

KANSAS CITY AREA TRANSPORTATION AUTHORITY

Request for Proposals (RFP) #24-7008-30B
Management and Operation of
Fixed Route Transit Services for Independence, Missouri

ADDENDUM #2

Issue Date: May 22, 2024

This Addendum is hereby made a part of the Request for Proposals and Project Documents to the same extent as if it were originally included therein and is intended to modify and/or interpret the bidding documents by additions, deletions, clarifications, or corrections. The Contractor shall acknowledge receipt of this Addendum on the "Receipt of Addenda" form (herein attached) and shall include the form in their proposal submittal.

PROPOSAL CLARIFICATIONS

1. **The closing date for this RFP is extended to Monday, June 3, 2024, at 2:00 PM Central**
2. A sample of the Agreement executed between Independence and Contractor is included as Attachment B to the RFP. A word version is being provided as a separate document. Firms shall notate their exceptions and requested changes (redlined) and submit the Word version with their proposal.

PROPOSER QUESTIONS

The following questions were submitted prior to the deadline and were inadvertently excluded.

1. Q: Would KCATA consider allowing an electronic submission of bid via email or secured file sharing link in lieu of a hard copy?
A: **No.**
2. Q: Section 2.39 of the RFP states "Customer Service Plan. The CONTRACTOR must operate a Customer Service training program that accomplishes the following:" Please advise if this requirement should include a Customer Service training program elements list.
A: **Section 2.39 encompasses 2.40 through 2.42.**
3. Q: It was mentioned in the pre-bid that new vehicles would be expected within the term of the contract, can you please advise at what point contractor is required to provide new vehicles?
A: **This is subjective given some vehicles have a lengthy lead time. Proposers should include a description of the vehicles that will be initially used and explain the new vehicles and when they will be put into service.**
4. Q: Given the volatility of fuel prices, would KCATA consider the inclusion of fuel escalator clause in contract language?
A: **Yes.**

5. Q: RFP requires contractor provide maintenance to the Transit Center including:
- *Daily cleaning (a minimum of three times per day), maintenance, supply provision, painting, plumbing repair, and maintenance of three restrooms (men's, women's, and driver's).*
 - *Sidewalk and driveway Power Wash as needed (minimum two (2) times per year).*
 - *Landscaping maintenance to include mowing, fertilization, mulch, aeration of lawn and proper maintenance and replacement of trees, shrubs, and flowers.*
 - *Maintaining proper US flag raising and lowering.*
 - *Snow removal and Ice melt as needed.*
 - *Water/sprinkler system maintenance (spring start-up and winterize in fall) and annual backflow testing.*
 - *Fountain and water pump maintenance and repair (spring start-up and winterize in the fall).*
 - *Kiosk and marketing materials maintenance.*
 - *Trash removal.*

Please confirm there are no additional responsibilities or costs of the contractor beyond the above tasks. Note, in the current contract the contractor has been responsible for facility systems maintenance (addressing frozen pipes etc.) and damage repairs at the facility, will the contractor continue to incur costs for these items in addition to the maintenance tasks listed in the RFP?

A: **Yes. Capital projects (e.g., sidewalks, drives, replacement of doors, roofs, etc.) would not be the responsibility of the contractor.**

6. Q: RFP mentions paratransit experience both within the Key Personnel Experience Section and the Operating Plan and Procedures section of the RFP – please confirm if there is any paratransit service included in the scope for this RFP or if bidders should instead include Fixed Route experience within these sections?

A: **There is no paratransit service opportunity with this contract.**

7. Q: Current annual hours for this contract are ~15,500 revenue hours. Based on the scenarios presented in the RFP there looks to be a significant decrease in anticipated service hours for the contract. Does KCATA anticipate service hours will increase throughout the term of the contract to reach current service levels?

A: **It is not anticipated, however, there could be opportunities depending on the direction given by the City Council.**

ATTACHMENTS

- Attachment B – Sample Terms and Conditions
- REVISED Receipt of Addenda Form

END OF ADDENDUM

KANSAS CITY AREA TRANSPORTATION AUTHORITY (KCATA)

Request For Proposals (RFP) #F24-7008-30B

Management and Operation of
Fixed Route Transit Services for Independence, Missouri

RECEIPT OF ADDENDA

Proposers shall return this form when submitting their Proposal Submittal. The form shall be signed and dated by an authorized representative of the firm. Failure to submit this form may deem the Proposer non-responsive. As additional addenda are issued, please notate date received below.

We hereby acknowledge that the Addenda noted below was received with all information that has been incorporated into the Request for Proposals as required.

Addendum #1 dated May 17, 2024 Date Received _____

Addendum #2 dated May 22, 2024 Date Received _____

Addendum #3 dated _____ Date Received _____

Company Name _____ Date _____

Address/City/State/Zip _____

Authorized Signature _____ Printed Name _____

Telephone _____ Fax _____ Email _____

ATTACHMENT B
SAMPLE CONTRACT/TERMS AND CONDITIONS

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made by and between the City of Independence, Missouri (hereinafter called CITY) and _____ (hereinafter called CONTRACTOR).

WITNESSETH:

WHEREAS, CITY requires contracting services for the fixed route transit service known as IndeBus; and

WHEREAS, CONTRACTOR is prepared to provide said professional services and shall give consultation and advice to CITY during the performance of said services;

NOW THEREFORE, CITY and CONTRACTOR, in consideration of the mutual covenants contained in this AGREEMENT, agree as follows:

ARTICLE 1 – EFFECTIVE DATE

The effective date of this AGREEMENT shall be _____.

ARTICLE 2 – SERVICES TO BE PERFORMED BY CONSULTANT

CONTRACTOR shall perform the services set forth in Exhibit A, Scope of Services; Exhibit B, Cost Sheet; and Exhibit C, Contract Terms and Conditions. In the event of a conflict between these documents and the provisions of this AGREEMENT, the AGREEMENT will control.

ARTICLE 3 – PERIOD OF SERVICE

The Scope of Service shall be completed by _____.

ARTICLE 4 – COMPENSATION

For services performed, the CITY shall pay CONTRACTOR an amount not to exceed _____ for fiscal year(s) _____. CITY and CONTRACTOR shall abide by costs outlined in Exhibit B for the _____ years outlined in the AGREEMENT.

Monthly invoices shall be submitted by CONTRACTOR to the CITY by the 15th of the following month for payment of services performed and expenses incurred during the preceding month. Invoices shall indicate the hours expended for the fixed-route service, the hourly rate for such service, the marketing fee and management fee. Additionally, the invoice will reflect, if necessary, a credit or surcharge for gasoline purchased during the month based upon the agreed upon fuel charge of \$_____ per gallon, and a summary of other expenses and charges with supporting documentation.

Payment will be made by the CITY within thirty (30) days of receipt of the monthly invoice. CONTRACTOR agrees that invoices may be paid using a City of Independence issued Debit card.

The CITY is exempt from State of Missouri sales and use taxes on purchases made directly for the CITY. CONTRACTOR shall not include any sales or use taxes on transactions between CONTRACTOR and the CITY.

ARTICLE 5 - PERMITS AND LICENSES

CONTRACTOR shall procure all necessary local construction permits and licenses and a City of Independence occupation license, unless exempt under state law.

CONTRACTOR will abide by all applicable laws, regulations, and ordinances of all federal, state, and local governments in which work under this Agreement is performed and will require the same of all SUBCONTRACTORS.

CONTRACTOR must furnish and maintain certification of authority to conduct business in the State of Missouri.

