

**South Central Regional Transit District
Invitation for Bid
For
Anthony Maintenance Facility
IFB 2023-01**

August 20, 2023



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

SECTION 1 – INTRODUCTION

A. PURPOSE OF THIS INVITATION FOR BID (IFB)

The South Central Regional Transit District (SCRTD) is renovating an existing maintenance facility to house the organization's existing and future fleet maintenance and operational needs. The purpose of this request is to solicit Bids from qualified general contractors for the rehabilitation and construction of projects for the Anthony maintenance facility to include (1) Replacement or Maintenance and Repair of (4) Bay doors, (2) Power Wash and Prime and Coat 4,500 Square Feet of metal roof (3) Replace ten Fiberglass Panels. The project is located at 830 Anthony Drive, Anthony, New Mexico 88021, in accordance with the scope of work listed herein.

The award of a construction contract shall be made to the low-responsive and responsible bidder. Factors such as contractor past performance, technical expertise and experience, management capabilities and resources, subcontractor teams, and craft personnel resources will form the basis for the criteria to be considered for qualifications, in addition to a lump sum price to perform the scope of work for the bid. The award shall be made in accordance with the terms, conditions, and requirements stated herein.

B. BACKGROUND INFORMATION

1.1 OVERVIEW OF SCOPE OF SERVICES

South Central Regional Transit District (SCRTD) is seeking Bids from qualified Bidders with demonstrated success in planning, developing, and construction of Rehabilitation of a Maintenance Facility. The anticipated budget for this project is \$128,625.13.

1.2 PROCURING AGENCY AND CONTRACTING OFFICER

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

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

Contracting Officer: Sara Vasquez
Chief Procurement
Officer: 915-274-7628
vasquez@scrted.org

1.3 SOLICITATION SCHEDULE

EVENT	DATE AND TIME
Request for Bid Issued	August 20, 2023
Prebid Conference	August 30, 2023, at 2:00 pm
Questions and requests for Clarifications only in writing due to SCRTD	Until September 6, 2023, 5:00 pm
SCRTD Responds to Questions and Clarifications	September 11, 2023, 5:00 pm
Bid Due Date	Bids are due no later than September 14, 2023, at 4:00 p.m.
Evaluation of Bids Received	TBD
Anticipated Award	September 18, 2023

1.4 BIDS DUE

- A. To be considered for the award, **bids must be received by 4:00 p.m. MST, Thursday, September 14, 2023.** Any bid received after the specified date and time will be returned to the Bidder unopened. The receiving time in the SCRTD Bus Facility located at 830 South Anthony Drive, Anthony, NM 88021, will be the governing time for the acceptability of bids. This IFB does not commit SCRTD to award a contract. SCRTD will not pay Bidders for any costs associated with preparing responses to this IFB. SCRTD reserves the right to accept or reject any or all Bids received as a result of this request or to cancel in part or in its entirety this IFB if it is in the best interests of SCRTD to do so.

1.5 DISTRIBUTION OF SOLICITATION DOCUMENTS

- A. SCRTD is distributing this IFB and all relevant documents through its website at SCRTD.org, as well as a direct email list and Las Cruces Sun News classified advertisements. All addenda and updates to the IFB will be posted at the above-referenced website. Prospective Bidders are responsible for checking the website for addenda and updates to the IFB. Beyond the initial email to inform prospective Bidders about the IFB, SCRTD will not send communication directly to Bidders.
- B. A non-mandatory Pre-bid conference will be held at the Anthony Shop located at 830 Anthony Dr, Anthony, NM 88021.

2.1 The Anthony Maintenance facility is located at 830 Anthony Drive, Anthony, New Mexico. The facility has four bus bays and an administrative and maintenance office. Ten to twelve buses operate from this location. Employee parking and visitors' spots are present.

2.2 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.
- B. 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.
- C. 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 bid, which did not pass in the fall of that year.

C. PROJECT DESCRIPTION

Construction of SCRTD Anthony Maintenance Facility to include. Replacement of 4 garage doors that will accommodate fleet needs, renovate 4,500 square feet of metal roof by replacing fiberglass panels, power washing, priming, and coating roof. The project location is 830 Anthony Dr. Anthony, New Mexico 88021.

