

**South Central Regional Transit DISTRICT  
Request for Proposal  
For  
Ten Year Transit Service and Financial Plan  
RFP 2019-01**

**March 4, 2020**

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South Central Regional Transit District  
830 South Anthony Drive,  
Anthony, NM 88021  
575-323-1620

## **SECTION 1 – INTRODUCTION**

### **1.1 OVERVIEW OF SCOPE OF SERVICES**

South Central Regional Transit District (SCRTD) is seeking Proposals from qualified Proposers with demonstrated success in planning, developing or managing one or more rural public transit systems to create a Ten Year Transit Service and Financial Plan (Plan). The anticipated budget for this project is \$62,500.

### **1.2 PROCURING AGENCY AND CONTRACTING OFFICER**

All communication concerning any aspect of this solicitation of offers shall be in writing and shall be with the Contracting Officer.

Procuring Agency: South Central Regional Transit District  
830 S. Anthony Drive, Anthony, NM 88021  
Phone: 575-323-1620

Contracting Officer: Sara Vasquez  
Administrative Assistance  
Phone: 915-274-7628  
vasquez@scrted.org

### **1.3 SOLICITATION SCHEDULE**

EVENT	DATE AND TIME
Request for Proposal Issued	3/4/2020
Prebid Conference (call-in)	3/16/2019 10:00 a.m.
Questions and requests for Clarifications due to SCRTD	3/24/2020 - 5:00 p.m.
SCRTD Responds to Questions and Clarifications	3-31-2020 - 5:00 p.m.
<b>Proposal Due Date</b>	<b>Proposals are due no later than 5:00 p.m. 4-13-2019</b>
Evaluation of Proposals Received	TBD
Proposer Presentations/Interviews	TBD
Anticipated Award	May 27 <sup>th</sup> , 2020

### **1.4 PROPOSALS DUE**

- A. To be considered for award, **Proposals must be received by 5:00 p.m. MST, Monday, April 13<sup>th</sup>**. Any proposal received after the specified date and time will be returned to the Proposer unopened. The receiving time in the SCRTD Bus Facility located at 830 South Anthony Drive Anthony, NM 88021, will be the governing time for acceptability of Proposals. This RFP does not commit SCRTD to award a contract. SCRTD will not pay Proposers for any costs associated with preparing responses to this RFP. SCRTD reserves the right to accept or reject any or all Proposals received as a result of this request, to negotiate with qualified Proposer, to award a contract without discussions/interviews or to cancel in part or in its entirety this RFP if it is in the best interests of SCRTD to do so.

## 1.5 DISTRIBUTION OF SOLICITATION DOCUMENTS

- A. SCRTD is distributing this RFP and all relevant documents through its website at [SCRTD.org](http://SCRTD.org), as well as a direct mail list, New Mexico Department of Transportation (NMDOT) vendor list, and national transit organizations classified advertisements. All addenda and updates to the RFP will be posted at the above referenced website. Prospective Proposers are responsible for checking the website for addenda and updates to the RFP. Beyond initial email to inform prospective Proposers about the RFP, SCRTD will not send communication directly to Proposers.
- B. A **Pre-bid conference** will be held at the Mesilla Valley Intermodal Transit Terminal located at 300 W. Lohman Avenue, Second Floor Conference Room, Las Cruces, New Mexico. You may attend in person or via the call in number at 515-604-9000; Access Code 196466. You can call 575-323-1620 if you have any questions.

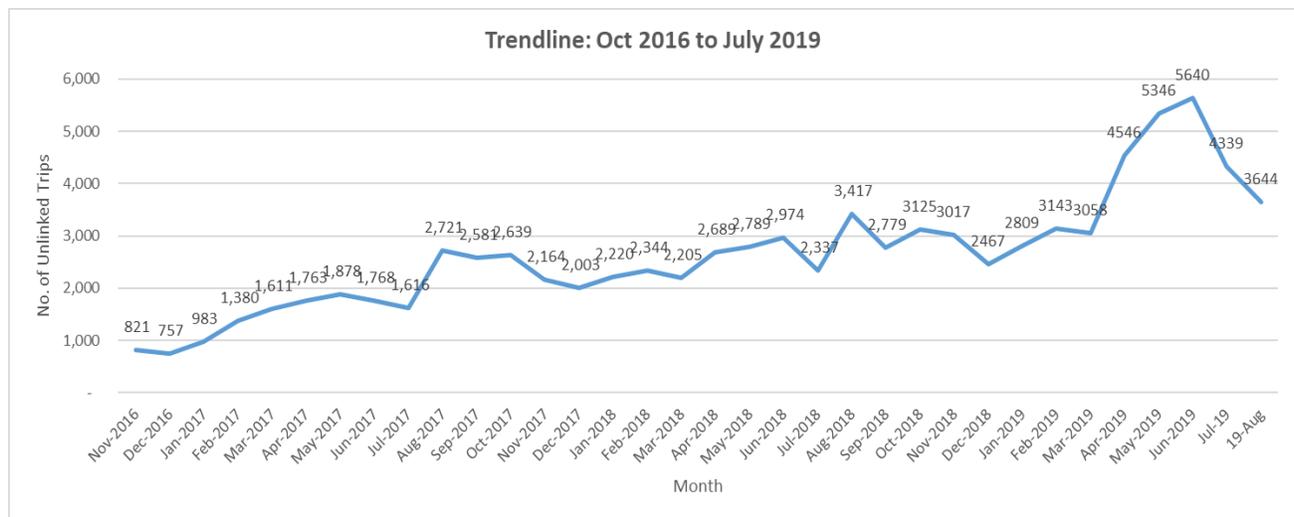
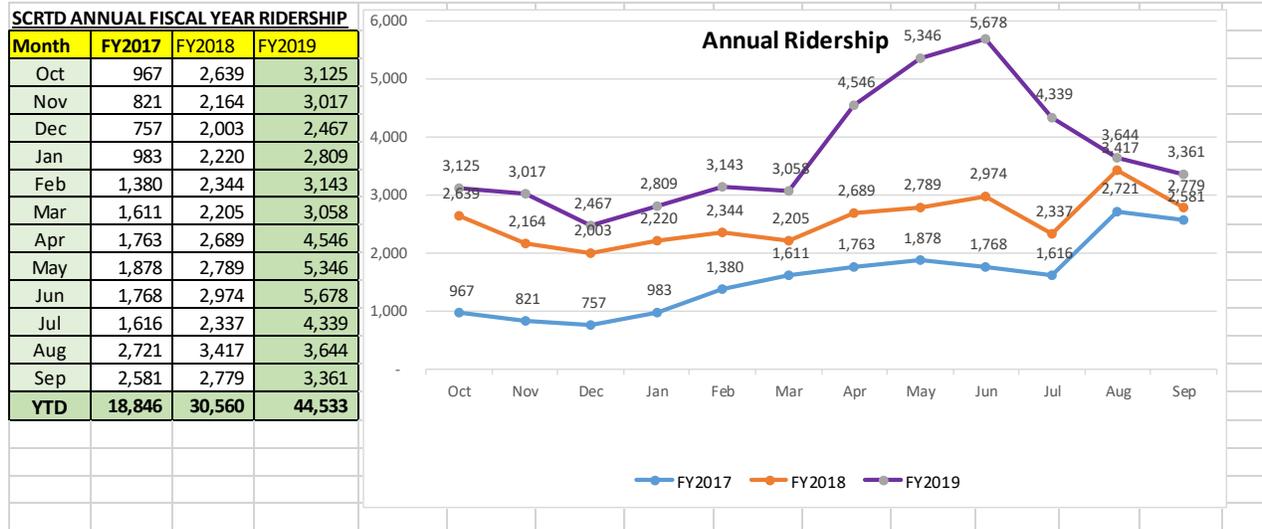
## SECTION 2 - INTRODUCTION AND PROCESSES