ARTICLE 6 - OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Except as otherwise provided herein, documents, drawings, and specifications prepared by CONTRACTOR as part of the Services shall become the property of CITY, provided, however, that CONTRACTOR shall have the unrestricted right to their use.

Notwithstanding the foregoing, CITY accepts that any re-use of the documents or intellectual property shall be at CITY's sole risk and liability.

ARTICLE 7 - CHANGES, DELETIONS, OR ADDITIONS TO AGREEMENT

Either party may request changes within the general scope of this AGREEMENT. If a requested change causes an increase or decrease in the cost or time required to perform this AGREEMENT; CITY and CONTRACTOR will agree to an equitable adjustment of the AGREEMENT price, period of service, or both, and will reflect such adjustment in a change order or formal modification.

ARTICLE 8 - STANDARD OF CARE

CONTRACTOR shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily possessed and exercised by a peer professional under similar circumstances.

ARTICLE 9- LIABILITY AND INDEMNIFICATION

Having considered the potential liabilities that may exist during the performance of this AGREEMENT and CONTRACTOR, and in consideration of the mutual covenants contained in the AGREEMENT, the CITY and CONTRACTOR agree to allocate and limit such liabilities in accordance with this Article.

CONTRACTOR agrees, to the fullest extent permitted by law, to indemnify and hold harmless the CITY, its Council Members, City Manager, Department Directors and employees, against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by CONTRACTOR negligent performance of professional services under this AGREEMENT and that of its sub-contractors or anyone for whom CONTRACTOR is legally liable. CONTRACTOR shall indemnify CITY against legal liability for damages arising out of claims by CONTRACTOR employees except to the extent that such claim or demand arises from or is caused by the negligence or willful misconduct of the CITY, its agents or employees, passenger upon passenger violence, routing and CONTRACTOR good faith adherence to transit authority's directives and policies and procedures.

ARTICLE 10 - INSURANCE

CONTRACTOR shall procure and maintain insurance against claims for injuries to persons or damage to property, which may arise from or in connection with the materials, equipment or supplies provided to the CITY. The insurer(s) must be licensed for business in the State of Missouri and maintain an AM Best rating of no less than A: VII; or an insurer approved by the CITY. Each policy requires a minimum cancellation notification of at least thirty (30) days' advance written notice to the CITY.

- (1) **General Liability Insurance**, with bodily injury and property damage limits of \$2,000,000 for each occurrence with a \$10,000,000 general aggregate and \$2,000,000 products and completed operations aggregate.
- (2) **Professional Liability or Errors and Omissions Insurance**, with a limit of \$1,000,000 for each occurrence \$2,000,000 annual aggregate.
- (3) **Automobile Liability Insurance**, with bodily injury limits of \$1,000,000 for each person and \$5,000,000 for each accident, and with property damage limits of \$5,000,000 for each accident.
- (4) **Pollution Liability insurance**, with \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

The above limits are the minimum acceptable and do not infer or place a limit on the liability of CONTRACTOR. The CITY is to be named as an additional insured as the CITY's interest may appear for the General Liability and the Automobile Liability Insurance. CONTRACTOR insurance shall be primary, and any insurance or self-insurance maintained by the CITY shall be excess for the CITY and not contribute with the coverage maintained by CONTRACTOR.

The CITY shall not obtain worker's compensation insurance on behalf of CONTRACTOR or the employees of CONTRACTOR. CONTRACTOR shall comply with the Worker's Compensation law concerning its business and its employees.

ARTICLE 11 - SHIPPING, TITLE AND RISK OF LOSS

All sales and deliveries are F.O.B. CITY.

ARTICLE 12 - DELAY IN PERFORMANCE

Neither the CITY nor CONTRACTOR shall be considered in default of this AGREEMENT for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this AGREEMENT, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restrains; and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either CITY or CONTRACTOR under this AGREEMENT. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this AGREEMENT.

ARTICLE 13 - TERMINATION

CITY may terminate or suspend performance of this AGREEMENT for CITY'S convenience upon written notice to CONTRACTOR. CONTRACTOR shall terminate or suspend performance of the Services on a schedule acceptable to CITY. If termination or suspension is for CITY'S convenience, CITY shall pay CONTRACTOR for all the Services performed until the date of the termination by the CITY or suspension expenses. Upon restart, an equitable adjustment shall be made to CONTRACTOR compensation.

This AGREEMENT may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this AGREEMENT. The nonperforming party shall have fifteen (15) calendar days from the date of the termination notice to cure or to submit a plan for cure acceptable to the other party. In the event that funding for the AGREEMENT is discontinued, CITY shall have the right to terminate this AGREEMENT immediately upon written notice to CONTRACTOR.

ARTICLE 14 - WAIVER

A waiver by either CITY or CONTRACTOR of any breach of this AGREEMENT shall be in writing. Such waiver shall not affect the waiving party's rights with respect to any other or further breach.

ARTICLE 15 - SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this AGREEMENT or the occurrence of any event rendering any portion or provision of this AGREEMENT void shall in no way affect the validity or enforceability of any other portion or provision of this AGREEMENT. Any void provision shall be deemed severed from this AGREEMENT, and the balance of this AGREEMENT shall be construed and enforced as if this AGREEMENT did not contain the particular portion or provision held to be void. The parties further agree to amend this AGREEMENT to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire AGREEMENT from being void should a provision which is of the essence of this AGREEMENT be determined void.

ARTICLE 16 - SUCCESSORS AND ASSIGNS

The CITY and CONTRACTOR each binds itself and its directors, officers, partners, successors, executors, administrators, assigns, and legal representatives to the other party to the AGREEMENT and to the directors, officers, partners, successors, executors, administrators, assigns, and legal representatives of such other party in respect to all provisions of this AGREEMENT.

ARTICLE 17 - ASSIGNMENT

Neither CITY nor CONTRACTOR shall assign any rights or duties under this AGREEMENT without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this AGREEMENT.

ARTICLE 18 - THIRD PARTY RIGHTS

Nothing in this AGREEMENT shall be construed to give any rights or benefits to anyone other than CITY and CONTRACTOR

ARTICLE 19 - INDEPENDENT CONSULTANTS

Each party shall perform its activities and duties hereunder only as an independent Contractor. The parties and their personnel shall not be considered to be employees or agents of the other party. Nothing in this AGREEMENT shall be interpreted as granting either party the right or authority to make commitments of any kind for the other. This AGREEMENT shall not constitute, create, or in any way be interpreted as a joint venture, partnership or formal business organization of any kind.

ARTICLE 20 - AUDIT

CONTRACTOR agrees that the CITY, or a duly authorized representative, shall, until the expiration of three (3) years after final payment under this AGREEMENT have access to and the right to examine and copy any pertinent books, documents, papers and records of CONTRACTOR involving transactions related to this AGREEMENT.

ARTICLE 21 - EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this AGREEMENT, CONTRACTOR agrees as follows: CONTRACTOR will not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, national origin or any other legally protected category. CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated fairly during employment, without regard to their race, age, color, religion, **sex**, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, age, color, religion, sex, or national origin.

CONTRACTOR will send to each labor union or representative of workers with which he or she has a collective bargaining agreement or other contract or understanding a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of CONTRACTOR commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his or her books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of CONTRACTOR noncompliance with the non-discrimination clauses of this AGREEMENT or purchase order with any of the said rules, regulations, or orders, this AGREEMENT may be canceled, terminated, or suspended in whole or in part, and the organization may be declared ineligible for any further government agreement/contracts or purchase order or federally assisted agreements/contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rules, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

CONTRACTOR will include the portion of the sentence immediately preceding Article and the provisions of Articles (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub-contractor or vendor. CONTRACTOR will take such action with respect to any sub-contractor or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions of noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with litigation with a sub-contractor or vendor as a

result of such direction by the Department, CONTRACTOR may request the United States to enter into such litigation to protect the interest of the United States.