D. INVITATION FOR BID (IFB) SCOPE OF PROCUREMENT – STEP 2

The District is seeking competitive Bids from qualified Contractors (Bidders) for construction services that comply with all Federal Transportation Administration (FTA) and State of New Mexico guidelines in relation to, but not limited to, ADA, Buy America, Davis Bacon, Disadvantaged Business Enterprise Program, (DBE), Title VI, Non-collusion, Non-endorsement, and Lobbying. The scope of the procurement includes all the tasks and requirements within the Construction Documents.

E. BID SECURITY PERFORMANCE AND PAYMENT BONDS

Bidder shall provide bid security in the form of a surety bond executed by a surety company authorized to do business in the State of New Mexico in the amount of 5% of the total price or the equivalent in cash by means of a cashier's check or in a form satisfactory to the Owner. The bid security must accompany each bid.

The Bidder will provide, with the bid, a notarized declaration from a bonding company licensed to do business in the State of New Mexico confirming the Bidder's ability to obtain Performance; Bond in an amount not less than 100% of the bid price and a Labor and Materials Payment Bond in an amount not less than 100% of the bid price.

No Bidder may withdraw their bid except as provided in the District's Procurement Policy.

F. PERMITS, PLAN CHECKING FEES, OTHER CHARGES

Bidders shall include as part of the bid all costs incurred for permits relating to this scope of work, including any Plan Checking Fees as charged by the State of New Mexico (or any other applicable entity or agency with jurisdiction over the project) for checking Construction Documents prior to obtaining a certificate of occupancy. Additionally, the Owner will not pay for business licenses, professional affiliations, and similar costs of doing business which is the Bidder's obligation to secure and maintain. The cost of all bonding will be paid by the Bidder and will not be paid by the Owner. These costs are to be included in Bidder's Price Bid.

G. TIMETABLE AND BUDGET

At the start of the project, the General Contractor shall produce a project timetable that lists major tasks with respective starting and ending dates, along with a projected invoicing schedule. Meetings and deliverables shall be included as milestones on the timetable. The General Contractor shall update and resubmit the timetable periodically as conditions warrant.

The desired timetable for project completion is three months from the date of contract execution. Bidder may, however, propose a more extended timeline if they feel the proposed work cannot be completed within the 3-month period.

A significant portion of the funding for this project is from the Federal Transit Administration (FTA); therefore, all federal requirements must be met, including but not limited to the federal requirements that have been incorporated into this contract. Familiarity with and understanding of FTA Federal requirements for this project is required and the responsibility of the General Contractor.

The successful Bidder for the items listed above must be able to provide professional high-quality construction work at the best obtainable price for the District.

H. Chief Procurement Officer

1. The District has a Chief Procurement Officer (CPO) who is responsible for the conduct of this procurement whose name, address, telephone number, and e-mail address are listed below:

Name: Sara Vasquez, Chief Procurement Officer
Address: 830 Anthony Drive
Anthony, NM 88021

Telephone: (915) 274-7628
Email: vasquez@scrted.org

2. All deliveries of responses via express carrier must be addressed as follows:

Name: Sara Vasquez, Chief Procurement Officer
Reference SOQ/IFB Name: Transit Maintenance Facility Construction
SOQ#
IFB# 2023-01
Address: 830 Anthony Drive,
Anthony, NM 88021

All correspondence, communication, and contact regarding any aspect of this solicitation or offers shall be only with the Chief Procurement Officer identified above. Unless otherwise instructed by the CPO, the Bidder and their representatives shall not make any contact with or try to communicate with any member of the District, its employees, and/or consultants regarding any aspect of this solicitation or offers. At any time during this procurement up to the time specified in the procurement schedule, Bidders may request, in writing, clarification or interpretation of any aspect, a change to any requirement of the solicitation SOQ/IFB, or any addenda to the solicitation SOQ/IFB. Requests may include suggested substitutes for specified items and for any Brand Names, which, whenever used in this solicitation, shall mean the Brand Name or Approved Equal. Such written requests shall be made to the CPO. The Bidder making the request shall be responsible for its proper delivery to District. 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 showing evidence that the exception shall result in a condition equal to or better than that required by the IFB without a substantial increase in cost or time requirements.

I. BUDGET AND TIMETABLE

1. The anticipated budget for this project is \$128,625.13
2. At the start of the project, the Bidder 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 Bidder shall update and resubmit the timetable as conditions warrant.
3. At the start of the project, the Bidder will provide a task-by-task budget. The budget will be constructed in a way that allows the Bidder and the SCRTD Project Manager to monitor project financial performance and take corrective actions in a timely manner.
4. The desired timetable for project completion is 3-4 months from the date of contract execution. Bidders may, however, propose a longer timeline if they feel the proposed work cannot be completed within the 3-4 month period. The following is a draft milestone timetable.