### 2.1 INTRODUCTION AND BACKGROUND

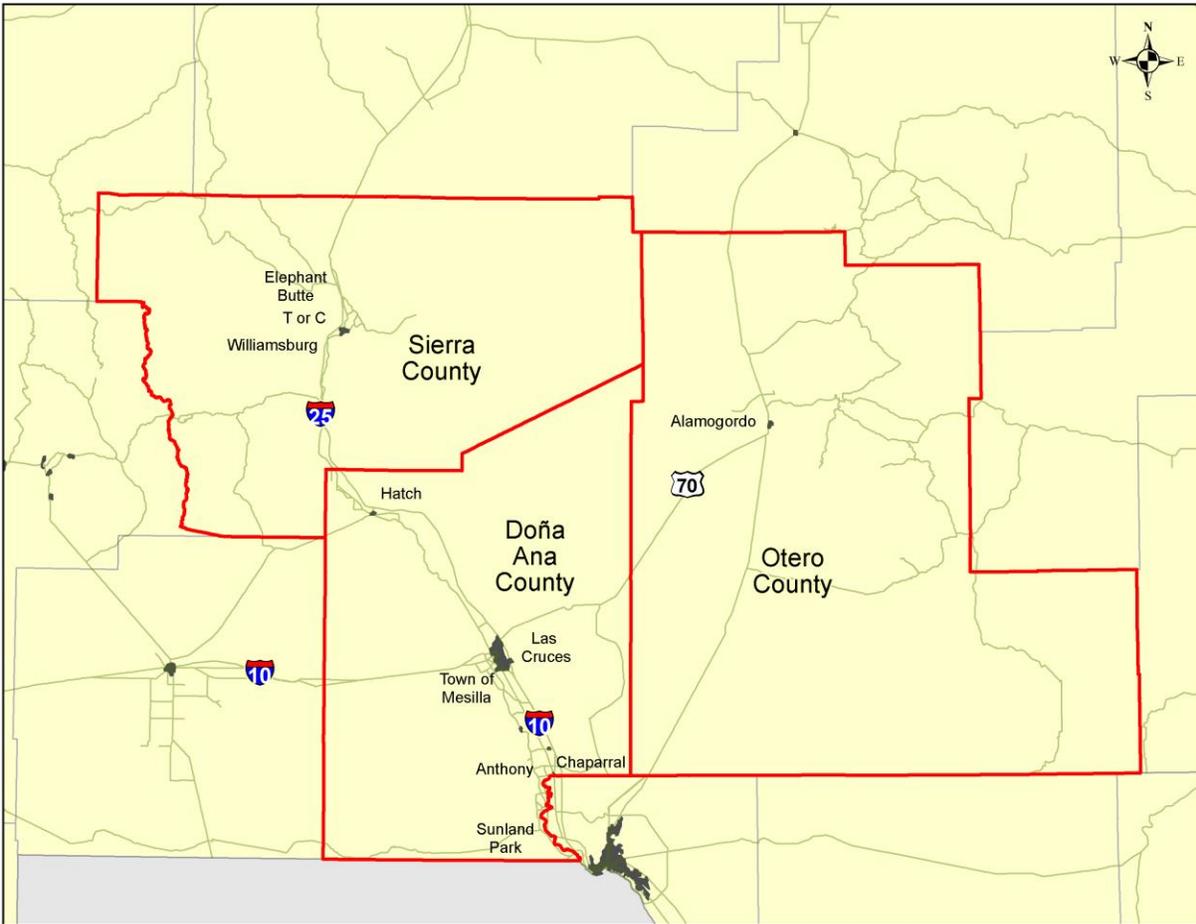
- A. The need for regional public transportation services in south-central New Mexico is referenced in numerous local, regional and state-wide plans and projects, including the following: Camino Real Regional Plan for Sustainable Development; Viva Doña Ana Sustainable Communities Plan; One Valley – One Vision; Doña Ana County Comprehensive Plan; Mesilla Valley Metropolitan Planning Organization (MPO) Coordinated Action Mobility Plan and Transport 2040 Plan; Santa Teresa Border Area Transportation Needs Assessment Strategic Plan (TIGER proposal); South Central Council of Governments / Mesilla Valley Metropolitan Planning Organization / El Paso Metropolitan Planning Organization Coordinated Public Transit – Human Services Transportation Plan; New Mexico State University Parking and Transportation Master Plan; New Mexico Department of Transportation’s (NMDOT) Statewide Public Transportation Plan; and, NMDOT Coordinated Management Plan.
- B. In 2003, then Governor Bill Richardson signed into law the Regional Transit District (RTD) Act § 73-25-2, which authorized the creation of regional transit districts in the State of New Mexico. The Act establishes that RTDs shall;
  - 1. Serve the public by providing for the creation of regional networks of safe and efficient public transit services;
  - 2. Allow multijurisdictional public transit systems to reduce the congestion of single-occupant motor vehicle traffic by providing transportation options for residents;
  - 3. Decrease automobile accidents by reducing traffic congestion on freeways and streets;
  - 4. Reduce noise and air pollution produced by motor vehicles;
  - 5. Prolong and extend the life of New Mexico's existing roadways by easing the traffic burden;
  - 6. Provide residents with a choice of transportation alternatives so that seniors, youth, low-income and mobility-impaired residents and others unable to drive or afford motor vehicles continue to have full access to the goods, services, jobs and activities of the community;
  - 7. Improve the New Mexico economy by increasing workforce and citizen access to education and higher paying jobs; and
  - 8. Prolong and extend petroleum resources.
- C. In 2004, Governor Richardson signed legislation that allowed RTDs to request up to ½ of one percent in Gross Receipt Taxes (GRT) to fund RTD operations.

- D. In 2008, the SCRTD was certified by the New Mexico Transportation Commission and became a political subdivision of the State of New Mexico. The SCRTD originally included three counties and eight municipalities in south-central New Mexico. Its membership was reduced to two counties through the withdrawal of Otero County in 2015. The SCRTD conducted a pilot project in the spring of 2014 and submitted a GRT proposal, which did not pass in the fall of that year.
- E. The SCRTD approved a Five Year Service and Financial Plan in May of 2015. In the spring of 2016, the District began providing regular services in southern Doña Ana County, and contracted with Z-Trans which operates out of Alamogordo, New Mexico, an incorporated community in Otero County, 75 miles north-east of Las Cruces, for service between those two municipalities.
- F. Its service area and ridership were increased in 2016, when it implemented route extensions into El Paso, Texas.
- G. Beginning in 2017 and continuing into 2018, the SCRTD updated its 2015 Plan. The Update was done in response to the SCRTD having met nearly 80 percent of the objectives contained in the 2015 Plan in less than two years. The Update was adopted in May of 2018. The process of updating the 2015 Plan led to this RFP.
- H. The SCRTD needs to refine existing un-met goals, especially in the areas of reaching un-served or underserved communities. Those communities include residents of rural unincorporated places, residents of small, incorporated communities, and the manufacturers in Santa Teresa, New Mexico.
- I. While the SCRTD has a potential service area of over 11,000 square miles, current services are essentially focused on operating in southern Dona Ana County with plans to extend service in 2019 to northern Dona Ana County and Sierra County. Currently the SCRTD operates five bus routes which provide (40 runs daily) in Doña Ana County. One route is contracted service with Z-Trans, Inc., and links the City of Alamogordo in Otero County New Mexico to stops in unincorporated areas east of Las Cruces as well as stops within Las Cruces. Two of the SCRTD owned and operated routes extend into El Paso County, Texas.
- J. Because funding constraints limit the SCRTD's expansion, the Plan that will result from this RFP must provide options for increasing the SCRTD's local funding base.
- K. Despite its financial constraints, the SCRTD has experienced strong ridership growth over the past two years as shown in Graph 1, below.

# Graph 1: Three Year Ridership Trends



## GRAPH 2 – Three County Service Area



- L. The Transit District was formed in November 2006 and encompasses a three county area with over 11,000 square miles. The District began funding a contract service, via Ztrans, that operates from Alamogordo in Otero County to Las Cruces in Dona Ana County. This services supports 20 bus stops with 16 bus stops in Dona Ana County.
- M. Service to northern Dona Ana County is planned to begin in the fall of 2019, extending service from Las Cruces to Hatch. Additional funding from Dona Ana County and the state are needed to support this service expansion.
- N. Service to Sierra County is planned to begin in 2019, subject to additional funding from the State of New Mexico through a 5311 Rural Transit Grant.

## 2.2 PURPOSE AND NEED

- A. This RFP is request for the development of a Ten Year Transit Service and Financial Plan (Plan). The Plan will replace the SCRTD's Five Year Service and Financial Plan which was originally adopted in June, 2015, and updated in April, 2018. The Plan is needed to allow the SCRTD to identify transit needs within and adjacent to its boundaries and to identify the processes and services that will meet those needs. The Plan will also increase the SCRTD's ability to secure long range funding from its members, increase its ability to secure Federal Transit Administration funding through the State of New Mexico, and increase participation by the private sector.

