSAL OPENING

TriMet may open proposals at any time after the exact date and time set forth in the Request for Proposals. There is no requirement for proposals to be opened in public.

15. BID EVALUATION

15.1 Generally

Opened bids shall be evaluated in accordance with the Invitation to Bid, applicable statutes and these Rules. When a bid is determined to be nonresponsive to the Invitation to Bid, it

will not be evaluated further. The bidder submitting the lowest responsive bid shall be evaluated for responsibility under applicable statutes, these Rules, and the Invitation to Bid.

15.2 Correction of Certain Errors

Arithmetic errors apparent on the face of a bid shall be corrected by TriMet before comparing bid prices. Discrepancies between a unit price and an extended total price for a bid item shall be resolved in favor of the unit price unless there is evidence apparent on the face of the bid establishing that the extended price is correct.

15.3 Clarification of Bids

After bid opening, TriMet, in its sole discretion, may conduct discussions with apparent responsive bidders solely for the purpose of clarification to assure full understanding of the bid. TriMet shall document clarification of any bidder's bid in the procurement file.

16. BID ERRORS

16.1 Errors of Judgment

A bid may not be corrected or withdrawn for an error in judgment. If a bidder is awarded a public contract and refuses to promptly and properly execute the public contract because of an error in judgment, the bidder's bid security must be forfeited under ORS 279B.055(3)(c) or ORS 279C.385 as applicable.

16.2 Minor Informalities

TriMet may waive or permit a bidder to correct a minor informality. A minor informality is either a matter of form rather than substance that is evident on the face of the bid, or an insignificant mistake that can be waived without prejudice to other bidders. For example, failure to sign the bid in the designated block on the bid form is a minor informality if a signature appears on the bid bond or somewhere else in the bid evidencing intent to be bound by the bid.

16.3 Clerical Errors

A clerical error is an error in transcribing the bid, and may include without limitation typographical errors, arithmetic errors, and transposition and other errors in transferring numbers from work sheets to the bid form. If a clerical error is apparent on the face of the bid and the correction also is apparent on the face of the bid, TriMet shall correct the error before evaluating bids. A discrepancy between a unit price and an extended bid item price is a clerical error and shall be corrected by giving precedence to the unit price.

If an error not apparent on the face of the bid is brought to TriMet's attention, the bidder may submit evidence to establish that the error is a clerical error. If it is clear and convincing from the face of the bid or from evidence submitted by the bidder that an error is a clerical error, rather than an error in judgment, but the correction of the error is not apparent on the face of the bid, the bidder may either withdraw its bid without forfeiting its bid security under ORS 279B.055(3)(c) or 279C.385 as applicable, or agree to proceed with the public contract as bid, without correcting the error. If the bidder takes neither of those actions, TriMet shall reject the bid as nonresponsive. A bidder may not correct a clerical error if the correction is not apparent on the face of the bid.

17. PROPOSAL METHODS/ADDENDA/COMPETITIVE RANGE/EVALUATION

17.1 TriMet shall have discretion in the method used to select the most advantageous proposal, including but not necessarily limited to an award based solely on ranking of proposals, negotiations with the highest ranked proposer, competitive negotiations, multiple-tiered competition designed to identify a class of proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower ranked proposers, multi-step selection methods or any combination of methods.

17.2 If TriMet issues an addendum after proposals are opened, TriMet shall provide sufficient time for proposers to supplement their proposals, if necessary, based on the changes provided in the addendum. Less than five days may be allowed for proposal supplementation if the changes made by the addendum do not require extensive analysis or action on the part of the affected proposers.

17.3 TriMet shall have discretion in the manner in which a competitive range is defined for a specific procurement. The number of proposers to be included within a competitive range may not be determined prior to evaluation of proposals.

17.4 Proposals shall be evaluated based upon the evaluation criteria established by the Request for Proposals. Changes in evaluation criteria shall be communicated by addendum. If evaluation criteria are changed after proposals have been submitted, all proposers shall have an opportunity to supplement their proposals or submit best and final offers after receipt of the addendum changing the evaluation criteria.

18. PROPOSAL ERRORS/PROPOSAL MODIFICATION

Unless there is limiting language in the Request for Proposals, errors in proposals may be corrected at any time prior to the deadline for TriMet's receipt of best and final offers, or, if best and final offers are not invited or allowed, the beginning of TriMet's final evaluation of proposals.

19. IRREVOCABILITY OF OFFERS

19.1 Bids

All bids received by TriMet for a particular public contract become binding offers when the deadline for receipt of bids passes, and remain irrevocable for 60 calendar days after opening unless a different period is specified in the Invitation to Bid. Each bidder agrees that after the deadline for receipt of bids, its bid constitutes a valid firm offer that shall not be withdrawn sooner than 60 calendar days after bid opening, unless a different period is specified in the Invitation to Bid.