ARTICLE 22 - GOVERNING LAW

This AGREEMENT shall be governed by the laws of the State of Missouri. The CITY and the CONTRACTOR agree that the performance of this AGREEMENT will be deemed to have occurred in the State of Missouri and that CONTRACTOR performance under this AGREEMENT will be deemed the transaction of business in Missouri. Jurisdiction and venue for any claim or cause of action arising under this AGREEMENT shall be exclusively in the Sixteenth Judicial Circuit of Missouri and CONTRACTOR submits to personal jurisdiction of and waives any personal jurisdiction or inconvenient forum objection to, that court.

ARTICLE 23 - COMMUNICATIONS

Any communication required by this AGREEMENT shall be made in writing to the authorized representative at the address specified below:

CONTRACTOR: _____

CITY: City Manager
111 E. Maple
Independence, MO 64050

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of CONTRACTOR and CITY.

ARTICLE 24 - SEPARATE AGREEMENTS

CITY and CONTRACTOR each reserve the right to, from time to time, enter into other agreements or contracts for specific projects. If such agreements or contracts are separately approved in writing by the parties, the terms and conditions of those agreements or contracts shall prevail for the specific projects set forth therein.

ARTICLE 25 - ENTIRE AGREEMENT

This AGREEMENT represents the entire AGREEMENT between the CITY and CONTRACTOR. All previous or contemporaneous agreements, representations, promises and conditions relating to the CONTRACTOR services described herein are superseded.

ARTICLE 26 - SURVIVAL OF TERMS

The following provisions shall survive the expiration or termination of this AGREEMENT for any reason:

1. If any payment obligations exist, Article 4-Compensation;
2. Article 5 - Permits and Licenses;
3. Article 9 - Liability and Indemnification;
4. Article 14 - Waiver;
5. Article 15 - Severability;
6. Article 17- Assignment;
7. Article 19 - Independent Consultants;
8. Article 22- Governing Law;
9. Article 25 - Entire AGREEMENT; and
10. Article 26 - Survival of Terms.

IN WITNESS WHEREOF, CITY and CONTRACTOR, by and through their authorized officers, have made and executed this AGREEMENT.

CITY OF INDEPENDENCE, MISSOURI

CONTRACTOR

By _____

By _____

Date _____

Title _____

Date _____

Approved as to form:

**EXHIBIT A
SCOPE OF SERVICES**

**EXHIBIT B
COST/PRICE PROPOSAL**

EXHIBIT C
AGREEMENT TERMS AND CONDITIONS

Introduction

Sections noted in *italics* are Federal Requirements for receipt of federal funding for the fixed route service.

This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements. This Agreement may be amended only by written instrument signed by all parties.

CONTRACTOR shall not assign any interest in this Agreement and shall not transfer any interest in the same, without the prior written consent of CITY. In the event of CITY's consent to assignment of this Agreement, all of the terms, provisions and conditions of the Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives.

Incorporation of Federal Transit Administration Terms - *The provisions in this Agreement include certain standard terms and conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1 For any revision thereto, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the Agreement. CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any CITY requests that would cause CITY to be in violation of the FTA terms and conditions. CONTRACTOR agrees to include this clause in all subcontracts at any time. It is further agreed that the clause shall not be modified, except to identify the subcontractors who will be subject to the provision.*

Notification and Communication - Communications regarding technical issues and activities of the project shall be exchanged with CITY's Community Development Director. Issues regarding the Agreement document, changes, amendments, etc. are the responsibility of CITY's Community Development Department. All notices and communications on all matters regarding this Agreement may be given by delivery or mailing the same postage prepaid, addressed to the following:

Mr. Tom Scannell
Community Development Director City of Independence
111 E. Maple Ave.
Independence, Missouri 64050

CONTRACTOR will notify the CITY immediately when a change in ownership has occurred or is certain to occur.

The addresses to which notices may be made may be changed from time to time by notice mailed as described above. Any notice given by mail shall be deemed given on the day after that on which it is deposited in the United States Mail as provided above.

1. Complete Agreement

This Agreement and all attachments and documents incorporated herein constitute the complete and exclusive statement of the terms of the Agreement between the CITY and CONTRACTOR and it supersedes all prior representations, understanding and communications. The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of other provisions. The CITY's failure to insist in one or more instances upon the performance of any term or terms of this Agreement shall not be construed as a waiver or relinquishment of the CITY's right to such performance by CONTRACTOR The RFP will be considered a part of the Agreement and Agreement requirements.

2. Independent Contractor Status

Under the Agreement, CONTRACTOR shall be an independent Contractor and not an agent of the CITY or the CITY COUNCIL. CONTRACTOR will be fully responsible for all acts and omissions of its employees, subcontractors and their suppliers, and specifically shall be responsible for sufficient supervision and inspection to ensure compliance in every respect with the

Agreement requirements, including all FTA compliance areas such as Drug and Alcohol Testing regulations. There shall be no contractual relationship between the subcontractor or supplier and the CITY by virtue of the Agreement with CONTRACTOR. No provision of this Agreement will be for the benefit of any party other than the CITY and the CONTRACTOR

CONTRACTOR will furnish adequate supervision, labor, materials, supplies, and equipment necessary to perform all the Services contemplated under this Agreement in an orderly, timely, and efficient manner.

3. Key Personnel

CONTRACTOR'S General Manager (GM) is considered to be essential to the work being performed under this Agreement. The CITY shall have final approval of the GM. Prior to diverting this individual to other programs, CONTRACTOR will notify the CITY at least 15 business days in advance and submit justification and proposed substitutions in sufficient detail to permit evaluation of the impact on the PROJECT. CONTRACTOR will make no diversion without the written consent of the CITY Manager or designee. In order to maintain a level of competitiveness in the local job market and to ensure a high quality of service from the beginning of the Agreement, the CITY requires CONTRACTOR to ensure all new hire COL (fixed route) drivers receive a salary no lower than \$14 per hour. The CONTRACTOR must maintain records verifying that all drivers operating Commercial Drivers Licenses (CDLs) vehicles indeed are COL licensed. Employee retention needs should be addressed in regard to current years of experience with existing drivers that may be hired as part of this Agreement.

All of the Services required hereunder shall be performed by CONTRACTOR or under its supervision and all personnel engaged in the Services shall be fully qualified and authorized under state and local law to perform such SERVICES. Any change in the key personnel, as described in CONTRACTOR'S Proposal, shall be subject to the written approval of CITY; such approval shall not be unreasonably withheld. The parties agree that at all times during the entire term of this Agreement that the persons listed in CONTRACTOR'S Proposal shall serve as the primary staff person(s) of CONTRACTOR to undertake, render and oversee all of the Services of this Agreement subject to CITY's right to remove personnel. CITY reserves the right to require CONTRACTOR to remove any personnel and or subcontractors for any cause provided such request for removal shall be documented in writing to CONTRACTOR.

No advantage shall be taken by CONTRACTOR or its subcontractor of the omission of any part or detail which goes to make the equipment complete and operable for use by CITY. In case of any variance, this specification shall take precedence over CONTRACTOR'S or SUBCONTRACTOR'S own specifications. CONTRACTOR shall assume responsibility for all materials and Services used whether the same is manufactured by CONTRACTOR or purchased ready made from a source outside CONTRACTOR'S company.