## 2.3 PROJECT SUMMARY

- A. The timeframe of the Plan shall be from Fiscal Year 2020 through Fiscal Year 2030.
- B. The Planning process shall include the following elements:
  - 1. Development and implementation of a current Needs Assessment
  - 2. Evaluation of the SCRTD's existing fleet, services, infrastructure, staffing, and funding relative to the findings of the Needs Assessment
  - 3. Recommendations for service changes for 2020 and 2025
  - 4. Development of a Fiscal Analysis
  - 5. Identification of Service Goals and Objectives
  - 6. Recommendations for Updated Routes
  - 7. Facilities and Capital Investment Plan with goals and objectives described at five-year increments (2020, 2025, 2030)
  - 8. Financial Plan
  - 9. Implementation Strategies
- C. The planning process will include a dynamic citizen involvement component and will require Proposer's coordination with the SCRTD Board of Directors, and SCRTD staff. The Plan will also address how the SCRTD should integrate its activities with other transit systems operating within and adjacent to the SCRTD's boundaries.
- D. The Plan shall consider the general needs of the traveling public as well as the specific needs of particular sub-markets including but not necessarily limited to businesses, university students, K-12 school-aged children, seniors, veterans, and people with disabilities. The Plan shall describe how non-users may be converted to users by addressing the specific barriers or concerns non-users have and how SCRTD might overcome those barriers or challenges.
- E. The plans, options, and recommendations in the Plan must consider not only mobility issues but also related topics such as economic development, workforce development, air quality, housing, environmental sustainability, and energy consumption.
- F. The Plan shall include a long range financial component that describes the costs, both capital and operating, of undertaking Plan recommendations, and shall identify how those recommendations can be funded.
- G. The Plan shall recommend implementation strategies and metrics for planning elements, including priorities and timing for accomplishing the goals and objectives.
- H. In addition, the Proposer shall provide information on staffing levels associated with any changes in levels of service.

## **2.4 TRANSIT NEEDS ASSESSMENT**

- A. The transit needs assessment shall provide a logical basis for the formulation and evaluation of proposals, policies, components, and alternatives leading to the creation of the Plan. Transit needs will be described for the present and future time periods through the year 2030. The needs assessment will include an evaluation of the existing transit system's ability to meet those needs and will identify those needs which are not met by the existing systems.
- B. Current and future unmet transit needs shall be analyzed in terms of their functions in:
  - 1. rural mobility
  - 2. rural form
  - 3. economic impacts
  - 4. public safety
  - 5. social impacts, and
  - 6. environmental impacts.
- C. In its analysis, the Proposer shall consider the following contexts:
  - 1. SCRTD's Mission, Goals and Objectives
  - 2. the existing regional system (SCRTD and other providers)
  - 3. future service opportunities for the SCRTD
  - 4. facility requirements to support existing service and expansion of service
  - 5. economic development and regional economic competitiveness
  - 6. workforce development initiatives
  - 7. associated costs and benefits of transit projects
  - 8. special mobility needs
  - 9. infrastructure requirements resulting from meeting transit needs
  - 10. return on investment considerations for transit projects
  - 11. funding options for implementing transit
  - 12. policy and investment decisions necessary to ensure an effective transit system

## **2.5 PUBLIC PARTICIPATION REQUIREMENTS**

- A. The needs assessment shall respond to public input gathered from meetings between the Proposer and the public. Those meetings shall inform the public of the SCRTD's services and shall gather input from those communities on the following issues related to their travel within, and to and from, the SCRTD:
  - 1. The level of the public's awareness of the SCRTD's services
  - 2. Impediments to the public's use of the SCRTD's services
  - 3. The public's preferred mechanisms for meeting those needs.
- B. At a minimum, the proposer shall participate in at least one public meeting dedicated to the SCRTD's planning process in each of the following communities:

Sunland Park, Anthony, Hatch, Mesilla, Elephant Butte, Chaparral and Las Cruces.
- C. The Proposer shall advertise community meetings at least two weeks prior to a meeting, in bi-lingual English and Spanish formats, via newspapers, radio, and broadly dispersed flyers designed to generate the largest local attendances possible. Proposer shall develop and retain agendas and sign-

in sheets for each meeting. Proposer shall keep and retain minutes of each meeting, and responses to all questions asked during each meeting will be documented for inclusion in the Plan.

- D. The Proposer’s recommendations based on Proposer’s experience, on the input it receives from the CAC, the public, the Board of Directors, case studies, best practices and lessons learned from leading peer transit providers, and experts at the federal and state levels. The recommendations shall be tailored to the SCRTD region, looking at the existing relationships between SCRTD and other agencies, and realistic system implementation and management alternatives for the region.

## **2.6 PERFORMANCE CRITERIA**

- A. The Proposer shall propose a set of performance criteria against which transit options leading up to a Plan will be evaluated. The set of evaluation criteria shall be developed in consultation with SCRTD staff, stakeholders, and public comment and the final Plan will incorporate those criteria. The criteria should include at least the following:
  - 1. Level of service available to citizens of the region (including sub-groups based on user type or geography)
  - 2. Estimated potential ridership for those subgroups
  - 3. Cost to provide service
  - 4. Geographic feasibility
  - 5. Safety and health impacts
  - 6. Economic development impacts of the service
  - 7. Environmental and energy impacts of the service
- B. The Proposer shall develop a methodology for prioritizing transit routes and transit investments (capital and operating) to build the system network over time. The methodology shall be based on ridership, operating and capital cost, constraints, equity, connectivity and network functionality, congestion, land use, business and economic needs, workforce development needs, travel markets and origin/destination demands, as well as other potential factors. The methodology shall identify and assess any trade-offs or prioritization of modal performance. Transit coverage and “lifeline” type service should also be addressed.
- C. Proposer shall evaluate the near and long-term transit network’s effects on the cost and provision of ADA paratransit service. The Proposer shall identify opportunities and strategies to effectively meet ADA paratransit and other accessibility needs in conjunction with transit network implementation.
- D. To the extent that the Plan requires acquisition of new vehicles, and/or the construction of new facilities, the costs of such items shall be developed on a life-cycle basis.
- E. To the extent that the Plan involves significant changes to existing service, the Proposer shall analyze and comment on the effect such changes will have on the existing ridership base and shall propose ways that such changes can be introduced with minimal adverse effect on existing riders. Throughout the planning effort, the Proposer shall recognize the distinctions between two broad market segments: 1) transit dependents, and 2) choice riders.

## **2.7 INTEGRATION WITH OTHER TRANSIT SYSTEMS**

- A. The SCRTD has connecting service with five other entities that operate public transit services within or adjacent to the SCRTD’s boundaries. Those are: City of Las Cruces, RoadRunner Transit; ZTrans, operating out of Otero County; New Mexico Department of Transportation, Park and Ride Gold and Silver Routes; City of El Paso, Texas, SunTrans; and, El Paso County, Texas, El Paso County Rural Transportation. The SCRTD contracts annually with ZTrans for a route linking the Cities of Las

Cruces and Alamogordo, New Mexico. As noted earlier in the RFP these entities have short or long term transit plans. The Proposer is NOT required as part of this Plan to provide a detailed assessment of these systems but is required to review and determine how their plans influence and/or can be coordinated with the SCRTD. Utilizing their plans, the Proposer shall provide a high-level examination of the relationship between these systems' supplied services and the SCRTD's supplied services with the following questions in mind:

1. Is there significant overlap or duplication of services?
  2. What opportunities exist for the systems to coordinate services or share resources in the near or long term?
  3. What initiatives might be undertaken jointly by the entities to satisfy transit needs that are not provided by either organization acting alone?
  4. What is an optimal transportation plan for the SCRTD ten years from now?
  5. How can the SCRTD effectively leverage its strengths and optimize its resources?
  6. Are there services or relationships that should develop out of collaboration?
  7. Are there existing SCRTD services that should not be provided in the long term?
  8. Is the existing method of delivery appropriate or are there better approaches?
  9. What factors must be measured to determine the success of each transportation mode/initiative?
- B. The Plan will also provide Implementation Strategies for accomplishing the recommendations contained in the Plan. Whereas the Plan is envisioned as a description of a desired future state, the Implementation Strategies should be designed to tell the SCRTD how to get there.
- C. The Proposer shall include, as part of the implementation strategies, a set of recommendations for measuring on-going achievement of Plan objectives.