19.2 Proposals

All proposals received by TriMet for a particular contract shall become binding offers on the last date for the receipt of best and final offers or, if best and final offers are not invited or permitted, from the date proposals are due, and shall remain irrevocable for 90 calendar days thereafter unless a different period is specified in the Request for Proposals. TriMet reserves the rights to analyze, examine, and interpret any proposal for a period of not more than 90 days, commencing from the proposal due date and time, unless a different period is specified in the Request for Proposals. Proposals shall not be conditioned to allow for an acceptance period less than the period specified in the Request for Proposals. If no acceptance period is specified in the

Request for Proposals, proposals shall not be conditioned to allow for an acceptance period of less than 90 days.

19.3 Extensions and Reinstatements

An offeror may extend the period of irrevocability of its offer by giving TriMet a written extension specifying a new period of irrevocability. An offeror may reinstate an offer (unchanged) after the expiration of the period of irrevocability by giving TriMet a written reinstatement specifying a new period of irrevocability. An offeror may not "extend" or "reinstate" an offer that differs in any material respect from the original; a purported extension or reinstatement of a materially differing offer amounts to a new offer.

20. TIED LOW BIDS OR QUOTATIONS

20.1 Generally

If (1) low bids or quotations are tied, (2) the price, fitness, availability, and quality of the goods or services offered by the tied offerors are otherwise equal, and (3) one of the tied offerors offers goods or services manufactured or produced in Oregon, the contract shall be awarded to that offeror in accordance with ORS 279A.120. If two or more of the tied offerors offer goods or services manufactured or produced in Oregon, the contract shall be awarded to one with principal offices or headquarters in Oregon. If two or more of the tied offerors offer goods or services manufactured or produced in Oregon, and none has principal offices or headquarters in Oregon, or if two or more of them have principal offices or headquarters in Oregon, the contract shall be awarded by drawing lots or another random selection process determined by TriMet. If none of the tied offerors offer goods or services manufactured or produced in Oregon, the contract shall be awarded by drawing lots or another random selection process determined by TriMet. The tied offerors shall be given notice and an opportunity to be present when the random selection process occurs.

20.2 Unequal Quality

If the fitness, availability, and quality of the goods or services offered by tied offerors are not otherwise equal, the contract shall be awarded to the offeror determined by TriMet to offer the superior goods or services.

21. REJECTION OF BIDS OR PROPOSALS/CANCELLATION

21.1 TriMet may reject any or all bids, proposals or other offers or cancel any solicitation or procurement solicited under ORS Chapter 279B in accordance with 279B.100.

21.2 TriMet may reject any or all bids or proposals solicited under ORS Chapter 279C in accordance with ORS 279C.395. TriMet may reject all bids or proposals for good cause upon a finding that rejection is in the public interest. Situations where good cause is sufficient to warrant rejection of all bids or proposals include but are not limited to: (1) competition is unnecessarily restricted because of the content of or an error in the solicitation document or the solicitation process; (2) all offered prices are too high or all offered performance is insufficient to meet TriMet's needs; (3) ambiguous or misleading provisions in the solicitation document, or misconduct or error, threaten the fairness and integrity of the competitive process; (4) events other than legitimate market forces threaten the integrity of the competitive procurement process.

21.2 TriMet may cancel a solicitation for good cause under ORS Chapter 279C if TriMet determines that cancellation is in the public interest, which shall be documented in the solicitation file.

22. NOTICE OF INTENT TO AWARD; BIDS AND PROPOSALS

A notice of intent to award a contract after receipt of bids or proposals will be issued at least seven days prior to award, by posting on the Vendor/Contractor Registration website system described in Rule 7 above, or alternatively, via mail, email, fax or other electronic means to all bidders or proposers, unless TriMet determines that seven days is impractical in that circumstances require prompt execution of the contract in which case a shorter notice period may be provided. Such circumstances may include, but are not limited to, where failure to more promptly execute the contract may result in a substantial risk of economic or other type of loss or damage, interruption of services or operations, public inconvenience or substantial threat to property, health or safety. Until the notice of intent to award has been posted, bidders or proposers shall not have the opportunity to protest the award in accordance with ORS 279B.410 provisions and with these Rules.

23. TRIMET SURPLUS PROPERTY

TriMet may sell personal property no longer required for TriMet purposes. If TriMet elects to sell personal property, it may be by public sale, including but not limited to: internet auctions, oral auctions, sealed bid sales, and fixed retail sales, separately or in any combination thereof. TriMet may also utilize the services of the Department of Administrative Services (DAS) for disposal of TriMet surplus property. TriMet may otherwise transfer or dispose of personal property in accordance with applicable laws and regulations.