SECTION 3 - INSTRUCTIONS TO BIDDERS

3.1 ACCEPTANCE PERIOD

- A. Bids shall be valid for a period of ninety (90) days after submittal to SCRTD.

3.2 BIDDER COMMUNICATIONS AND REQUEST

- A. All correspondence and/or contact concerning any aspect of this solicitation or offers shall be with the Purchasing Agent. Bidders and their representatives shall not contact or communicate with any members of SCRTD or its employees other than the Purchasing Agent concerning any aspect of this solicitation or offers. Bidders may be disqualified if any unsolicited contact related to this IFB 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, Bidders may request in writing a clarification or interpretation of any aspect or a change to any requirement of the IFB or any addenda to the IFB. Requests may include suggested substitutes for specified tasks. Such written requests shall be made to the Contracting Officer. The Bidder 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 IFB, 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 Bidder's Request for Clarifications must be received by the date indicated in the Solicitation Schedule located in this IFB.
- D. If it should appear to a prospective Bidder that the Scope of Work or Specifications is not sufficiently described or explained in the IFB 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 Bidder shall submit a written request for clarification to the SCRTD within the time specified.

3.3 CONDITIONS, EXCEPTIONS, RESERVATIONS OR UNDERSTANDING

- A. Bids stating conditions, exceptions, reservations, or understandings (hereinafter deviations) relating to the IFB may be rejected.
- B. All deviations must be explicitly, fully, and separately stated in the bid 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 Bidder receiving a less favorable evaluation than without the deviation.

3.4 REQUIREMENTS FOR IFB RESPONSE

- A. Bidders shall submit one (1) original-unbound and five (5) bound copies of their bid 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 bid contact, including name, address, telephone and facsimile numbers, email, and firm website.
 - 2. Acknowledgment of IFB addenda, if any. An “Addenda” form is included in the Required Forms and Certifications section of this IFB.
 - 3. Name, title, and contact information for vendor representative who will be the point of contact on all issues regarding this IFB.
 - 4. A statement to the effect that the bid shall remain valid for a period of not less than 90 days from the date of submittal or Bid due date, whichever is later.
 - 5. Signature of the person authorized to bind the offering firm to the terms of the bid.
- 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 the name(s) of staff from proposing firm that worked on the project.
 - 2. Discussion and evidence of successful transit service plan that Bidder has developed. Bidder 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 Bidder understands the nature of the work and issues related to providing the Plan for the SCRTD.

F. 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 detailed enough 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 to completing the requested services for this project on schedule.

G. Cost

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

3.5 BID MODIFICATION, WITHDRAWAL, LIMITS ON USE

A. Modification

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

B. Withdrawal

1. A Bidder may withdraw the entire bid already received prior to the Bid Due Date by submitting a written request for withdrawal executed by the Bidder's authorized representative. After the proposed Due Date, a bid may be withdrawn only if SCRTD fails to award the Contract within the bid validity period or any agreed-upon extension thereof. The withdrawal of a bid does not prejudice the right of a Bidder to submit another bid within the time set for receipt of Bids.

C. Limits on Use

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

3.6 BID EVALUATION AND SELECTION

A. General Information

1. Bids will be evaluated, 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 Bids, the Bidder will be selected based on the lowest bid submitted by a Bidder found to be responsive and responsible. During the initial review of Bids, SCRTD reserves the right to request clarification of minor issues from any Bidder to ensure a complete understanding of their bid.
2. SCRTD will consider all the material submitted by the Bidder and related evidence SCRTD may obtain to determine whether the Bidder is capable of and has a history of successfully completing contracts of the type solicited.

3. Bidders 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 bid to be rejected.
4. The evaluation team will make investigations as are considered necessary for a complete evaluation. The evaluation team will employ those evaluation criteria set forth in this IFB or in the 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. It is the responsibility of the Bidder to submit a clear and complete Bid. Bidders must not assume they will have another opportunity (presentation, interview, or otherwise) to clarify or further discuss their capabilities/qualifications beyond the Bid they submit.

B. Opening of Bids

1. Bids will be publically opened at the time and date specified in this IFB.

3.7 RESPONSE TO BIDS

A. Notice of Award: The contract shall be deemed to include all provisions of this IFB and all provisions required in public contracts by local, state, and federal law.