## **2.8 FUNDING AND REVENUE STRATEGIES**

- A. The Proposer shall identify strategies for funding the improvements recommended in the Plan.
- B. The funding strategies must address how SCRTD might pay for both capital improvements and on-going operations. Funding strategies may include the use of existing funding sources as well as funding sources not yet in place. If suggested funding sources are not yet in existence, the Proposer shall outline the steps needed to establish those funding sources, describe possible challenges to establishing those sources, and provide a description of the steps SCRTD might take to establish the suggested funding source.
- C. The SCRTD's funding sources are Federal Grants, 5311, 5310, member dues, and an annual contribution from Dona Ana County. The SCRTD operates on a \$1.00 fare system with free transfers between SCRTD routes.

## **2.9 DELIVERABLES**

- A. The following deliverables are logical outcomes of the required services described above. However, the Proposer is welcome to suggest additional or alternative deliverables that reflects the nature of its proposed planning process.
1. Executive Summary
  2. Needs Assessment Report
  3. Preliminary Options Report
  4. Recommended Plan
  5. Policy Framework and Performance-Based Methodology for Prioritizing Transit Routes and Transit Investments

- 6. Implementation Strategies
- 7. Long Range Financial Plan
- 8. Funding Strategies
- 9. Stakeholder Involvement Record

- B. Each deliverable shall be transmitted to SCRTD in draft form and will be subject to a two-stage review process. SCRTD staff will review the draft and advise the Proposer of needed changes. When the changes have been made, the Proposer will be advised to produce a draft for the Board of Directors presentation and review. Additional changes to the document may be required after the Board of Directors review process.
- C. Media and file formats: Reports shall be delivered to SCRTD in a current version of Microsoft Word. Presentations shall be produced and delivered in Microsoft PowerPoint, and public versions will be delivered in portable document format (pdf) format.
- D. Reports shall be dated and identified as either draft or final, as appropriate. Submittal of final reports shall be accompanied by the files, in their native format, that were used to generate graphics displayed in the reports.

**2.10 BUDGET AND TIMETABLE**

- A. The anticipated budget for this project is \$62,500.
- B. At the start of the project, the Proposer shall produce a project timetable that lists major tasks with their starting and ending dates. Meetings and deliverables shall be included as milestones on the timetable. The Proposer shall update and resubmit the timetable as conditions warrant.
- C. At the start of the project, the Proposer will provide a task-by-task budget. The budget will be constructed in a way that allows the Proposer and the SCRTD Project Manager to monitor project financial performance and take corrective actions in a timely manner.
- D. The desired timetable for project completion is 9-12 months from the date of contract execution. Proposers may, however, propose a longer timeline if they feel the proposed work cannot be completed within the 9-12 month period. Following is a draft milestone timetable.

Tasks	Months from Notice to Proceed							
	1	2	3	4	5	6	7	8
Task 1 - Project Initiation	★							
Task 2 - Outreach/Board Dialogue		★ ★ ★						
Task 3 - Review of Other Agency Near and Long Term Plans			★					
Task 4 - Review of Demographic, Land Uses, Travel Patterns 20 year Prospective				★				
Task 5 - Identification of Needs					★			
Task 6 - Preliminary Options, Alternatives, Proposed Strategies						★		
Task 7 - Recommended Long Range Service Plan							● ★	
Task 8 - Financial Plan, Implementation Strategies and Funding Strategies							● ★	
Task 9 - Final Long Range Transit Service Plan							● ★	F

- ★ Meeting
- Deliverable
- F Final Report

## **SECTION 3 - INSTRUCTIONS TO PROPOSERS**

### **3.1 ACCEPTANCE PERIOD**

- A. Proposals and subsequent offers shall be valid for a period of ninety (90) days after submittal to SCRTD.

### **3.2 PROPOSER COMMUNICATIONS AND REQUEST**

- A. All correspondence and/or contact concerning any aspect of this solicitation or offers shall be with the Purchasing Agent. Proposers and their representatives shall not make any contact with or communicate with any members of SCRTD or its employees other than the Purchasing Agent concerning any aspect of this solicitation or offers. Proposers may be disqualified if any unsolicited contact related to this RFP is made with an employee or representative of SCRTD other than the Purchasing Agent.
- B. At any time during this procurement up to the time specified, Proposers 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 tasks. Such written requests shall be made to the Contracting Officer. The Proposer making the request shall be responsible for its proper delivery to SCRTD. SCRTD will not respond to oral requests. 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 the SCRTD 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 the SCRTD shall be binding on the SCRTD.
- C. The Proposer's Request for Clarifications must be received by the date indicated in the Solicitation Schedule located in 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 the SCRTD within the time specified.

### **3.3 CONDITIONS, EXCEPTIONS, RESERVATIONS OR UNDERSTANDING**

- A. Proposals stating conditions, exceptions, reservations or understandings (hereinafter deviations) relating to the RFP may be rejected.
- B. 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 SCRTD. All deviations found to be unacceptable shall be evaluated in accordance with the appropriate evaluation criteria and procedures may result in the Proposer receiving a less favorable evaluation than without the deviation.

### 3.4 REQUIREMENTS FOR RFP RESPONSE

- A. Proposers shall submit one (1) original-unbound and five (5) bound copies of their proposal that must include the following:
- B. Letter of Transmittal: The Letter of Transmittal shall be addressed to David Armijo, Executive Director, and must, at a minimum, contain the following:
  - 1. Identification of the offering firm(s) and proposal contact, including name, address, telephone and facsimile numbers, email, and firm website.
  - 2. Acknowledgment of RFP addenda, if any. An “Addenda” form is included in the Required Forms and Certifications section of this RFP.
  - 3. Name, title and contact information for vendor representative who will be the point of contact on all issues regarding this RFP.
  - 4. A statement to the effect the proposal shall remain valid for a period of not less than 90 days from the date of submittal or Proposal due date, whichever is later.
  - 5. Signature of person authorized to bind the offering firm to the terms of the proposal.
- C. Qualifications and References
  - 1. Describe the company, including history, mission and nature of work, number of employees and office location(s).
  - 2. List the qualifications and capabilities of the staff to be assigned to SCRTD’s contract including licenses, certifications, and years of experience.
- D. Experience and Capacity
  - 1. Provide a minimum of three clients, preferably public transit or governmental agencies, that the firm has provided services like SCRTD’s requirements. Provide the address, phone number, email (if available) and contact name for the clients. Provide name(s) of staff from proposing firm that worked on the project.
  - 2. Discussion and evidence of successful transit service plans that Proposer has developed. Proposer must state what measurements it used to determine that the transit service plans have been successful.
- E. Understanding of major work elements and project:
  - 1. This section shall clearly convey that the Proposer understands the nature of the work, and issues related to providing the Plan for the SCRTD.

#### F. Approach and Management Plan

1. This section shall provide the Proposer's approach and management plan for providing the services, including an organization chart showing the proposed relationships among Proposer's Key Team members, SCRTD staff, and any other parties that may have a significant role in the delivery of this project.

#### G. Staffing Plan

1. The proposal shall provide a staffing plan and an estimate of the total hours (detailed by position) required for each task included in the scope of services. Discuss the workload, both current and anticipated, for all Key Team Members, and their capacity to perform the requested services for the Plan on the schedule contained in this RFP.

#### H. Work Plan and Schedule

1. This section shall include a description and schedule of how each task deliverable of the project will be completed. The Work Plan shall be in enough detail to demonstrate a clear understanding of the project. The schedule shall show the expected sequence of tasks and include durations for the performance of each task, milestones, submittal dates and review periods for each submittal. Discuss the firm/team's approach for completing the requested services for this project on schedule.

#### I. Cost Control

1. Provide information on how the firm/team will control project costs to ensure all work is completed within the negotiated budget for the project. Include the name and title of the individual responsible for cost control.

#### J. Cost

1. Provide a detailed cost proposal for the project including all direct costs, including labor.

### **3.5 PROPOSAL MODIFICATION, WITHDRAWAL, LIMITS ON USE**

#### A. Modification

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

#### B. Withdrawal

1. A 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 SCRTD 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. Limits on Use

1. These provisions for modification and withdrawal of Proposals may not be utilized by a Proposer to submit a late proposal and, as such, will not alter SCRTD's right to reject a late proposal.