24. AMENDMENTS

TriMet may amend a public contract in accordance with the provisions of the original contract, or as determined appropriate by TriMet upon consideration of factors which may include but are not limited to: the type and nature of the contract; whether the additional work is within the scope of the original contract (factors may include but are not limited to whether the additional work is logically related to the contract work; if prudent contract management, engineering or construction practices dictate that the additional work ought to be performed in conjunction with the original contract work; if the additional work is located at the same site as the contract work; and if the contract objectively establishes the price, or the method of arriving at the price, for the additional work); whether the additional work can be performed by the contractor at a cost below what TriMet estimates it would cost if the additional work were awarded through a competitive solicitation process; and other factors as determined by TriMet in accordance with applicable contracting requirements.

25. PERSONAL SERVICES CONTRACT SELECTION PROCEDURES

These procedures constitute TriMet's procedures for the screening and selection of personal services contracts. For purposes of these personal services contract procedures, "proposal" shall mean an offer to provide personal services whether formal or informal as designated below. TriMet may follow the selection procedures established by ORS 279C.110 for contracts for architectural, engineering, land surveying or related services if TriMet determines that selection procedure would be in TriMet's best interest under the circumstances.

25.1 Sufficient Quality and Fair and Reasonable Price

Regardless of the specific method of selection used, the individual in charge of selecting a personal services contractor on behalf of TriMet shall ensure that the quality of the service offered by the personal services contractor is sufficient for TriMet's particular needs under the circumstances, and that the cost to TriMet for the services is fair and reasonable under the circumstances.

25.2 Personal Services Contract of \$3,000 or Less

A personal services contractor may be selected without soliciting informal proposals from more than one qualified proposer if the total cost of the personal services contract is estimated to be \$3,000 or less, the quality of service offered by the personal services contractor is sufficient for TriMet's particular needs under the circumstances, the cost to TriMet is fair and reasonable under the circumstances, the award does not reflect favoritism, and the award is in all other respects in TriMet's best interests.

25.3 Personal Services Contracts Over \$3,000 But Not Over \$25,000

If the total cost of a personal services contract is estimated to be more than \$3,000 but not more than \$25,000, informal proposals may be solicited. If it is practicable, informal proposals shall be solicited from a sufficient number of qualified prospective proposers to ensure no fewer than three qualified proposers submit proposals. If fewer than two qualified proposers submit proposals, the efforts made to solicit proposals shall be documented in TriMet's files.

25.4 Personal Services Contracts Over \$25,000 But Not Over \$100,000

If the total cost of a personal services contract is estimated to be more than \$25,000 but not more than \$100,000, informal proposals may be solicited. Informal proposals shall be solicited from a sufficient number of qualified prospective proposers to ensure no fewer than three qualified proposers submit proposals. If fewer than two qualified proposers submit proposals, the efforts made to solicit proposals shall be documented in TriMet's files.

25.5 Personal Services Contracts Over \$100,000

When a nonexempt personal services contract is estimated to exceed \$100,000, formal sealed proposals shall be solicited by a formal Request for Proposals, and a contract may be awarded based upon competitive negotiation using any method permitted for solicitation of proposals in these Rules as determined in TriMet's best interests. The Request for Proposals for a personal services contract shall include at least the following elements:

- A description of the criteria upon which proposals will be evaluated;
- The contractual terms and conditions required by TriMet;
- A description of the work;
- The requirements that must be satisfied by written proposals; and
- A protest procedure.

Proposals shall be evaluated based upon evaluation criteria described in the Request for Proposals. The evaluation criteria shall be presumed to have equal importance unless the Request for Proposals indicates otherwise. The evaluation criteria may be changed only by written addendum to the Request for Proposals.

Although not exclusive as methods, TriMet may solicit proposals by public advertisement, or may solicit without advertisement directly to a pool or limited number of members of a pool of prospective proposers as described below, provided that the pool, or segment of the pool solicited, has at least three members, and the method of selecting the limited number of proposers solicited is either random or qualifications based.

A pool of prospective proposers may be established for a particular type of personal services contract by soliciting statements of qualification from individuals or firms that may be qualified to perform those particular personal services. Statements of qualification must be solicited from all such individuals or firms known to TriMet within the area from which TriMet normally would solicit proposals for the particular type of contract by advertising as provided by these Rules for the advertisement of Requests for Proposals. The solicitation must state the evaluation criteria that will be used in determining which prospective proposers will be admitted to the pool, and may describe how proposals for particular contracts will be solicited and evaluated from limited numbers of pool members. After a pool is established, a prospective proposer who is not a member of the initial pool may apply for admission to the pool by submitting a statement of qualification, and shall be added to the pool if TriMet determines the prospective proposer is qualified based upon the evaluation criteria established in the original solicitation. TriMet may remove a prospective proposer from the pool upon determining that the prospective proposer is no longer qualified based upon the evaluation criteria established in the original solicitation. Removal of a prospective proposer from a pool is not subject to review in the same manner as the disqualification of a bidder.