B. Acceptance/Rejection of Bids

1. SCRTD reserves the right to reject any or all Bids and waive any defects, minor informalities, or irregularities in any bid that do not materially affect the bid or prejudice other Bidders.
2. If there is any evidence indicating that two or more Bidders are in collusion to restrict competition or otherwise engaged in anti-competitive practices, the Bids of all such Bidders 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 bid that includes unacceptable deviations from the requirements of this IFB.

C. Single Bid Response

1. If only one bid is received, an analysis will be conducted to determine if a competitive environment exists. This analysis will include canvassing expected bidders to determine why they chose not to submit a bid. If it is determined that a competitive environment exists, SCRTD will award the single bid if the single bidder is responsive and responsible. and it is found by SCRTD to be acceptable, a detailed price/cost bid may be requested of the single Bidder. A price or cost analysis, or both, including an audit, may be performed by or for SCRTD of the detailed price/cost bid to determine if the price is fair and reasonable.

D. 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 Bidders any costs incurred in the preparation of a bid responding to this IFB.

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 IFB document, the other sections of the IFB take precedence.

4.2 MODIFICATION TO CONTRACT

- A. Written Change Orders: Oral change orders are not permitted. No change to the contract shall be made unless SCRTD gives prior written approval. The Bidder shall be liable for all costs resulting from, and/or for satisfactorily correcting, any specification changes not properly ordered by a written modification to the contract signed by SCRTD. A properly executed change order takes precedence over previously executed contract provisions.
- B. Change Order Procedure: Within fifteen (15) calendar days after receipt of the written change order to modify the contract, the Bidder shall submit to SCRTD a detailed price and schedule bid for the work to be performed. This bid shall be accepted or modified by negotiations between the Bidder 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 Bidder will begin work and maintain a schedule set forth in the Timeline presented in its Bid 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 THE 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 reject all Bids.
 2. The right to remedy or waive technical or immaterial errors in the IFB.
 3. The right to request any necessary clarifications or bid data without changing the terms.
 4. The right to make a selection of the Bidder to perform the services required based

on the original Bids without negotiations.

5. The right to make all final determinations as to whether the services and scope of service have been satisfactorily completed.

4.5 PROTEST PROCEDURES

- A. Any Bidder or Bidder 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 830 Anthony Dr. Anthony, NM 88021. Failure to comply with any of the requirements may result in the 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 the 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
830 Anthony Dr. Anthony, NM 88021

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 Bidder or an officer or employee of the proposing corporation having authority to sign on its behalf (if the Bidder is a corporation);
2. That the attached bid has been arrived at by the Bidder 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 Invitation for Bid, designed to limit independent bids or competition.
3. That the contents of the bid have not been communicated by the Bidder or its employees or agents to any person not an employee or agent of the Bidder or its surety on any bond furnished with the Bidder and will not be communicated to any such person prior to the official opening of the Bids; 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 _____ ,
2023

Notary Public

My commission expires _____,

Bidder'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”

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 the bid or IFB 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 seven calendar days prior to the deadline for receipt of the bid or bid. No protest bond will apply to such a protest. The Purchasing Agent shall issue a determination in writing within two workdays 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, Bidder 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, Bidder, 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 it with the Executive Director’s office within 15 calendar days after the decision has been delivered to the aggrieved person. The proceedings 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 Bidder should have been awarded the contract under the solicitation but was not, then the protesting bidder or Bidder 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 the 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 a timely decision.* If the Purchasing Agent does not issue a written decision regarding any contract controversy within 15 days after the 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 proceedings 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 Bids.* If, prior to the bid opening or the closing date for receipt of Bids, 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 Bids, 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 the 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 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 invalid by the Purchasing Agent, if such action is in the best interests of the SCRTD.

Attachment “B”
AGREEMENT BETWEEN
CONTRACTOR AND
SOUTH CENTRAL REGIONAL TRANSIT DISTRICT

This agreement (“Agreement”) is entered into as of the _ day of __, 2023, by and between _____ (“Contractor”) and the South Central Regional Transit District (“SCRTD”).

WHEREAS, the SCRTD is a political subdivision of the State of New Mexico; and,

WHEREAS, the SCRTD wishes to retain the Contractor to perform the work described below;
and,

WHEREAS, the SCRTD 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 SCRTD’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 IFB; and

WHEREAS, the SCRTD has selected the Contractor as the low responsive and responsible Bidder; and

WHEREAS, the procurement regulations are available to all vendors and contractors by and through the SCRTD and the most current version of the regulations are adopted by Resolution No. 2023-15 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 IFB and the Scope of Work Attached hereto as Exhibit "A" and any and all addenda as described in the SCRTDs IFB and as outlined in the project bid.