## 3.6 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 the SCRTD's right to reject any or all Proposals, the Proposer will be selected based on whose proposal is found to be most advantageous to SCRTD, based upon consideration of the criteria. During the initial review of Proposals, SCRTD 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. SCRTD will consider all the material submitted by the Proposer and related evidence SCRTD 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. Proposers shall furnish acceptable evidence of their ability to perform, such as financial stability and the ability to obtain the necessary personnel when requested by SCRTD. 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 team will employ those evaluation criteria set forth in this RFP 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. SCRTD reserves the right to select Proposals that are in a competitive range, conduct discussions, and request Best and Final Offers. SCRTD also reserves the right to make an award without discussions or requesting Best and Final Offers.
6. After reviewing Proposals, SCRTD has the right to invite none, one, or more Proposers to make a presentation and be interviewed at SCRTD offices. The decision to invite none, one, or more Proposers to make a presentation and be interviewed will be at SCRTD's sole discretion and not open to negotiation with Proposers who are, or are not, invited to present their Proposals and be interviewed. Not all Proposers may be invited. Proposers who are invited to make a presentation and be interviewed do so at their own expense and are not guaranteed award of a Contract. SCRTD will not reimburse any expenses incurred by a Proposer.
7. Proposers are solely responsible for communicating their ideas, solutions, strengths, etc. within the time limit provided for their presentation and interview. SCRTD is not responsible for communication the Proposer fails to provide within the time limit allowed. Proposers will be made aware of the time limit when a presentation and interview are scheduled.
8. While SCRTD may make available the audio-visual equipment it has available on site for Proposers to use during their presentation and interviews, SCRTD is not responsible for equipment failures or power outages and will not be obligated to schedule another presentation or interview for the Proposer should equipment failures or power outages affect the Proposer's presentations and interviews. Proposers are welcome to bring their own equipment as appropriate.
9. It is the responsibility of the Proposer to submit a clear and complete Proposal. Proposers must not assume that they will have another opportunity (presentation, interview or otherwise) to clarify or further discuss their capabilities/qualifications beyond the Proposal they submit.

## B. Opening of Proposals

1. 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 SCRTD 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

1. The selection of a successful Proposer will be based on the following criteria:
  - a. Quality and approach of proposal:
    - (1) Proven experience of firm
    - (2) Proven experience and qualifications of staff dedicated to work on this project
    - (3) Proposer's understanding of this RFP
    - (4) Methodology and procedures
    - (5) Work plan/schedules/time lines
  - b. Proposer's cost and/or fees
  - c. Proposer's technical resources
  - d. Proposer's organization and management structure
  - e. The degree to which the Proposer and content of the proposal meet the requirements of the RFP
2. Evaluation Procedures
  - a. SCRTD may conduct at its sole discretion discussions with all Proposers. The extent of discussions/demonstrations will vary with the nature and the quality of the Proposals. The basic purposes of the discussions are to review any shortcomings or deficiencies in the proposal, to discuss any listed deviations or exceptions, to clarify any information or questions the evaluation team may have concerning the proposal.
  - b. Evaluations will be made in accordance with all the evaluation criteria and procedures listed above. SCRTD 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 SCRTD based on consideration of the evaluation criteria.

## D. Confidentiality of Proposals

1. Access to government records is governed by State of New Mexico law. Except as otherwise required by State Statutes, the SCRTD 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-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, SCRTD will notify in writing the party involved. The involved Proposer shall indemnify SCRTD's defense costs associated with its refusal to produce such identified information; otherwise, the requested information may be released.
4. SCRTD shall employ sound business practices no less diligent than those used for SCRTD'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 Proposers 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 New Mexico laws against disclosure of such information and material to third parties except as permitted by the Contract. The Proposer shall be responsible for ensuring that confidential commercial or financial information, trade secrets or proprietary information, with such determinations to be made by SCRTD in its sole discretion, bears appropriate notice relating to its confidential character.

### **3.7 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. SCRTD will inform unsuccessful Proposers who were within the competitive range at the time negotiations closed of the following information
  2. The number of prospective Proposers solicited by the SCRTD
  3. The number of Proposals SCRTD received
  4. The name of the successful Proposer

SCRTD will try to give the notice under this paragraph promptly after contract Award. SCRTD's failure to give that notice shall not be deemed to affect the validity of the contract.

- C. Acceptance/Rejection of Proposals
  1. SCRTD reserves the right to reject any or all Proposals for any reason it deems valid at its sole discretion, to undertake discussions with one or more Proposers, and to accept that proposal or modified proposal which, in its judgment will be most advantageous to SCRTD, price and other evaluation criteria considered. SCRTD 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. SCRTD 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 Proposers.
  2. If there is any evidence indicating that two or more Proposers are in collusion to restrict competition or otherwise engaged in anti-competitive practices, the Proposals of all such Proposers shall be rejected, and such evidence may be a cause for disqualification of the participants in any future solicitations undertaken by SCRTD.
  3. SCRTD may reject a proposal that includes unacceptable deviations from the requirements of this RFP.
- D. Single Proposal Response
  1. If only one proposal is received, and it is found by SCRTD 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 SCRTD of the detailed price/cost

proposal 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. 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 conducted to form an opinion as to the degree to which the proposed costs represent what the Proposer's performance will 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 SCRTD to accept such a single proposal; and SCRTD may reject such proposal at its sole discretion.

E. Cancellation of Procurement

1. SCRTD reserves the right to cancel the procurement, for any reason at its sole discretion, at any time before the Contract is fully approved and executed on behalf of SCRTD. SCRTD will not pay Proposers any costs incurred in the preparation of a proposal responding to this RFP.

## **SECTION 4 - SPECIAL PROVISIONS**

### **4.1 INTEGRITY OF CONTRACT DOCUMENTS**

- A. All parts of the Contract Documents are intended to be integrated so that any work called for in one part and not mentioned in the other, or vice versa, is to be executed the same as if mentioned in all said documents. Wherever conflicting, contradictory, or redundant statements exist between the Scope of Services and the other sections of the RFP document, the other sections of the RFP take precedence.

### **4.2 MODIFICATION TO CONTRACT**

- A. Written Change Orders: Oral change orders are not permitted. No change in the contract shall be made unless SCRTD gives prior written approval. The Proposer shall be liable for all costs resulting from, and/or for satisfactorily correcting, any specification changes not properly ordered by written modification to the contract signed by SCRTD. A properly executed change order takes precedence over previous executed contract provisions.
- B. Change Order Procedure: Within fifteen (15) calendar days after receipt of the written change order to modify the contract, the Proposer shall submit to SCRTD a detailed price and schedule proposal for the work to be performed. This proposal shall be accepted or modified by negotiations between the Proposer and SCRTD. At that time, a detailed modification shall be executed in writing by both parties.

### **4.3 TERM OF CONTRACT AND RENEWAL**

- A. Upon pre-award approval by the SCRTD Board of Directors, SCRTD will issue a One (1) year Contract. Upon Award, the Proposer will begin work and maintain a schedule set forth in the Time Line presented in its Proposal and agreed upon by SCRTD.

B. Change Orders to extend the term of the Contract may be made by SCRTD.

#### **4.4 RESERVED RIGHTS OF SCRTD IN SOLICITATION PROCESS**

A. In addition to all other rights of SCRTD under New Mexico and Federal law, SCRTD reserves the following rights:

1. The right to rank firms and negotiate with the highest ranking firm. Negotiation with an individual Proposer does not require negotiation with others.
2. The right to select the proposal that it believes will serve the best interest of SCRTD.
3. The right to reject all Proposals.
4. The right to remedy or waive technical or immaterial errors in the RFP.
5. The right to request any necessary clarifications or proposal data without changing the terms.
6. The right to make selection of the Proposer to perform the services required based on the original Proposals without negotiations.
7. The right to make all final determination as to whether the services and scope of service have been satisfactorily completed.

#### **4.5 PROTEST PROCEDURES**

- A. Any Proposer or Proposer 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 SCRTD pursuant to the protest procedures attached hereto as Exhibit # B prior to filing any protest, claim or dispute with the SCRTD.
- B. Protests, claims or disputes shall be in writing and filed with SCRTD Executive Director 300 West Lohman, Suite 115, Las Cruces, New Mexico 88005. Failure to comply with any of the requirements may result in rejection of the protest.

# **REQUIRED FORMS AND CERTIFICATIONS**

**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 GOODS and SERVICES**

To: South Central Regional Transit District  
300 Lohman Avenue, Suite 115  
Las Cruces, NM 88005

The undersigned hereby agrees to furnish the goods and services as listed below in accordance with the specifications which have been carefully examined and are attached.

Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

\_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Telephone: \_\_\_\_\_

For (Company): \_\_\_\_\_

Address:  
\_\_\_\_\_

**CERTIFICATE OF NON COLLUSION**

I hereby swear (or affirm) under penalty of 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 has 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 bids or competition;
3. That the contents of the proposal have 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 \_\_\_\_\_ ,  
2019

Notary Public

My commission expires \_\_\_\_\_ ,

Proposer's 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: \_\_\_\_\_

Bidder's firm is: (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, \_\_\_\_\_

**Attachment “A”**

**Existing Short Range Transit Service Plan**

See attached.

## **Attachment “B”**

### **PROTESTS, APPEALS, AND REMEDIES**

#### **1. Authority to resolve protested solicitations and awards.**

The Purchasing Agent is responsible to address, process, and exercise the following:

- (a) *Protests of bid or RFP specifications or scope of work.* Any vendor who is aggrieved in connection with the specifications or scope of work in a solicitation may protest to the Purchasing Agent. The protest shall be submitted in writing no later than 7 calendar days prior to the deadline for receipt of the bid or proposal. No protest bond will apply to such protest. The Purchasing Agent shall issue a determination in writing within 2 work days of receipt of such protest, and either proceed with the solicitation, modify it, or cancel it
- (b) *Right to protest; protest bond.* Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Purchasing Agent. The protest shall contain all the grounds for such protest and must be submitted in writing within 15 calendar days after such aggrieved person knows or should have known of the facts giving rise thereto, along with a bond provided by a surety company authorized to do business in the state, or the equivalent in cash, or otherwise supplied in a form satisfactory to the SCRTD. The amount of the bond shall not exceed the estimated cost to the SCRTD of processing and defending a protest. Only one protest per person per solicitation is permitted.
- (c) *Authority to resolve protests.* The Purchasing Agent shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest of an aggrieved bidder, offeror or contractor, actual or prospective, concerning the solicitation or award of a contract.
- (d) *Decision.* If the protest is not resolved by agreement, the Purchasing Agent shall promptly issue a decision in writing stating the reason for the action taken and informing the protestant of its right to appeal the decision to the SCRTD Board. A copy of the decision of the Purchasing Agent shall be mailed, return receipt requested, or hand-delivered to the protestant or to the address provided in the protest.
- (e) *Appeal.* Any appeal to the SCRTD Board of an adverse decision shall be made by filing with the Executive Director’s office within 15 calendar days after the decision has been delivered to the aggrieved person. The proceeding before the Board shall be de novo. The Board shall decide whether the solicitation or award was in accordance with this Policy, procedures, and the terms and conditions of the solicitation.
- (f) *Decisions final.* A decision of the SCRTD Board under this Section shall be final and conclusive. The aggrieved person may seek judicial review in the state First

Judicial District Court within 30 days of the receipt of notice of the decision of the SCRTD Board.

- (g) *Stay of procurements during protests.* In the event of a timely protest under subsection (a) of this section, the Purchasing Agent shall not proceed further with the solicitation or with the award of the contract unless the Purchasing Agent, after consultation with the Executive Director, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the SCRTD.
- (h) *Entitlement to costs.*
  - (1) When a protest is sustained, and the protesting bidder or offeror should have been awarded the contract under the solicitation but was not, then the protesting bidder or offeror shall be entitled, in addition to any other relief, to the reasonable costs incurred in connection with the protest or appeal costs other than attorney's fees.
  - (2) Should the protest be denied, the SCRTD shall be entitled to recover reasonable costs for processing and adjudicating the protest, and for costs associated with an unreasonable delay of the contract. Recovery of these costs shall not be limited to the proceeds from the protest bond. Excess bond proceeds shall be returned to the person.

## **2. Contract Claims.**

Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation or other cause for contract modification or rescission. Within 15 calendar days of the time the contractor knows or should have known of the facts and circumstances giving rise to a claim the following procedure shall apply:

- (a) *Notice of claim to the Purchasing Agent.* All claims by a contractor against the SCRTD relating to a contract except bid protests shall be submitted in writing to the Purchasing Agent for decision. The contractor may request a conference with the Purchasing Agent on the claim.
- (b) *Notice to the contractor of the Purchasing Agent's decision.* The decision of the Purchasing Agent shall be issued in writing within 15 calendar days of claim notice and immediately mailed, or otherwise furnished, to the contractor. The decision shall state reasons for the decision reached and shall inform the contractor of its appeal rights under subsection (d) of this section.
- (c) *Failure to render timely decision.* If the Purchasing Agent does not issue a written decision regarding any contract controversy within 15 days after written request for a final decision, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed as if an adverse decision had been received.

- (d) *Appeal.* Any appeal to the SCRTD Board of an adverse decision shall be made by filing with the Executive Directors office within 15 calendar days after the decision has been received by the aggrieved person. The proceeding before the SCRTD Board shall be de novo.
- (e) *Decisions by Board final; exception.* A decision of the SCRTD Board under this section shall be final and conclusive unless a protestant seeks judicial review in the state First Judicial District Court within 30 days of the receipt of notice of the decision of the SCRTD Board.

### **3. Remedies for solicitations or awards in violation of law.**

- (a) *Prior to bid opening or closing date for receipt of Proposals.* If, prior to the bid opening or the closing date for receipt of Proposals, the Purchasing Agent, after consultation with the SCRTD Attorney, determines that a solicitation is in violation of applicable law or regulation then the solicitation shall be canceled by the Purchasing Agent or revised to comply with applicable law.
- (b) *Prior to award.* If, after bid opening or the closing date for receipt of Proposals, the Purchasing Agent, after consultation with the SCRTD's Legal Counsel, determines that a solicitation or a proposed award of a contract is in violation of applicable law then the solicitation or proposed award shall be canceled by the Purchasing Agent.
- (c) *After award.* If, after an award, the Purchasing Agent, after consultation with the SCRTD's Legal Counsel, determines that a solicitation or award of a contract was in violation of applicable law, then:

If neither the purchaser nor the person awarded the contract has acted fraudulently or in bad faith:

- a. The contract or invoice may be ratified and affirmed or approved for payment by the Board for any amount or the Executive Director, as applicable, for amounts under \$100,000.00, provided that it is determined that doing so is in the best interests of the SCRTD; or
- b. The contract may be terminated, and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to the termination; or

If either the purchaser or the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void by the Purchasing Agent, if such action is in the best interests of the SCRTD.

**Attachment “C”**  
**PROFESSIONAL SERVICES AGREEMENT**  
**BETWEEN**  
**Contractor, and**  
**SOUTH CENTRAL REGIONAL TRANSIT DISTRICT**

This agreement (“Agreement”) is entered into as of the \_ day of \_\_\_\_, 2019, by and between \_\_\_\_\_ (“Contractor”) and the South Central Regional Transit District (“SCR TD”).

**WHEREAS**, the SCR TD is a political subdivision of the State of New Mexico; and,

**WHEREAS**, the SCR TD wishes to retain Contractor to perform the work described below;  
and,

**WHEREAS**, the SCR TD has adopted its own procurement code pursuant to the powers and authority granted to it under the Regional Transit District Act; and

**WHEREAS**, pursuant to the SCR TD’s Procurement Regulations the Contractor has held itself out as possessing the personnel, experience and knowledge necessary to perform the services described in implementing the Scope of Work as attached (Exhibit “A”) and contained within the RFP; and

**WHEREAS**, the SCR TD has selected the Contractor as the offeror most advantageous to the SCR TD; and

**WHEREAS**, the procurement regulations are available to all vendors and contractors by and through the SCR TD and the most current version of the regulations are adopted by Resolution No. 2012-21 and are entitled “South Central Regional Transit District Procurement Regulations.”

**NOW THEREFORE:** in consideration of the mutual agreements of the parties herein and

for other good and valuable consideration the receipt of which is hereby acknowledged the parties to this Agreement agree as follows:

1. SCOPE OF WORK

The Contractor shall provide the following services to the SCRTD. All services listed below shall be inclusive of work, work product and shall be interpreted consistent with any solicitation or procurement documents promulgated by the SCRTD:

A. Provide all services contained in their response to the RFP and the Scope of Work Attached hereto as Exhibit "A" and any and all addenda as described in the SCRTDs RFP and as outlined in the project proposal.