25.6 Exemptions

25.6.1 Sole Source

If only one firm is qualified and available to perform a personal services contract, a contract may be awarded to that firm without competition.

25.6.2 Unique or Specialized Knowledge or Expertise

A personal services contract may be awarded without competition if the contractor has unique or specialized knowledge or expertise required by TriMet, and the individual approving the contract on behalf of TriMet has determined that soliciting informal or formal proposals from others would not be in TriMet's best interests.

25.6.3 Emergency

A personal services contract may be awarded without competition if prompt execution of a contract is necessary in an emergency.

25.6.4 Unsolicited Proposals

Unsolicited Proposals for personal services may be submitted in accordance with the Unsolicited Proposal Procedures set forth at Appendices A and B. TriMet shall comply with applicable contracting laws relating to public improvements if applicable to the Unsolicited Proposal.

25.7 Cancellation/Rejection of Proposals

Any solicitation for personal services may be canceled, or any or all informal or formal proposals may be rejected in whole or in part, when the cancellation or rejection is in the best interest TriMet as determined by TriMet. The reasons for the cancellation or rejection must be made part of the solicitation file. TriMet is not liable to any proposer for any loss or expense caused by or resulting from the cancellation of a solicitation or award, or rejection of an informal or formal proposal.

26. PROTESTS

26.1 Written Protest Required

If a bidder/proposer or prospective bidder/proposer, (hereinafter referred to as "protester"), wishes to object to any aspect of a TriMet procurement, the protester may file a written protest with TriMet's General Manager in accordance with these procedures and the Code. The protest must include all factual and legal grounds for the protest, and all supporting evidence, in the form of physical evidence, documents, or affidavits, and the relief requested.

26.2 Timeliness

A protest must be filed promptly as soon as the protester knows of the grounds for the protest.

If the grounds for a protest were apparent on the face of the Solicitation Document, TriMet may decline to consider a protest filed later than five business days before the date by which bids or proposals must be submitted.

If the grounds for a protest were not apparent on the face of the Solicitation Document, TriMet may decline to consider a protest filed later than five business days after the protester knew or should have known of TriMet's intent to award the contract.

26.3 Written Decision

TriMet's General Manager shall issue a written decision in response to a protest.

26.4 Discretionary Meeting

TriMet's General Manager or his designee may, but is not required to, schedule a meeting with the protester prior to issuing a written decision. TriMet's General Manager or his designee may invite other TriMet staff to the meeting, and, in the case of a procurement involving a TriMet evaluation team, may invite one or more members of the evaluation team to the meeting.

26.5 Appeal and Final Administrative Action

If the protester disagrees with the written decision issued by TriMet's General Manager, the protester may request the General Manager's reconsideration of a decision if (a) information becomes available that was not previously known, or reasonably could have become known (b) the General Manager's decision contains an error of law. The request must be submitted in writing to the General Manager within five business days of the date of issuance of the initial decision. The request must include a detailed explanation of the basis for reconsideration, all legal arguments and all evidence, in the form of physical evidence, documents and affidavits, and

state the course of action the protesting party desires that TriMet take. Within 10 business days of receipt of the request for reconsideration the General Manager shall issue a written decision that shall be final upon issuance.

26.6 Role of Federal Transit Administration

Where Federal Transit Administration (FTA) funds will be utilized to fund the contract which is the subject of a protest, TriMet Procurement staff and management will notify the FTA Regional Office that a formal protest has been received. While a protesting party may file an appeal with the FTA where federal funds are involved if it is not satisfied with TriMet's disposition of the protest, FTA will only entertain such an appeal after the protesting party has exhausted all of the above described procedures.

27. ROLE OF THE GENERAL MANAGER

TriMet's General Manager shall have full authority over TriMet's source selection and decision to award the contract, subject to applicable law and Board of Directors policy. The General Manager may issue and publish modifications to these procedures.

APPENDIX "A"

POLICY AND RULES CONCERNING THE RECEIPT OF AND AWARD OF CONTRACTS PURSUANT TO UNSOLICITED PROPOSALS FOR PUBLIC-PRIVATE PARTNERSHIP INFRASTRUCTURE PROJECTS

I. Background & General Guidance

- A. Public-private partnerships create opportunities for both the public and private sectors. Agreements between public and private sector entities to jointly plan, design, finance, develop, construct, reconstruct, replace, improve, maintain, manage, repair, operate and take whatever actions authorized by TriMet's enabling legislation that may be necessary or convenient to provide transportation and transit projects ("infrastructure projects") are herein referred to as public-private partnerships ("partnerships"). Recognizing that the structure of these partnerships will be dependent upon the project scope and the opportunities the project offers, the involved entities play varying roles and assume varying degrees of responsibility in identifying, financing, designing, building, operating, and maintaining projects. Partnerships are designed to benefit both the public and private partners.