4. Employee Eligibility Verification (Missouri Requirement)

To comply with Section 285.500 RSMo, et seq., CONTRACTOR is required by sworn affidavit to affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted Services. CONTRACTOR will also affirm that it does not knowingly employ any person in connection with the contracted Services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S.C. §1324a(h)(3). CONTRACTOR is required to obtain the same affirmation from all subcontractors at all tiers with contracts exceeding \$5,000.

A federal work authorization program is any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security (E-Verify) or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and control Act of 1986 (IRCA), P.L.99-603.

5. Employee Protections

- a) *Public Transportation Employee Protective Arrangements (Standard)- To the extent that the FTA determines that transit operations are involved, CONTRACTOR agrees to carry out the transit operations work on this agreement in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this Agreement and to meet guidelines established in 29 CFR Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. Department*

of Labor to the FTA, the employee protective requirements of 49 U.S.C. § 5333(b) (formerly known as Section 13(c) of the Federal Transit Act), and the U.S. Department of Labor certification applicable to the grant from which Federal assistance is provided to support work on this Agreement. CONTRACTOR agrees to carry out that work in compliance with the conditions stated in that U.S. Department of Labor certification which is incorporated in and made part of this Agreement.

- b) Public Transportation Employee Protective Arrangements For (Elderly and Disabled Transportation) - If the U. S. Secretary has determined or determines in the future that the employee protective requirements are necessary or appropriate on work performed under this Agreement, CONTRACTOR agrees to comply with the terms and conditions determined by the U. S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U. S. Department of labor ("DOL" guidelines established in 49 CFR Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to the FTA, applicable to the grant from which Federal assistance is provided to support work on this Agreement. CONTRACTOR agrees to perform transit operations in connection with the underlying Agreement in compliance with the conditions stated in that U.S. DOL letter. CONTRACTOR agrees to comply with U.S. DOL's certification of public transportation employee protective arrangements for the Project, dated as displaying on the underlying Grant Agreement.
- c) Contract Work Hours and Safety Standards Act.
1. Overtime Requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. (40 U.S.C. § 3701-3708 et seq and supplemented by Department of Labor (DOL) Regulations 29 CFR part 5)
 2. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in Paragraph 1 of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in Paragraph 1 of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty hours without payment of the overtime wages required by the clause set forth in Paragraph 1 of this section.
 3. Withholding for Unpaid Wages and Liquidated Damages. The CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in Paragraph 2 of this section.
 4. Safety Standards. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic to work in surroundings or under conditions that are unsanitary, hazardous, or dangerous as prohibited by the safety requirements of section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 3704, and its implementing U.S. Department of Labor regulations, "Safety and Health Regulations for Construction," 29 CFR Part 1926.
 5. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in Paragraphs a through e of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in Paragraphs 1 through 4 of this section.

6. Subcontracting

CONTRACTOR shall not assign, award, or delegate any of its rights, duties or obligations under this Agreement to a subcontractor without prior written approval of the CITY. The CITY shall not unreasonably withhold, condition, or delay such approval. The CITY's approval of any assignment, award or delegation shall not release CONTRACTOR of an obligation under the Agreement. CONTRACTOR shall be fully responsible for the acts and omissions of the subcontractors, and of persons either directly or indirectly employed by CONTRACTOR, as CONTRACTOR is for the acts and omissions of persons directly employed by it.

Nothing contained in this Agreement shall create any contracture relation between any subcontractor and the CITY. Adequate Provision(s) in Subcontract(s) (if applicable).

Any subcontracts related to this Agreement must contain adequate provisions to define a sound and complete agreement. In addition, all subcontracts shall contain contractual provisions or conditions that allow for:

- a) Administrative, contractual, or legal remedies in instances where subcontractors violate or breach contract terms, including sanctions and penalties as may be appropriate.
- b) Termination for cause and for convenience including the manner by which it will be affected and the basis for settlement.
- c) The following provisions if included in this Agreement:
 - 1) Changes in Federal Requirements
 - 2) Civil Rights
 - 3) Clean Air
 - 4) Clean Water
 - 5) Conflict of Interest (Organizational)
 - 6) Debarment and Suspension
 - 7) DBE Requirements
 - 8) Disclaimer of Federal Government Obligations or Liability
 - 9) Dispute Resolution
 - 10) Employee Eligibility Verification
 - 11) Employee Protections
 - 12) Energy Conservation
 - 13) Federal Tax Liability and Recent Felony Convictions
 - 14) Fraud and False or Fraudulent Statements or Related Acts
 - 15) Incorporation of FTA Terms
 - 16) Lobbying Restrictions
 - 17) National Intelligent Transportation Systems Architecture & Standards
 - 18) Notice of Legal Matters
 - 19) Privacy Act Requirements
 - 20) Prohibited Weapons and Materials
 - 21) Prohibition on Certain Telecommunications and Video Surveillance Equipment
 - 22) Record Retention and Access
 - 23) Recovered Materials/Recycled Products
- d) CONTRACTOR will take such action with respect to any subcontractor as CITY or the U.S. Department of Transportation may direct as means of enforcing such provisions.

7. Agreement Duration

The initial term of this Agreement will be for a ten-year period beginning _____, 2024 and _____, 2034.

8. Scope of Work

The CITY hereby engages CONTRACTOR and CONTRACTOR agrees to perform the Services, hereinafter described in connection with the management and operation of transit service within the CITY.

Subject only to the general policies and directions of the CITY with regard to transit management and operations, and to the provisions and requirements of this Agreement, CONTRACTOR will upon receiving CITY'S notice to proceed, do all things necessary to manage, operate, and maintain transit service as described in Exhibit A, 'Scope of Services - CONTRACTOR Duties and Responsibilities', and as described with CONTRACTOR'S Technical Proposal (Exhibit D) and final Cost/Price Proposal in Exhibit B.

9. Payment to CONTRACTOR

CITY shall make payments to CONTRACTOR within 30 days after receipt of acceptable invoices and all required monthly reports. It is desirable that CONTRACTOR provide a system where payment may be made via a CITY Credit Card with no processing fees. Monthly invoices are due to the CITY by the 15th of the month following the conclusion of the month. Digital invoices are required in MS Excel format. The monthly payments shall be based on service performed in the preceding month for the fixed route service.

- a) *CONTRACTOR shall establish procedures to ensure timely payment of amounts due pursuant to the terms of its subcontracts. CONTRACTOR shall pay each DBE and non-DBE subcontractor for satisfactory performance of its Agreement, or any billable portion thereof, in accordance with the timing set forth in any applicable laws or no later than 30 days, whichever is less, from the date of CONTRACTOR's receipt of payment from the CITY for work by that subcontractor.*
- b) *If retainage is withheld from subcontractors, CONTRACTOR is required to return any retainage payment to its DBE and non-DBE subcontractors in accordance with the timing set forth in any applicable laws or no later than 30 days, whichever is less, from the date of completion related to the subcontractors' work. Any delay or postponement of payment from said time frame may occur only for good cause following written approval from CITY.*
- c) CONTRACTOR shall certify on each payment request to the CITY that payment has been or will be made to all subcontractors. Lien waivers may be required for CONTRACTOR and its subcontractors. CONTRACTOR shall notify CITY on or before each payment request of any situation in which scheduled subcontractor payments have not been made.
- d) If a subcontractor alleges that the CONTRACTOR has failed to comply with this provision, CONTRACTOR agrees to support any CITY investigation, and if deemed appropriate by the CITY, to consent to remedial measures to ensure that subcontractors are properly paid as set forth herein.
- e) CONTRACTOR agrees that the CITY may provide appropriate information to interested subcontractors who inquire about the status of CITY payments to CONTRACTOR
- f) Nothing in this provision is intended to create a contractual obligation between the CITY and any subcontractor or to alter or affect traditional concepts of privity of contract between all parties.