B. Deliver completed project in a timely manner with all work to be done in cooperation with the SCRTD's project coordinator and in accordance with the Plan timeline.

C. Submit invoices as outlined in Contractor's proposal, containing a detailed report of work performed. Invoices shall be substantially in the form outlined in Contractor's proposal and shall contain a detailed report of work performed enough to meet the New Mexico Department of Transportation's requirements contained in the Memorandum of Agreement with the SCRTD which is attached hereto as Exhibit "B". Contractor recognizes and acknowledges that the SCRTD must make quarterly reports of progress including actual costs and expenses incurred as of the reporting date. Contractor's failure to timely submit information enough for this purpose may compromise the SCRTD's ability to obtain federal funds and may in turn compromise payments by the SCRTD to the Contractor for amounts otherwise compensable under this Agreement.

D. Contractor may be required to attend SCRTD Board meetings and provide advice to the full SCRTD Board if requested to do so by the Executive Director.

E. Contractor may be required to perform such acts and render such services as are reasonably necessary to complete the work contemplated under this Agreement.

F. Contractor understands and agrees that the professional services covered by this scope of work are to be performed and delivered by the principle professionals within the Contractor's firm and that substitution of subcontractors or delegation of critical work to subordinates does not meet the demands and expectations of SCRTD.

G. All deliverables required under this Agreement, including material, products, reports, policies, procedures, software improvements, databases, and any other products and processes, whether in written or electronic form, shall remain the exclusive property of and shall inure to the benefit of SCRTD as works for hire. Contractor shall not use, sell, disclose, or obtain any other compensation for such works for hire. In addition, Contractor may not, with regard to all work, work product, deliverables or works for hire required by this Agreement, apply for, in its name or otherwise, any copyright, patent or other property right and acknowledges that any such property right created or developed remains the exclusive right of SCRTD. Contractor shall not use deliverables in any manner for any other purpose without the express written consent of the SCRTD.

2. STANDARD OF PERFORMANCE; LICENSES

A. The Contractor represents that it possesses the personnel, experience and knowledge necessary to perform the services described under this Agreement.

B. The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

3. COMPENSATION

A. The SCRTD shall pay to the Contractor \$\_\_\_\_\_ for services referred to above, excluding gross receipts tax. The aforementioned amount is inclusive of Contractor expenses anticipated to be incurred in the performance of services in the Agreement such as copying, mileage, printing, travel, and per diem, telephone and computer research charges at the normal rate for such expenses charged by the Contractor to its other clients. Per diem and mileage expenses shall not exceed the amounts provided in the Per Diem and Mileage Act or as set forth below.

B. Payment shall be made upon receipt from the Contractor of statements in accordance with the deliverable tasks outlined in the Contractor's proposal attached hereto as Exhibit "C." All statements shall contain a detailed report of work performed and expenses incurred. Prepayment by public entities is generally not permitted under New Mexico law. Therefore, the delivery of service and timely billing thereafter is a condition precedent to any payment by SCRTD to Contractor.

C. Payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility. The New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the SCRTD to the Contractor.

D. Contractor agrees to Refund to the SCRTD, in the same proportion as it was paid to the Contractor, expenditures under this agreement when determined by independent audit to be ineligible for payment.

#### 4. APPROPRIATIONS

The terms of this Agreement are contingent upon enough appropriations and authorization being made by the SCRTD for the performance of this Agreement. If enough appropriations and authorization are not made by the SCRTD, this Agreement shall terminate upon written notice being given by the SCRTD to the Contractor. The SCRTD's decision as to whether enough

appropriations are available shall be accepted by the Contractor and shall be final. By executing this Agreement, the SCRTD represents that it will make good faith efforts to ensure that enough money is budgeted and appropriated to make the payments that may become due for the work performed under this Agreement. However, by signing this Agreement Contractor hereby acknowledges and agrees that SCRTD is not responsible for ensuring that budgeted amounts will be appropriated enough to pay any amendment, extension, or other charges beyond those set forth in Section 3 above.

5. TERM AND EFFECTIVE DATE

This agreement shall not become effective until approved by the South Central Regional Transit District. This Agreement shall terminate at 5:00 p.m. on \_\_\_\_\_2020, unless terminated pursuant to paragraph 6 below or extended by agreement in writing for up to six (6) additional months.

6. TERMINATION

A. This Agreement may be terminated by the SCRTD upon ten (10) days written notice. Upon such termination, Contractor shall be paid for Services completed to the satisfaction of SCRTD. Contractor shall render a final report of the Services performed to the date of termination and shall turn over to SCRTD originals of all materials prepared pursuant to this Agreement.

(1) The Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the SCRTD original copies of all work product, research or papers prepared under this Agreement.

(2) If compensation is not based upon hourly rates for services rendered, the SCRTD shall pay the Contractor for the reasonable value of services satisfactorily performed

through the date Contractor receives notice of such termination, and for which compensation has not already been paid.

(3) If compensation is based upon hourly rates and expenses, then Contractor shall be paid for services rendered and expenses incurred through the date of termination.

7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. The Contractor and its agents and employees are independent contractors performing professional services for the SCRTD and are not employees of the SCRTD. The Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of SCRTD vehicles, or any other benefits afforded to employees of the SCRTD as a result of this Agreement.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to all employees or contractors retained by Contractor in the performance of the services under this Agreement.

C. Contractor is not an agent or employee of SCRTD and will not be considered an employee of SCRTD for any purpose. Contractor, its agents or employees shall make no representation that they are SCRTD employees, nor shall they create the appearance of being employees by using a job or position title on a name plate, business cards, or in any other manner, bearing the SCRTD's name or logo.

D. Contractor shall have no authority to bind SCRTD to any agreement, contract, duty or obligation. Contractor shall make no representations that are intended to, or create the appearance of, binding the SCRTD to any agreement, contract, duty, or obligation. Contractor shall have full power to continue any outside employment or business, to employ and discharge its employees or associates as it deems appropriate without interference from the SCRTD

provided, however, that Contractor shall at all times during the term of this Agreement maintain the ability to perform the obligations in a professional, timely and reliable manner.

8. CONFIDENTIALITY

A. Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the SCRTD, except as otherwise provided by law. Notwithstanding the preceding agreement to keep materials confidential the Contractor hereby acknowledges and agrees that the SCRTD may provide copies of all documents required to be made available for inspection and copying pursuant to the New Mexico Inspection of Public Records Act. Contractor is not required to provide SCRTD with any documents that are not work product or are not otherwise required to perform the scope of work or to comply with state and federal laws. Nothing herein shall be deemed to waive any claim of confidentiality by SCRTD or Contractor nor to compel production of documents or information other than as required by this Agreement or by law.

B. Some documents may be subject to the requirements of the Privacy Act of 1974, 5 U.S.C. §552a. The Contractor agrees that it will always comply and assist the SCRTD in compliance with that law.

9. CONFLICT OF INTEREST

Contractor warrants that it presently has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under this Agreement. Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18 NMSA 1978, regarding contracting with a public officer, SCRTD employee or former SCRTD employee have been followed.

10. ASSIGNMENT; SUBCONTRACTING

The Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the SCRTD. Contractor acknowledges that the SCRTD is a SUBGRANTEE under Exhibit B and is expressly bound to seek New Mexico Department of Transportation approval of any subcontracts under that agreement. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the SCRTD. Contractor agrees that its principle officers and employees are to perform the scope of work under this agreement and that it will not unreasonably delegate work to subordinates.

11. RELEASE

The Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the SCRTD, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the SCRTD to any obligation not assumed herein by the SCRTD unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. INSURANCE

A. Contractor shall obtain and maintain at its own expense adequate insurance at all times during its performance of this Agreement.

B. Contractor shall obtain and maintain Workers' Compensation insurance required by law to provide coverage for Contractor's employees throughout the term of this Agreement. Upon request, Contractor shall provide the SCRTD with evidence of its compliance with such requirement.

C. Contractor shall maintain professional liability insurance throughout the term of

this Agreement providing a minimum coverage of one million dollars (\$1,000,000) per occurrence.