The primary difference between public-private partnerships and the way transportation projects are usually structured is the degree to which the private sector can be involved. Typically, the private sector plays an important role in many transportation projects by providing engineering, construction, and other services, but does not initiate projects or assume any ownership of them. In public-private partnerships contemplated by the Policy and Rules contained herein, the private sector can initiate projects by submitting unsolicited proposals and can assume some ownership of or direct responsibility for the public system, ranging from none to complete.

By assuming this additional responsibility, the private sector also assumes risk, creating an opportunity for a market-based return on investment. As the degree of responsibility increases, so does the risk, but also the opportunity for higher return. The public sector benefits by gaining access, through the private sector, to financing sources and arrangements traditionally not available to the public sector and to innovative methods that can shorten the time required for project design and construction.

When they are properly conceived and implemented, including having the support of the community and local jurisdictions, public-private partnerships can offer significant advantages to both sectors. The core concepts that are woven through TriMet's belief in and commitment to public-private partnerships in developing infrastructure are the desirability of and need for: (1) Innovation; (2) A streamlined and expedited selection and contract award process; (3) Competition; (4) Quality; (5) Utilization of private and governmental expertise; (6) Fair and consistent standards, consistent messages, and trust; (7) Cost effective use of increasingly scarce public funds; (8) Informed risk taking and resilience to the occurrence of unforeseen and significant problems; (9) Public confidence, accountability, and transparency, and; (10) Continuous monitoring, evaluation, and learning.

B. Summary

In summary, public-private partnerships have the following characteristics:

- Leveraging the expertise and resources of the private and public sectors to effectively deliver a high quality project, reduce the use of public funds, and enhance confidence and public trust in the performance of government and its ability to spend taxpayer money wisely;
- Allowing private sector firms the ability to submit innovative, creative, and proprietary approaches, plans, processes, procedures, and mechanisms that have commercial value to private sector firms and can be tailored to fit TriMet's needs and requirements;
- Meeting the public need for infrastructure projects that cannot be wholly or as effectively satisfied by existing methods of procurement and financing;
- Delivering critically needed transportation projects quickly, thereby reducing costs, traffic and other disruptions;
- Providing access to innovative project development and financing sources and arrangements;
- Providing cost certainty earlier in the procurement process;
- Encouraging and promoting business and employment opportunities; and,
- Attracting a larger number of and increasing competition among highly qualified firms by providing a sound investment opportunity for the private sector.

II. Definition Of Unsolicited Proposal For Public Partnership Infrastructure Projects

Recognizing that TriMet can build its infrastructure in the traditional manner, unsolicited proposals provide another means to encourage and facilitate highly qualified private sector firms to propose innovative financing, development and operational approaches and methods for infrastructure projects. The unsolicited proposal Policy and Rules contained herein also implement and facilitate federal funding agency objectives and requirements that federal funds be utilized in a manner that provides for maximum return on federal investment in infrastructure projects.

An unsolicited proposal is a written offer that may meet TriMet's strategic goals and requirements with respect to the creation of light rail or other infrastructure projects and it is initiated and submitted to TriMet by a prospective offeror without solicitation by TriMet. A valid unsolicited proposal must be: (1) Innovative and unique; (2) Independently originated and developed by the offeror; and (3) Prepared without TriMet's supervision, endorsement, direction, or direct involvement. The proposal is submitted by the prospective offeror with the objective of obtaining a contract with TriMet.

An unsolicited proposal should be distinguished from the following:

1. Advertising or Promotional Material

Material designed to acquaint TriMet with prospective offeror's current products or potential capabilities, or designed to determine TriMet's interest in procuring such products or services; and

2. Contributions

Concepts, suggestions, or mere ideas presented to TriMet for its use, with no indication on the part of the offeror that it will continue in its efforts with regard to such concepts, suggestions, or ideas on behalf of TriMet; and

3. Technical Correspondence

Written inquiries regarding TriMet's interest in developing infrastructure projects, pre-proposal explorations, technical inquiries and research proposals.

III. Advance Guidance

Organizations or individuals interested in submitting an unsolicited proposal are encouraged to first contact TriMet to make preliminary inquiries as to the general need for the type of effort contemplated.

Prior contact with TriMet technical personnel is permissible and is encouraged with the limited objective of conveying to the prospective offeror an understanding of TriMet's needs relative to the type of effort contemplated. Personal contacts by a prospective offeror shall be conducted in a manner that (1) avoids seeking TriMet commitment regarding acceptance of an unsolicited proposal; and (2) avoids attempting to obtain a competitive advantage in any planned competitive solicitation.

IV. Process And Evaluation Description

TriMet will follow a four step evaluation process in determining whether to accept an unsolicited proposal. A favorable comprehensive evaluation will not, in itself, result in the awarding of a contract to the offeror. A summary of the evaluation process is set forth in the following paragraphs.