10. Right to Offset

The CITY, without waiver or limitation of any rights, may deduct from any amounts due CONTRACTOR in connection with this Agreement, or any other Agreement between CONTRACTOR and CITY, any amounts owed by CONTRACTOR to CITY, including amounts owed by CONTRACTOR pursuant to CONTRACTOR'S obligation to indemnify CITY against third party claims arising out of CONTRACTOR'S performance of work under this Agreement.

11. Payment for Transit Services

Payment for fixed-route transit SERVICES shall be based on the total revenue hour rate as outlined in Attachment C. Revenue Hours to be used as the billing rate for fixed route shall include fixed route revenue service hours and layover hours. Revenue Hours do NOT include deadhead hours.

If there are increases or decreases beyond 10% in the amount of projected revenue hours for fixed route SERVICES provided by CONTRACTOR, then new rates for that service will be negotiated for the following contract year. All service revisions will be based upon the CITY projected fixed route revenue hours at the start of the Agreement. Payment for transit services will occur within 30 days after the 15th of the month following completion of monthly transit services.

12. Fueling Procedures

Fueling of vehicles for the fixed route system is the sole responsibility of CONTRACTOR. Furthermore, CONTRACTOR is responsible for ensuring that fueling of vehicles occurs at times that does not impede the timeliness or inconvenience the riders of the fixed route system. The CITY reserves the right to renegotiate the contract should the CITY be able to provide a fueling facility, in the future, that meets the needs of the proper and efficient operation of the transit service.

13. Inspection of Services

- a) *CONTRACTOR shall provide and maintain an inspection system acceptable to the CITY covering the Services provided in the performance of the Agreement. "Services" includes Services performed, quality of the work, and materials furnished or used in the performance of Services. Complete records of all inspection work performed by CONTRACTOR shall be maintained and made available to the CITY during Agreement performance and for as long afterwards and the Agreement requires.*
- b) *The CITY has the right to inspect and test all Services called for by this Agreement to the extent practicable at all times and places during the term of the Contract. The CITY shall perform inspection and tests in a manner that will not unduly delay the work.*
- c) *If any of the Services performed do not conform to Agreement requirements, the CITY may require CONTRACTOR to perform the Services again in conformity with Agreement requirements for no additional fee. When the defects in performance cannot be corrected by re-performance, the CITY may:*
 - 1) *Require CONTRACTOR to take necessary action to ensure that future performance conforms to Agreement requirements; or*
 - 2) *Reduce the Agreement Sum accordingly.*
- d) *If CONTRACTOR fails to promptly perform the Services again or to take the necessary action to ensure future performance in conformity with Agreement requirements, the CITY may:*
 - 1) *By Agreement or otherwise, perform the Services and charge to CONTRACTOR any cost incurred by the CITY that is directly related to the performance of the work; or,*
 - 2) *Terminate the Agreement for default*

14. Operating Revenues

Operating revenues will be collected by CONTRACTOR. Riders will be able to pay their fare by using cash or local/regional passes on the fixed route system, as well as by using pre-purchased multi-day fares. CONTRACTOR'S responsibilities will be limited to collecting cash on fixed route service and ensuring proper swiping of 31-day passes or other multi-ride passes. Fixed route vehicles will be equipped with GFI Odyssey fareboxes provided by CONTRACTOR. All revenue collected from the fixed route service by CONTRACTOR will be deposited into the CITY account and accounted for in the monthly reports submitted to the CITY. Deposits will occur no less than once per week. Should there be a situation where the GFI report and cash deposit do not reconcile equally, CONTRACTOR is required to provide CITY with an explanation and the CITY will be

credited with the correct amount based on the GFI report. The CITY expects the GFI and cash to reconcile within 1%. The GFI summary revenue report will be the basis for determining the amount of cash collected each month.

15. Termination

- a) Termination for Convenience. The CITY may terminate this Agreement, in whole or in part, at any time for any reason upon one-hundred twenty (120) days written notice to CONTRACTOR. Any notice to terminate the Agreement will be given by certified mail, return receipt requested. The effective date of termination shall be one-hundred twenty (120) days from the date of receipt as noted on the return receipt.
- b) Termination for Cause. Either party may terminate this Agreement should either party default in the performance of any of the terms, covenants, obligations, or conditions of this Agreement and the non-defaulting party may proceed by following any of the options listed below in the Default section.
- c) Funding Contingency. If this Agreement is subject to financial assistance provided by the U.S. Department of Transportation, CONTRACTOR agrees that withdrawal or termination of such financial assistance by the U.S. DOT may require CITY to terminate the Agreement.

16. Default

Default shall mean a failure to comply with any of the provisions of this Agreement or any applicable CITY, State, or Federal laws, which do not fall within the force majeure provisions of this Agreement.

- a) In the event of default under this Agreement, the non-defaulting party shall send written notice of specific instances of failure to fulfill any of its obligations under the Agreement and, within ten (10) days of the date of notice is sent, such failure has not been cured or otherwise remedied to the satisfaction of the non-- defaulting party during this ten-day period, then the non-defaulting party may, at its election, terminate the Agreement in whole or in part, for default. Non defaulting party may give written notice of termination; or
- b) CONTRACTOR will be in default should the CONTRACTOR become insolvent or unable to pay its debts as they mature or make an assignment for the benefit of creditors or should a bankruptcy petition under the Bankruptcy Code of 1978, as amended be brought by or against CONTRACTOR; or
- c) CONTRACTOR will be in default should a judgment or order for payment of money no longer subject to appeal or which judgement or order, in the opinion of the CITY, would be fruitless to appeal, be entered against CONTRACTOR by any court of other tribunal which exceeds \$100,000 in amount and (a) such judgment or order shall continue undischarged or unpaid for a period of 30 days, and (b) an insurer acceptable to the CITY has not acknowledged that such judgment or order is fully covered by a relevant policy of insurance, and (c) or the CITY is otherwise reasonably satisfied that CONTRACTOR would be able to satisfy the judgment without affecting its ability to provide those Services.
- d) *If CONTRACTOR does not deliver supplies in accordance with the contract delivery schedule, or if the Agreement is for Services, and CONTRACTOR fails to perform in the manner called for in the Agreement, or if CONTRACTOR fails to comply with any other provisions of the Agreement, CITY may terminate this Agreement for default. Termination shall be affected by serving a notice of termination on the Agreement setting forth the manner in which CONTRACTOR is in default. 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 Agreement.*
- e) *If the termination is for failure of CONTRACTOR to fulfill the Agreement obligations, CITY may complete the work by contract or otherwise and CONTRACTOR shall be liable for any additional cost incurred by CITY. If, after termination for failure to fulfill the Agreement obligations, it is determined that CONTRACTOR was not in default, CITY, after setting up a new delivery or performance schedule, may allow CONTRACTOR to continue work, or treat the termination as a termination for convenience.*
- f) *CITY in its sole discretion may, in the case of a termination for breach or default, allow CONTRACTOR an appropriately short period of time in which to cure the defect. In such case, the written notice of termination will state the time period*

in which cure is permitted and other appropriate conditions. If CONTRACTOR fails to remedy to CITY's satisfaction the breach or default of any of the terms, covenants, or conditions of this Agreement within the time period permitted, CITY shall have the right to terminate the Agreement without any further obligation to CONTRACTOR. Any such termination for default shall not in any way operate to preclude CITY from also pursuing all available remedies against CONTRACTOR and its sureties for said breach or default.