D. Automobile Liability Insurance shall be in amount at least equal to the minimum required by state law on any owned, and/or non-owned motor vehicles used in performing Services under this Agreement,

E. General Liability Insurance shall be in the amount of \$1,000,000 combined single limit and per occurrence shall name the SCRTD as an additional insured, and shall provide that the SCRTD will be notified no less than thirty (30) days in advance of cancellation;

F. The SCRTD retains the right to require that Contractor obtain or provide proof of insurance, certificates of insurance, riders or addenda including documents listing SCRTD as an additional named insured if, in the SCRTD's opinion, the Contractor's work creates a risk or liability for the SCRTD that can be covered and insured without excessive cost or expense to the Contractor.

G. Waiver of insurance requirements may only be performed in writing by the SCRTD's Executive Director and only if he is satisfied that the waiver will not result in substantial or unreasonable liability for the SCRTD.

### 13 INDEMNIFICATION

Contractor agrees to indemnify SCRTD to the extent permitted by law for the Contractor's acts and omissions under this Agreement and for such other liabilities as may be incurred by the SCRTD due to the Contractor's performance or failure to perform the services set forth in this Agreement.

### 14. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the SCRTD in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA

1978, as amended. The SCRTD and its “employees” as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

15. THIRD PARTY BENEFICIARIES

A. By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the SCRTD and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

B. In compliance with the requirements set forth in Exhibit B the Contractor acknowledges and agrees to the following:

“The New Mexico DEPARTMENT [AG1] of Transportation and SUBGRANTEE acknowledge and agree that, notwithstanding any concurrence by the Federal government in or approval of the solicitation or award of the AGREEMENT, absent the express written consent by the Federal government, the Federal government is not a party to this AGREEMENT and shall not be subject to any obligations or liabilities to the DEPARTMENT, SUBGRANTEE, or any other party (whether or not a party to the AGREEMENT) pertaining to any matter resulting from the AGREEMENT.”

16. RECORDS AND AUDIT

A. The Contractor shall maintain, throughout the term of this Agreement and for a Contractor shall maintain throughout the term of this Agreement and for a period of six (6) years thereafter records that indicate the date, time, and nature of the services rendered. Contractor shall make available for inspection by SCRTD all records, books of account, memoranda, and other

documents pertaining to SCRTD at any reasonable time upon request. These records shall be subject to inspection by the SCRTD, the Department of Finance and Administration, and the State Auditor. The SCRTD shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the SCRTD to recover excessive illegal payments.

B. Contractor acknowledges and agrees to maintain all records for a period in excess for five (5) years from the date of the last expenditure report submitted to the Federal government under Exhibit B to ensure the SCRTD can comply with the requirements under that agreement.

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial SCRTD.

18. AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

19. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior

agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. NON-DISCRIMINATION

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

21. SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein, and any other application thereof shall not in any way be affected or impaired thereby.

22. NOTICES

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses. Notices may also be provided by electronic transmissions such as facsimiles or e-mails. However, the burden of proof to establish that notice was received shall be on the party electing to utilize electronic transmissions of notifications. Notice under this Agreement shall be deemed given on the day personally delivered or three (3) days after deposit in the United States Mail, first class postage pre-paid, or on the date sent and received if sent by electronic mail. Notices by regular mail shall be sent to a party at the address set forth below:

**South Central Regional Transit District  
Executive Director  
399 West Lohman, Suite 115  
Las Cruces, NM 88005**

**Contractor**

An address may be changed by notification to the other party in writing delivered as specified for notices hereunder. Unless such notice is made, a party is entitled to rely on the address stated above.

23. COMPLIANCE WITH FEDERAL RESTRICTIONS

The Contractor acknowledges and agrees that contracts such as this Agreement which are funded with, or implicate federal laws, grant requirements and restrictions are subject to state and federal requirements and compliance above and beyond the express terms set forth in this Agreement and that Contractor has made independent inquiry and satisfied itself that it may perform the work required under this Agreement while, at all times, maintaining compliance with said restrictions. Express requirements and restrictions include but are not limited to:

- A. All requirements of 49 U.S.C. §5304 whether express or implied;
- B. Federal Funds received by the SCRTD shall be used solely for activities described in the Scope of Work as set forth in Exhibit B.
- C. Federal Funds shall only be allocated for payment of eligible costs as set forth in Exhibit B and as detailed in 2 Code of Federal Regulations (CFR) parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."
- D. Compliance and certification of compliance with Program fraud Civil Remedies Act of 1986, 31 U.S.C. §§ 3801 et seq. and associated regulations including 49 C.F.R. Part 31. Penalties may be imposed under 18 U.S.C. §1001 and 49 U.S.C. 5307(n) (1). The full text of the clauses are as follows:

“The SUBGRANTEE acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 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 Program. The SUBGRANTEE certifies or affirms the truthfulness and accuracy of any statement it makes pertaining to the AGREEMENT or the FTA assisted Program for which this work is being performed. The SUBGRANTEE 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 SUBGRANTEE to the extent the Federal government deems appropriate.

The SUBGRANTEE 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 program 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 Federal government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307 (n)(1) on the SUBGRANTEE, to the extent the Federal government deems appropriate.”

E. Compliance and assistance with compliance with the requirements of the Privacy Act of 1974, 5 U.S.C. §552a.

F. Title VI and Title VII of the Civil Rights Act of 1964 the Age Discrimination Employment Act, the Americans with Disabilities Act of 1990, the Environmental Justice Act of 1994, the Civil Rights Restoration Act of 1987, the New Mexico Human Rights Act, Executive Order 11246 as amended by Executive Order 11375 and as supplemented by the Department of

Labor regulations 41 C.F.R. part 60 and 49 C.F.R. part 21.

G. Federal Transit Laws including 49 U.S.C. §5332 and all implementing regulations.

H. All contractual provisions required by FTA Circulars 4220.1F and 8100.1C.

I. Compliance and assistance in compliance with Title VII of the Civil Rights Act, 42 U.S.C. §2000e, and Federal Transit Laws at 49 U.S.C. §5332, 41 C.F.R. Parts 60 et seq. and implementing regulations. The specific provision of Exhibit B is as follows:

“The following equal opportunity requirements apply to the AGREEMENT:  
Race, Color, Creed, National Origin, Sex – in accordance with Title VII of the Civil Rights Act, 42 U.S.C. §2000e, and Federal Transit Laws at 49 U.S.C. §5332, the SUBGRANTEE agrees to comply with all applicable equal employment opportunity requirements of the U.S. Department of Labor regulations: Office of Federal Contracts 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. §20003 note), and with any applicable Federal statutes, executive orders, regulation and Federal policies that may in the future affect construction activities undertaken in the course of the Program. The SUBGRANTEE agrees to take affirmative action to ensure that applicants are employed and that employees are treated during the 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 SUBGRANTEE agrees to comply with any implementing requirements FTA may issue.”

J. Compliance and assistance in compliance with Age Discrimination in Employment Act of 1967, 29 U.S.C. §623 and Federal Transit Laws at 48 U.S.C. §5332. The specific provision of Exhibit B is as follows:

“The following equal opportunity requirements apply to the AGREEMENT:  
Age – In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, 29 U.S.C. §623 and Federal Transit Laws at 49 U.S.C. §5332, the SUBGRANTEE agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the SUBGRANTEE agrees to comply with any implementing requirements FTA may issue.”

K. Compliance and assistance in compliance with Section 102 of the Americans with Disabilities Act, 42 U.S.C. §12112 and 29 C.F.R. Part 1630. The specific provision of Exhibit B is as follows:

“The following equal opportunity requirements apply to the AGREEMENT:  
Disabilities – In accordance with Section 102 of the American with Disabilities Act, 42 U.S.C. §12112, the SUBGRANTEE agrees that it will comply with the requirement of the U.S. Equal Employment Commissions, “Regulation to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630. In addition, the SUBGRANTEE agrees to comply with any implementing requirements FTA may issue.”

L. Compliance with all applicable standards, orders or regulation and assistance in reporting any violations relating to the Federal Water Pollution Control Act, 33 U.S.C. §§1251 et seq. and the Clean Air Act, 42 U.S.C. §§7401 et seq.

M. Compliance with Executive Order 12549, as implemented by 49 C.F.R. Part 29 regarding non-employment of suspended and debarred contractors.

N. Compliance and certification of compliance with 49 C.F.R. Part 29 and particularly Subpart "C" by Contractor and any subcontractors.

O. 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.

P. 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 comply shall constitute a material breach of this contract.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

**CONTRACTOR**

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**SOUTH CENTRAL REGIONAL  
TRANSIT DISTRICT:**

\_\_\_\_\_  
David Armijo,  
Executive Director  
  
Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Attorney