V. Initial Review And Evaluation Of The Proposal - STEP 1

An initial evaluation shall be conducted by the appropriate TriMet staff to determine that the proposal contains sufficient information and detail to permit a meaningful evaluation (See Section IX). If the proposal does not meet the requirements of this paragraph, the offeror may be given the opportunity to provide the required information.

A. Initial Review

Upon initial review, TriMet may deem an unsolicited proposal unacceptable for the following threshold reasons. The unsolicited proposal:

1. Does not contain any unique approaches to financing or capital investment and would be available to TriMet without restriction from other sources, or is otherwise not sufficiently innovative or unique to justify acceptance, or
2. Closely resembles that of a pending competitive solicitation, or
3. Is not within TriMet's interests or is not useful to TriMet at the present time, or
4. Is otherwise determined to be not meritorious.

If TriMet determines following initial review that it will not further evaluate a proposal, the proposal shall be returned to the offeror together with the reasons for the return.

B. Evaluation.

If, after initial review, TriMet elects to evaluate an unsolicited proposal, the following criteria will be considered in addition to any other criteria TriMet deems relevant:

1. Unique, innovative, or meritorious methods, approaches, or ideas that have originated with or are assembled together by the offeror that are contained in the proposed effort or activity.
2. Overall merits of the proposed project effort.
3. Potential contribution that the proposed effort is expected to make to TriMet's specific goal, if pursued at this time
4. Capabilities related to experience, facilities, or techniques, or unique combinations thereof that the offeror possesses and offers, and which are considered to be integral factors for achieving the objective(s) of the proposal,
5. Qualifications, capabilities, and experience of the proposed principal, team leader, or key personnel who are considered to be critical in achieving the objectives of the proposal.
6. The financial benefit to TriMet in implementing the proposal, including but not limited to access to and level of the capital contribution or assumption/allocation of risk proposed,
7. Timing considerations of any proposed effort

C. At this stage of evaluation of the unsolicited proposal, TriMet may determine that additional information is required and give the offeror the opportunity to provide such information.

D. Upon completion of this initial evaluation, TriMet staff performing the evaluation shall prepare a memo stating that the proposal is either unacceptable or potentially acceptable, and setting forth the reasons for the result. The memo shall also recommend further action if any. The offeror shall be promptly notified of the result.

VI. Publication To Determine Sole Source - STEP 2

A. Prior to performing a secondary evaluation or negotiation regarding an unsolicited proposal initially deemed as potentially acceptable, TriMet will publicize its "Intent to Negotiate for Contract Offered by Unsolicited Proposal." The purpose of such publication is to ascertain whether other parties desire and are able to accomplish the same infrastructure project that is similar to that contemplated within the original unsolicited proposal. TriMet's publication will give notice of the basic business elements of the original offer and inform that other interested parties may inquire about or provide comment, by a date certain (30 days from publication). The publication will not disclose proprietary information as such information is defined in Section XII. If interest, in written form, is expressed by third parties who also desire an opportunity to submit a proposal for a contract whose elements are similar to those publicized, then TriMet will allow and consider written submittals as long as it conforms to the same requirements outlined in this policy and required of the original unsolicited proposal.

B. If, based on review of other proposals submitted in response to publication, TriMet determines that it is in TriMet's interest to conduct a competitive solicitation, all proposals received under this policy may be rejected and returned to the submitting parties and TriMet shall inform all offerors of its intentions regarding a subsequent competitive solicitation process.

VII. Secondary Evaluation Of Proposal, Required Supplemental Material – STEP 3

Upon a finding that the original unsolicited proposal is potentially acceptable and that there is a sole source justification for the contract to be awarded in accordance with the services proposed, TriMet will conduct a secondary evaluation of the proposal. TriMet reserves the right to require the submission of supplemental material that will assist TriMet in negotiating a final contract and in determining that the offeror has the technical capability and financial resources to perform the contract as contemplated. In the event TriMet elects to recommend a contract award to its Board of Directors, TriMet staff will insure that the unsolicited proposal and tentative agreement undergo a comprehensive review and analysis, including an independent cost estimate on all phases of the unsolicited proposal.

VIII. Board Of Director Review – STEP 4

An unsolicited proposal that results in a recommendation of TriMet staff that a contract be awarded is subject to review and approval of the TriMet Board of Directors. The terms and conditions of any contract awarding a public private partnership for infrastructure shall be reviewed at a public meeting of the TriMet Board of Directors. The public will have an opportunity to make comments to the TriMet Board of Directors on the proposed agreement.

IX. Content Of Unsolicited Proposals

Unsolicited proposals should contain the following information in order to permit consideration in an objective and timely manner.