- g) Waiver of Remedies for any Breach. In the event that CITY elects to waive its remedies for any breach by CONTRACTOR of any covenant, term or condition of this Agreement, such waiver by CITY shall not limit CITY's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.*
- h) Upon termination of the Agreement for any reason, and if CONTRACTOR has any property in its possession belonging to CITY, CONTRACTOR will protect and preserve the property, account for the same, and dispose of it in the manner CITY directs. Upon termination of the Agreement for any reason, CONTRACTOR shall (1) immediately discontinue all Services affected (unless the notice directs otherwise), and (2) deliver to CITY's Project Manager all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Agreement, whether completed or in process.*

17. Liquidated Agreement Damages

Upon termination for the convenience of the CITY, the CITY shall pay CONTRACTOR the following amounts:

- a) Agreement prices for supplies or Services accepted under the Agreement;
- b) Costs incurred in preparing to perform and performing the terminated portion of the work plus the stated profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages), less amount paid or to be paid for accepted supplies or Services; provided, however, that if it appears that CONTRACTOR would have sustained a loss if the entire Agreement would have been completed, no profit shall allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
- c) Costs of settling and paying claims arising out of the termination of subcontracts (these costs must not include costs paid in accordance with subparagraph (2) of this paragraph); and,
- d) The reasonable settlement costs of CONTRACTOR including accounting, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Agreement and for the termination and settlement of subcontracts there under, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Agreement.

The total sum to be paid to CONTRACTOR for termination under this Section, 'Liquidated Agreement Damages' shall not exceed the lesser of actual damages to CONTRACTOR or the maximum annual amounts identified in the Cost proposal requested in the RFP payable by the CITY in the relevant calendar year in which the termination under this Section, 'Liquidated Agreement Damages' occurs. Any dispute as to the amount of such damage shall not affect or delay the effectiveness of termination.

18. Force Majeure

Any delay or failure of performance by either party shall not constitute a default or give rise to any claims for damages if and to the extent the failure is primarily caused by any act, event or condition reasonably beyond the party's control and adversely affecting its ability to perform its obligations including by not limited to:

- a) Acts of God, lightning, earthquake, fire, epidemic, landslide, drought, hurricane, tornado, storm, explosion, failure of utilities, flood, nuclear radiation, or any other act by third parties that interferes with operations;
- b) Condemnation or other taking by any government body, change in any applicable law, rule, regulation, ordinance, or permit condition not in effect as of the date hereof;

- c) Any order, judgment, action or determination of any federal or state court, administrative agency or government body;
- d) In the event CONTRACTOR enters into proceedings relating to bankruptcy, whether voluntary or involuntary, CONTRACTOR agrees to furnish, by certified mail, written notification of the bankruptcy to the CITY official identified in the "Notification and Communication" section. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of CITY Contract numbers against which final payment has not been made. This obligation remains in effect until final payment under this Agreement.
- e) CITY may at any time, by a written order, and without notice to the sureties, make changes within the general scope of this Agreement. No such changes shall be made by CONTRACTOR without prior written approval by CITY. If any such change causes an increase or decrease in the Agreement sum, or the time required for performance of this Agreement, whether changed or not changed by such order, an equitable adjustment shall be made by written modification. Any claim by CONTRACTOR for adjustment under this clause must be asserted within 30 days from the date of receipt by CONTRACTOR of the notification of change. Nothing in this clause shall excuse CONTRACTOR from proceeding with the Agreement as changed.

19. Hold Harmless and Indemnification Agreement

- a) CONTRACTOR'S Liability. CONTRACTOR shall be liable for all damages to persons (including employees of CONTRACTOR) or property of any type that may occur as a result of any act or omission by CONTRACTOR, any subcontractors, or sub-subcontractor, their respective agents or anyone directly employed by any of them or anyone for whose acts any of them may be liable or arising out of any product provided or Services rendered under this Agreement.
- b) CONTRACTOR, its agents and any subcontractor hereby waive and relinquish any right of subrogation or claim against CITY, its Council members, City Manager, Department Directors and employees arising out of the use of CITY's premises (including any equipment) by any party in performance of this Agreement.
- c) To the fullest extent permitted by Law, CONTRACTOR agrees to and shall indemnify, defend and hold harmless CITY, its Council Members, City Manager, Department Directors and employees from and against any and all claims, losses, damages, causes of action, suits, liens and liability of every kind, (including all expenses of litigation, expert witness fees, court costs and attorney's fees whether or not suit be commenced) by or to any person or entity (collectively the "Liabilities") arising out of, caused by, or resulting from the acts or omissions of CONTRACTOR, subcontractors, or sub-subcontractors, their respective agents or anyone directly or indirectly employed by any of them in performing work under this Agreement, and provided such claim is attributable to bodily injury, sickness, disease or death of any person, or injury to or destruction of property, including consequential damages, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder, so long as such Liabilities are not caused by the sole negligence or willful misconduct of a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph.
- d) In claims against any person or entity indemnified under this section, by an employee or CONTRACTOR, subcontractor or sub-subcontractor or anyone directly or indirectly employed by any of them, the indemnification obligation shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR, subcontractor, or sub-subcontractor under worker's compensation acts, disability benefit acts or other employee benefit acts. If any action at Law or suit in equity is instituted by any third party against CONTRACTOR arising out of or resulting from the acts of CONTRACTOR in performing work under this Agreement, CONTRACTOR shall promptly notify CITY of such suit.
- e) If any action at law or suit in equity is instituted by any third party against CITY or its Council Members, City Manager, Department Directors, or employees arising out of or resulting from the acts of CONTRACTOR, a subcontractor or sub-subcontractor, their respective agents or anyone directly or indirectly employed by any of them in providing products, equipment or materials, or in performing work or Services under this Agreement, and if CONTRACTOR has failed to

provide insurance coverage to CITY against such action as required herein or otherwise refuses to defend such action, CITY shall have the right to conduct and control, through counsel of its choosing, the defense of any third party claim, action or suit, and may compromise or settle the same, provided that CITY shall give CONTRACTOR advance notice of any proposed compromise or settlement.

- f) *CITY shall permit CONTRACTOR to participate in the defense of any such action or suit through counsel chosen by CONTRACTOR, provided that the fees and expenses of such counsel shall be borne by CONTRACTOR. If CITY permits CONTRACTOR to undertake, conduct and control the conduct and settlement of such action or suit, CONTRACTOR shall not consent to any settlement that does not include as an unconditional term thereof the giving of a complete release from liability with respect to such action or suit to CITY. CONTRACTOR shall promptly reimburse CITY for the full amount of any damages, including fees and expenses of counsel for CITY, incurred in connection with any such action.*

20. Debarment and Suspension Certification

- a) *CONTRACTOR, its principals and any affiliates, shall certify that it is not included in the "U.S. General Services Administration's List of Parties Excluded from Federal Procurement or Non-procurement Programs," as defined at 49 CFR Part 29, Subpart C.*
- b) *CONTRACTOR agrees to refrain from awarding any subcontract of any amount (at any tier) to a debarred or suspended subcontractor, and to obtain a similar certification from any subcontractor (at any tier) seeking a contract exceeding \$25,000.*
- c) *CONTRACTOR agrees to provide CITY a copy of each conditioned debarment or suspension certification provided by a prospective subcontractor at any tier, and to refrain from awarding a subcontract with any party that has submitted a conditioned debarment or suspension certification until FTA approval is obtained.*

21. Laws Governing and Venue of Actions

The Agreement shall be governed by, and construed in accordance with, the laws of the State of Missouri. The courts of Missouri, allocated in Jackson County, Missouri, and, as applicable, the United States District Court for the Western District of Missouri shall have exclusive jurisdiction to hear any claim between CONTRACTOR and the CITY in connection with the Agreement or the operation of the transit system, and CONTRACTOR submits to the jurisdiction and venue of such courts.