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

C. Submit invoices as outlined in Contractor's bid, containing a detailed report of work performed. Invoices shall be in the form outlined in Contractor's bid 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 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 necessary to complete the work contemplated under this Agreement.

F. Contractor understands and agrees that the services covered by this scope of work are to be performed and delivered by the principal 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. The 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. The 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 bid attached hereto as Exhibit "C." All statements shall contain a detailed report of work performed and expenses incurred. Prepayment by public entities is 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. in _____2023 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, the Contractor shall be paid for Services completed to the satisfaction of SCRTD. The 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.

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. The contractor is not required to provide SCRTD with any documents that are not work products 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 the 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

The 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. The contractor acknowledges that the SCRTD is a SUBGRANTEE under Exhibit B and is expressly bound to seek the 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. The contractor agrees that its principal 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 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. The 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 provides a minimum coverage of one million dollars (\$1,000,000) per occurrence.

D. Automobile Liability Insurance shall be an 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 the 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 INDEMNIFICATIONS

The 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 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 of 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

The contractor shall abide by all applicable federal and state laws and regulations and all ordinances, rules, and regulations from South Central Regional Transit District. 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
830 Anthony Dr
Anthony, NM 88021**

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 above address.

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 reasons 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 regulations 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

FEDERAL CLAUSES

(where applicable)

1. No Government Obligation to Third Parties

a. 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 PURCHASER, 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.

2. 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. Chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(1) or other applicable federal law 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.

3. Access to Records

The CONTRACTOR agrees to provide 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. 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. In accordance with 2 CFR 200.333, 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

4. 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 Department of Transportation, Federal Transit Administration, Master Agreement between Purchaser and FTA, 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.

5. 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. 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:

(i) 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.

(ii) 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 age. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

(iii) 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.

6. Disadvantaged Business Enterprises

- a. It is the policy of the Department of Transportation and PURCHASER that Disadvantaged Business Enterprises (DBEs) as defined in 49 C.F.R. part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with federal funds under this contract. Consequently, the DBE requirement of 49 C.F.R. applies to this contract.
- b. The CONTRACTOR or subcontractor shall not discriminate on the basis of race, color, natural origin, or sex in the performance of this contract. The CONTRACTOR shall carry out applicable requirements of 49 C.F.R. 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 the recipient deems appropriate.
- c. The CONTRACTOR agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the prime contractor receives from PURCHASER. The prime contractor agrees further to return retainage payments to each subcontractor within ten (10) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the PURCHASER. This clause applies to both DBE and non-DBE subcontractors.
- d. The CONTRACTOR or its subcontractors agrees to ensure that DBEs as defined in 49 C.F.R. have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or part with federal funds provided under this contract. In this regard, all contractors shall take all necessary and reasonable steps in accordance with 49 C.F.R. Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform under this contract. Contractors shall not discriminate on the basis of race, creed, color, age, sex or national origin in the award and performance of DOT-assisted contracts.
- e. DBEs will be encouraged and afforded full opportunity to actively solicit information concerning this project and to submit bids and or proposals.

7. Incorporation of FTA Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by U.S. DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by U.S. DOT, as set forth in FTA Circular 4220, 2 CFR 200.318, and subsequent revisions 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 PURCHASER request, which would cause PURCHASER to be in violation of the FTA terms and conditions.

8. 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, 42 U.S.C. §§ 6321 *et seq.*

9. Termination

- a. Termination for Convenience: PURCHASER may terminate this contract, in whole or in part, at any time by written notice to the CONTRACTOR. 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 termination claim to PURCHASER to be paid the CONTRACTOR. If the CONTRACTOR has any property in its possession belonging to PURCHASER, the CONTRACTOR will account for the same, and dispose of it in the

manner PURCHASER directs.

b. Termination for Cause: 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, PURCHASER 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. If it is later determined by PURCHASER that the CONTRACTOR had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or beyond the control of the CONTRACTOR, PURCHASER, after setting up a new delivery of performance schedule, may allow the CONTRACTOR to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure: PURCHASER in its sole discretion may, in the case of a termination for breach or default, allow the CONTRACTOR ten (10) business 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 PURCHASER's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by CONTRACTOR of written notice from PURCHASER setting forth the nature of said breach or default, PURCHASER 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 PURCHASER from also pursuing all available remedies against the CONTRACTOR and its sureties for said breach or default.