1. Basic Information

This includes the name and address of the offeror (if an organization, indicate type: e.g., profit, nonprofit, educational, small business); names and telephone numbers of the offeror's technical and business personnel whom TriMet may contact for evaluation or negotiation purposes; identification of any proprietary data which the offeror intends to be used by TriMet only for evaluation purposes and which the offeror intends to remain confidential; names of any other federal, state, or local agencies or other parties receiving the proposal and/or funding the proposed effort or activity; date of submission; and signature of a responsible official or representative of the organization, or a person authorized to contractually obligate the organization. If the offeror is a joint venture, partnership, consortium or otherwise involves more than one legal entity, the same information should be provided for all entities.

2. Technical Information

This includes a concise abstract (approximately 800 words) of the proposed infrastructure project effort; a reasonably complete discussion stating the objectives of the effort or activity, the method of approach and extent of effort to be employed, the method of financing the project,

the nature and extent of the anticipated results, and the manner in which the work will help to support accomplishment of TriMet's goal; the names and brief biographical information of the offeror's key personnel who would be involved, and the type of support, if any, the offeror requests of TriMet, e.g., facilities, equipment, materials or personnel resources.

3. Supporting Information

This includes a proposed cost and risk allocation structure for the proposed effort sufficiently detailed so that there can be meaningful evaluation; the type of contract preferred; the period of time for which the proposal is valid (a minimum of 6 months is suggested); the proposed duration of effort; statements, if applicable, regarding cost sharing and the level of investment to be made by the offeror; organizational conflicts of interest; environmental impacts; and brief descriptions of the organization, previous work or experience in the field of the proposal, and facilities to be utilized for the work, where appropriate for understanding the proposal.

X. Time For Submission

Unsolicited proposals should be submitted well in advance of the offeror's desired beginning of the proposed effort or activity in order to allow TriMet sufficient time to evaluate the proposal and negotiate a contract if the proposal is accepted.

XI. Submission Of Proposal

Proposals shall be submitted to the Director of Procurement and Contracts, TriMet 1800 SW 1st Avenue, Ste. 300, Portland, Oregon 97201. Offeror shall submit three (3) copies of the proposal with cover letter. The Director of Procurement and Contracts shall acknowledge receipt of unsolicited proposals as soon as possible.

XII. Use Of Information

All proposals submitted to TriMet are subject to the applicable public records laws. Offerors are advised to familiarize themselves with the provisions of these laws. If the offeror has special concerns about proprietary information that it wants to make available to TriMet, the offeror may wish to suggest for TriMet's consideration, prior to submission of its proposal, methods for safeguarding such information from disclosure consistent with applicable public records laws.

Nothing herein precludes TriMet from using any data, concept or idea that it may have intended to use had the unsolicited proposal not been submitted. Subject to this Policy, any information submitted to TriMet shall be held in confidence until such time that TriMet accepts the unsolicited proposal and it becomes necessary to commence the contract award process.

APPENDIX "B"

POLICY AND RULES CONCERNING THE RECEIPT OF AND AWARD OF CONTRACTS PURSUANT TO UNSOLICITED PROPOSALS (NON-PUBLIC/PRIVATE PARTNERSHIP INFRASTRUCTURE PROJECTS)

I. DEFINITION OF UNSOLICITED PROPOSAL

An unsolicited proposal is a written offer which may meet TriMet strategic goals and requirements and entail the performance of a proposed task, service, or effort, initiated and submitted to TriMet by a prospective offeror without solicitation by TriMet. A valid unsolicited proposal must be: (1) Innovative and unique; (2) Independently originated and developed by the offeror, and; (3) Prepared without TriMet supervision, endorsement, direction, or direct involvement. The proposal is submitted by the prospective offeror with the objective of obtaining a contract with TriMet. This procedure does not apply to public improvements as defined in ORS 279A.010(1)(cc).

An unsolicited proposal should be distinguished from the following:

1. Advertising or Promotional Material

Material designed to acquaint TriMet with prospective offeror's current off-the-shelf products or potential capabilities, or designed to determine TriMet's interest in procuring such products; and

2. Commercial Products Offerings

Offers of standard commercial products usually sold in substantial quantities to government agencies or the general public which the offeror desires TriMet to procure as an alternate or replacement for existing supplies; and

3. Contributions

Concepts, suggestions, or mere ideas presented to TriMet for its use, with no indication on the part of the offeror that it will continue in his efforts with regard to such concepts, suggestions, or ideas on behalf of TriMet; and

4. Technical Correspondence

Written inquiries regarding TriMet's interest in research areas, pre-proposal explorations, technical inquiries and research proposals.

II. ADVANCE GUIDANCE

Organizations or individuals interested in submitting an unsolicited proposal are encouraged to first contact TriMet to make preliminary inquiries as to the general need for the type of effort contemplated.

Prior contract with TriMet technical personnel is permissible and is encouraged with the limited objective of conveying to the prospective offeror an understanding of TriMet's needs relative to the type of effort contemplated. Personal contacts by a prospective offeror shall be conducted in a manner that (1) avoids seeking TriMet commitment regarding acceptance of an unsolicited proposal; and (2) avoids attempting to obtain a competitive advantage in any planned competitive solicitation.