This Agreement shall be deemed to have been made in, and be construed in accordance with, the laws of the State of Missouri. Any action of law, suit in equity, or other judicial proceeding to enforce or construe this Contract, respecting its alleged breach, shall be instituted only in the Circuit Court of Jackson County, Missouri.

22. Emergencies

In the event of a declared civil disorder or natural catastrophe, CONTRACTOR shall direct the employees to operate as ordered by federal, state, County and /or the City civil authorities. Compensation shall be based on actual hours or revenue service performed.

23. Meetings

Upon request of the CITY, CONTRACTOR will, at its own expense, attend citizens' meetings, advisory committee meetings and meetings with the CITY COUNCIL and City staff to provide information concerning the transit system.

24. Removal of Contract Work

Promptly upon the written demand of the CITY, CONTRACTOR shall remove from activities associated with the Agreement any CONTRACTOR employee or subcontractor staff that CITY considers unsuitable for such work based on, for example and not by way of limitation, poor driving safety records or unacceptable behavior that jeopardizes the safety and well-being of passengers and citizens/visitors of the CITY.

25. Approval of Procedures

The plans submitted by CONTRACTOR in response to the CITY'S Request for Proposals are hereby incorporated into this Agreement by reference except for the original Cost/Price Proposal. The Cost/Price Proposal submitted _____ is the accepted and final Cost/Price proposal for this Agreement. These plans, together with the requirements in the Request for Proposals, shall constitute CONTRACTOR'S operating procedures, policies and practices, and upon reasonable written request from the CITY, CONTRACTOR shall amend any such procedures, policies and practices that not in accordance therewith. CONTRACTOR will request the CITY's prior written approval for any change to these plans. Such procedures, policies and practices shall be deemed to include all operators' and other CONTRACTOR employees' training and orientation and CONTRACTOR'S employee performance codes and disciplinary procedures, dress codes, run cuts, timetables and other performance-related procedures or policies.

26. Compliance with Law

CONTRACTOR shall comply with all applicable federal, state and local laws and regulations relating directly or indirectly to providing transit Services. All vehicles shall be maintained and operated at all times in compliance with all applicable rules, regulations and codes governing the operation of vehicles of public conveyance of the CITY and its municipalities, and those of the State of Missouri and the United States.

- a) *Clean Air Requirements for Transit Operations - The U.S. EPA imposes requirements implementing the Clean Air Act, as amended, which may apply to public transportation operators, particularly operators of large public transportation bus fleets. Accordingly, the CITY agrees to comply with the following U.S. EPA regulations to the extent they apply to the Project: "Control of Air Pollution from Mobile Sources," 40 CFR Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 CFR Part 86; and "Fuel Economy of Motor Vehicles," 40 CFR Part 600. CONTRACTOR agrees to report, and to require each subcontractor at any tier receiving more than \$100,000 from this Agreement, to report any violation of these requirements resulting from any project implementation activity to CITY. CITY will, in turn, report each violation as required to assure notification to FTA and the appropriate U.S. EPA Regional Office.*
- b) *CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. CONTRACTOR agrees to report, and require each subcontractor at every tier receiving more than \$100,000 from this Contract to report, any violation of these requirements resulting from any project implementation activity to CITY. CONTRACTOR understands that CITY will in turn, report each violation as required to assure notification to FTA and the appropriate U.S. EPA Regional Office.*
- c) *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. CONTRACTOR agrees to include the requirements of this clause in all subcontracts under this Agreement.*
- d) *Recovered Materials/Recycled Products. To the extent practicable and economically feasible, CONTRACTOR agrees to provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient. Examples of such products may include, but are not limited to, products described in U.S. Environmental Protection Agency guidelines at 40 CFR Part 247, which implements Section 6002 of the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6962), and Executive Order 12873. CONTRACTOR also agrees to include these requirements in each subcontract at every tier receiving more than \$10,000.*
- e) *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 CFR Part 31, apply to its actions pertaining to the Project. Upon execution of the Contract, CONTRACTOR certifies and affirms the truthfulness and accuracy of any statement it has made, it makes, or may make pertaining to the project covered under this Agreement. In addition to other penalties that may be applicable, CONTRACTOR further acknowledges that if it makes 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 CONTRACTOR to the extent the Federal Government deems appropriate.*

- f) *CONTRACTOR a/so acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with this Agreement, the Government reserves the right to impose on CONTRACTOR the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate.*
- g) *CONTRACTOR agrees to include these clauses in each subcontract, and it is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.*

27. Bonding Requirements

CONTRACTOR is required to provide a performance bond equal to 10% of the value of the contract. The bond must be issued by a surety legally authorized to do business in Missouri. The bond must be signed by Principal and Attorney-in-fact with the Power of Attorney attached. The bond is required to be maintained for the full term of the Agreement and failure to maintain it in place constitutes a default.

- a) CONTRACTOR shall furnish, at its own expense, a performance bond payable to CITY in the amount of ten percent (10%) of the full expected cost of the annual SERVICES to be performed. A licensed surety company shall secure the bonds. The bond shall be renewed on an annual basis and shall remain valid and in effect for the full term of this CONTRACT.
- b) A cash deposit, certified check, irrevocable letter of credit (LOC), or another negotiable instrument may be accepted by CITY in lieu of a bond. The form of any substitution in lieu of a bond must be approved by CITY. The cash deposit, certified check, irrevocable LOC, or other negotiable instrument accepted in lieu of a bond must remain valid and in effect for the full term of this Contract.
- c) If used, the LOC shall be irrevocable, unconditional, and issued by an acceptable federally insured financial institution. The LOC must cover the entire period of performance or may be submitted with an initial expiration date which is a minimum period of one year from the date of issuance, with a provision which states that the LOC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of performance is completed. The period of performance shall end the later of 90 days following final payment, or until completion of any warranty period. CITY may require additional performance bond protection when the Contract Sum is increased.
- d) CONTRACTOR'S failure to maintain a valid payment/performance bond or a valid substitution for the full term of this Agreement will be a breach of this Agreement.

28. Breach of Contract

- a) *If CONTRACTOR shall fail, refuse or neglect to comply with the terms of this Agreement, such failure shall be deemed a total breach of Contract and CONTRACTOR shall be subject to legal recourse by CITY, plus costs resulting from failure to comply including the CITY's reasonable attorney fees, whether or not suit is commenced.*
- b) *The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law or equity. No action or failure to act by CITY shall constitute a waiver of any right or duty afforded under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.*

29. Licenses, Permits and Filing Fees

CONTRACTOR shall, without additional expense to CITY, be responsible for obtaining any necessary licenses and permits, and for complying with all Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work in this Contract, including those laws, codes, and regulations of the City of Independence, Missouri.