10.

11. Governmentwide Debarment and Suspension

By signing and submitting its bid or proposal, the offeror certifies as follows:

The certification in this clause is a material representation of fact relied upon by PURCHASER. If it is later determined that the bidder or offeror knowingly rendered an erroneous certification, in addition to remedies available to PURCHASER, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or offeror 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 offeror further agrees to include a provision requiring such compliance in its lower tier covered transactions.

12. Notification Related to Fraud, Waste, Abuse, or Other Legal Matters

If a current or prospective legal matter that may affect the Federal Government emerges, the CONTRACTOR must promptly notify PURCHASER so that it can notify the Federal Government. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

The CONTRACTOR agrees to include a similar notification requirement in subcontracts exceeding \$25,000 financed in whole or in part with federal assistance provided by FTA and must require each subcontractor to include an equivalent provision in its federally assisted subcontracts exceeding \$25,000.

13. Lobbying Restrictions

The CONTRACTOR agrees to:

- a. Refrain from using Federal assistance funds to support lobbying,
- b. Comply and assure the compliance of each SUBCONTRACTOR at any tier, with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352.
- c. Comply with Federal statutory provisions to the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence Congress or a State legislature on legislation or appropriations, except through proper, official channels.

14. 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 includes microcomputer equipment, software, and small purchases (currently less than \$150,000) 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 70 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification with all bids or offers 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.

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20. Davis-Bacon and Copeland Anti-Kickback Acts

The CONTRACTOR agrees to comply and assure compliance of each third party contractor and each subcontractor at any tier of the project with the following Federal laws and regulations providing protections for their employees:

- 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 (1)(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)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this 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 therefore 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)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

b. Withholding - PURCHASER 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 this 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, PURCHASER 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 PURCHASER 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 (a)(3)(ii)(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 that 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 this 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 this contract.

i. **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this 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 this 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 this 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.

21. Contract Work Hours and Safety Standards Act

The CONTRACTOR agrees to comply with and assure compliance by subcontractors and other project participants for construction employees with the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 et seq., specifically the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and safety Standards Act)," 29 C.F.R. Part 5; and the safety requirements of section 107 of that Act at 40 U.S.C. § 3704, and implementing U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. Part 1926.

The CONTRACTOR further agrees to comply with and assure compliance by other project participants for nonconstruction employees with the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 et seq., in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and safety Standards Act)," 29 C.F.R. Part 5.

22. Bonding Requirements

Bid Bond Requirements

Bid Bond will be five (5) percent of the bid price and must be issued by a fully qualified surety company acceptable to PURCHASER and listed as a company currently authorized under 31 C.F.R., Part 223 as possessing a Certificate of Authority as described thereunder.

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by PURCHASER to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of PURCHASER.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of PURCHASER, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, or refuse or be unable to furnish adequate and acceptable insurance, he shall forfeit his bid security to the extent of PURCHASER damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by PURCHASER as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense PURCHASER for the damages occasioned by default, then the undersigned bidder agrees to indemnify PURCHASER and pay over to PURCHASER the difference between the bid security and PURCHASER's total damages, so as to make PURCHASER whole. The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

Performance Bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless PURCHASER determines that a lesser amount would be adequate for the protection of PURCHASER.
2. PURCHASER may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. PURCHASER may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

Payment Bonds

A payment bond of 100 percent of the original contract price unless PURCHASER determines that a lesser amount would be adequate for the protection of PURCHASER.

23. Veterans Preference

As provided in 49 U.S.C. § 5325(k), to the extent practicable, the contractor agrees and assures that it and its subcontractors will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under the contract.

This does not require the contractor to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

24. Seismic Safety

The CONTRACTOR agrees that they will comply with 42 U.S.C. §7701 et seq. in accordance with Executive Order No. 12699 as well as 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 this 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.

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29. Recycled Products

To the extent applicable, the CONTRACTOR agrees to comply with U.S. EPA regulations, "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 C.F.R. Part 247, implementing section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and otherwise provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient.

30. Accessibility

The CONTRACTOR 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 CONTRACTOR also agrees to comply with all applicable provisions of Section 504 of the Rehabilitation Act, 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 CONTRACTOR 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 the FTA approves otherwise in writing.

31.

32. Pre-Award and Post-Delivery Audit Requirements

The CONTRACTOR agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

a. Buy America Requirements (>\$150,000): The CONTRACTOR shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) 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 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.