III. PROCESS AND EVALUATION DESCRIPTION

TriMet will follow a three step evaluation process in determining whether to accept an unsolicited proposal. A favorable comprehensive evaluation will not, in itself, result in the awarding of a contract to the offeror. A summary of the three step evaluation process is set forth in the following paragraphs.

IV. INITIAL REVIEW AND EVALUATION OF THE PROPOSAL – STEP 1

An initial evaluation shall be conducted by the appropriate TriMet staff to determine that the proposal contains sufficient information and detail to permit a meaningful evaluation. If the proposal does not meet the requirements of this paragraph, the offeror may be given the opportunity to provide the required information.

A. Initial Review.

Upon initial review, TriMet may deem an unsolicited proposal unacceptable for the following threshold reasons. The unsolicited proposal:

1. Is available to TriMet without restriction from another source, or is otherwise not sufficiently innovative or unique to justify acceptance, or
2. Closely resembles that of a pending competitive solicitation, or
3. Is not within TriMet's interests or is not useful to TriMet at the present time, or
4. Is otherwise determined to be not meritorious.

If TriMet determines following initial review that a proposal is unacceptable, the proposal shall be returned to the offeror together with the reasons for the return.

B. Evaluation.

If, after initial review, TriMet elects to evaluate a proposal, the following criteria will be considered in addition to any other criteria TriMet deems relevant:

1. Unique, innovative, or meritorious methods, approaches, or ideas that have originated with or are assembled together by the offeror that are contained in the proposed effort or activity.
2. Overall merits of the proposed effort or activity.
3. Potential contribution that the proposed effort is expected to make to TriMet's specific goal, if pursued at this time.
4. Capabilities related experience, facilities, or techniques, or unique combinations thereof, which the offeror possesses and offers and which are considered to be integral factors for achieving the objective(s) of the proposal.
5. Qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are considered to be critical in achieving the objectives of the proposal.
6. The financial benefit to TriMet in implementing the proposal.
7. Timing considerations of any proposed effort.

C. At this stage of evaluation of the unsolicited proposal, TriMet may determine that additional information is required and give the offeror the opportunity to provide such information.

D. Upon completion of this initial evaluation, TriMet staff performing the evaluation shall prepare a memo stating that the proposal is either unacceptable or potentially acceptable, and setting forth the reasons for the result. The memo shall also recommend further action if any. The offeror shall be promptly notified of the result.

V. PUBLICATION TO DETERMINE SOLE SOURCE – STEP 2

A. Prior to performing a secondary evaluation or negotiation regarding an unsolicited proposal initially deemed as potentially acceptable, TriMet will publicize its “Intent to Negotiate for Contract Offered by Unsolicited Proposal.” The purpose of such publication is to ascertain whether other parties may desire and be able to offer goods or services within a scope that is similar to that contemplated within the original unsolicited proposal. TriMet’s publication will give notice of the basic business elements of the original offer and inform that other interested parties may inquire about or provide comment, by a date certain (30 days from publication). The publication will not disclose proprietary information as such information is defined in Section XII. If, based on TriMet’s publication, interest is expressed by third parties who also desire an opportunity to submit a proposal for a contract whose elements are similar to those publicized, then TriMet will allow and consider such submittal as long as it conforms to the same requirements outlined in this policy and required of the original unsolicited proposal.

B. If, based on review of other proposals submitted in response to publication, TriMet determines that it is in TriMet’s interest to conduct a competitive negotiation, all proposals received under this policy may be rejected and returned to the submitting parties and TriMet shall inform all offerors of its intentions regarding a subsequent competitive solicitation process.

VI. SECONDARY EVALUATION OF PROPOSAL REQUIRED SUPPLEMENTAL MATERIAL - STEP 3

Upon a finding that the original unsolicited proposal is potentially acceptable and that there is a sole source justification for the contract to be awarded for the goods or services contemplated by the proposal, TriMet will conduct a secondary evaluation of the proposal. TriMet reserves the right to require the submission of supplemental material that will assist TriMet in negotiating a final contract and in determining that the offeror has the technical capability and financial resources to perform the contract as contemplated.

An unsolicited proposal that results in a recommendation by TriMet staff that a contract be awarded is subject to all other applicable contract award and approval requirements.

VII. CONTENT OF UNSOLICITED PROPOSALS

Unsolicited proposals should contain the following information in order to permit consideration in an objective and timely manner.

1. Basic Information

This includes the name and address of the offeror (if an organization, indicate type: e.g., profit, nonprofit, educational, small business); names and telephone numbers of the offeror’s technical and business personnel whom the agency may contact for evaluation or negotiation purposes; identification of any proprietary data which the offeror intends to be used by the