30. Minimum Limits of Insurance

CONTRACTOR shall maintain at all times during the term of this Agreement, at its sole expense:

Note: The minimum insurance ratings for any company insuring the CONTRACTOR shall be Best's A-. Should the ratings of any insurance carrier fall below the minimum rating, the CITY may, at its option, require CONTRACTOR to purchase insurance from a company whose rating meets the minimum standard. CONTRACTOR'S insurance carrier(s) shall be licensed and admitted to do business in the state of Missouri. If CONTRACTOR is unable to find a licensed and admitted carrier for any line of insurance coverage, CONTRACTOR shall notify CITY in writing.

All insurance policies (except Worker's Compensation and Professional Liability) shall name the CITY as an additional insured party. Evidence of such insurance shall be furnished to the CITY, together with evidence that each policy provides that the CITY shall receive not less than thirty (30) days prior written notice of any cancellation, non-renewal or reduction of coverage of any of the policies. Upon notice of such cancellation, non-renewal or reduction, CONTRACTOR shall procure substitute insurance so as to assure the CITY that the minimum limits of coverage are maintained continuously throughout the periods specified herein.

- a) The insurance required in this Contract shall be written for not less than any limits of liability required by law or by those set forth below, whichever is greater, and shall include blanket contractual liability insurance as applicable to CONTRACTOR'S obligations under the Liability and Indemnification section below. All policies, except Professional Liability policies, shall name the City of Independence, elected or appointed officials, members of Boards & Commissions, employees and authorized volunteers acting within the scope of duties as additional insureds.
- b) Explosion, collapse and underground coverage shall not be excluded. The insurance should be written with companies acceptable to CITY and the companies should have a minimum A.M. Best's insurance rating of A-(VIII). An exception to the minimum A.M. Best rating is granted for Workers Compensation exposures insured through the Builders' Association of Self Insurance Fund (BASIF).
- c) CONTRACTOR shall be required to furnish to CITY copies of required insurance policies and relevant additional insured endorsements of insurance. If copies of the required insurance policies or endorsements are not available, CONTRACTOR shall be required to furnish certificates of insurance prior to execution of the Agreement, and thereafter furnish copies of the policies and additional insured endorsements, from time to time, whenever reasonably requested by CITY. The certificates (with the exception of Professional Liability and Workers Compensation coverage) shall specifically state that:
 - 1) Contractual liability coverage is applicable; and,
 - 2) The City of Independence is named as additional insureds (Named Insureds) on the policies covered by the certificate; using this specific wording: CITY is named as additional insureds as respects general liability and where required by written contract. Any coverage afforded the certificate holder as an additional insured shall apply as primary and not excess or contributing to any insurance or self-insurance in the name of the certificate holder and shall include a waiver of subrogation.
 - 3) Further, from time to time and whenever reasonably requested by CITY, CONTRACTOR shall represent and warrant to CITY (1) the extent to which the insurance limits identified below have been, or may be, eroded due to paid or pending claims under the policies; and (2) the identity of other entities or individuals covered as an additional insured on the policies. Further, CONTRACTOR shall confirm that the insurers' obligation to pay defense costs under the policies is in addition to, and not part of the liability limits stated in the policies.
- d) All such insurance, with the exception of Professional Liability coverage, shall contain endorsements that the policies may not be canceled or amended or allowed to lapse by the insurers with respect to CITY, its elected or appointed officials, members of Boards & Commissions, employees and authorized volunteers acting within the scope of duties, by the insurance company without thirty (30) days prior notice by certified mail to CITY in addition to the Named Insured (s) and that denial of coverage or voiding of the policy for failure of CONTRACTOR to comply with its terms shall not affect the interest of CITY, its commissioners, officers and employees thereunder.

e) The requirements for insurance coverage are separate and independent of any other provision hereunder.

1) Worker's Compensation:

State: Missouri and/or Kansas - Statutory
Employer's Liability: Bodily Injury by Accident -- \$1,000,000 Each Accident
Bodily Injury by Disease -- \$500,000 Each Employee
Bodily Injury by Disease - \$500,000 Policy Limit

CONTRACTOR and any subcontractor shall maintain adequate workers' compensation insurance as required by law to cover all employees during performance of services, or during delivery, installation, assembly or related services in conjunction with this Agreement.

2) Commercial General Liability:

Bodily Injury and Property Damage to include Products and Completed Operations:
\$2,000,000 Each Occurrence
\$10,000,000 General Aggregate (per project)
\$1,000,000 Personal and Advertising Injury
\$50,000 Fire Damage
\$5,000 Medical Expenses
2 Years (Completed Operations)

CONTRACTOR shall procure and maintain at all times during the term of the CITY purchase order or the Agreement commercial general liability insurance for liability arising out of the operations of CONTRACTOR and any subcontractors. The policy(ies) shall include coverage for CONTRACTOR'S and SUBCONTRACTORS' products and completed operations for at least two (2) years following project completion, or as otherwise noted. The policy(ies) shall name as an additional insured, in connection with CONTRACTOR'S activities, the CITY, its commissioners, officers, and employees. Using ISO Form CG 20 10 11 85 (or OCG20 26 0704 in the case of a Blanket Endorsement), or such other additional insured forms acceptable to CITY. The Insurer(s) shall agree that its policy(ies) is primary insurance and that it shall be liable for the full amount of any loss up to and including the total limit of liability without right of contribution from any other insurance or self-insurance CITY may have.

3) Auto Liability:

Bodily Injury and Property Damage:
\$5,000,000 per occurrence with a \$10,000,000 Combined Single Limit

The policy(ies) shall include automobile liability coverage for all vehicles, licensed or unlicensed, on or off the CITY premises, whether the vehicles are owned, hired or non-owned, covering use by or on behalf of the Contractor and any subcontractors during the performance of work under this Contract.

4) Professional Liability Insurance Professional Liability Limit:

\$1,000,000 Each Occurrence
\$2,000,000 Annual Aggregate

Where applicable, the Contractor shall obtain professional liability insurance covering any damages caused by an error, omission or any negligent acts of the Contractor or its employees with regard to performance under this Agreement.

5) Pollution Liability Pollution Liability Limit:

\$1,000,000 Each Occurrence
\$2,000,000 Annual Aggregate

Where applicable, the CONTRACTOR shall obtain and keep in effect during the term of the Contract, Pollution Liability Insurance covering their liability for bodily injury, property damage and environment damage,

including clean up and remediation costs arising out of the work or services to be performed under this contract. Coverage shall apply to the above for premises and operations, products and completed operations and automobile liability.

Automobile liability coverage may be satisfied by utilizing ISO Endorsement CA 9948 or equivalent.

- 6) Umbrella or Excess Liability Umbrella or Excess Liability Limit:
 \$2,000,000 Each Occurrence
 \$10,000,000 Aggregate (per project)

Where applicable, CONTRACTOR shall obtain and keep in effect during the term of the contract, Umbrella or Excess Liability Insurance covering their liability over the limit for primary general liability, automobile liability, and employer's liability.

31. Verification of Coverage

CONTRACTOR shall furnish the CITY'S Purchasing Manager and Community Development Director with certificates of insurance with original endorsements effecting coverage required by this clause on an annual basis or as needed to ensure the CITY has the most up-to-date copy of the certificate of insurance on all vehicles. CONTRACTOR is to commence no activity with regard to performance of the Agreement until the required insurance has been obtained. The CITY reserves the right to require complete, certified copies of all required insurance policies, at any time and shall receive not less than thirty (30) days prior written notice of any cancellation, non-renewal or reduction of coverage of any of the policies. Upon notice of such cancellation, non-renewal or reduction CONTRACTOR must procure substitute insurance so as to assure the CITY that the minimum limits of coverage are maintained continuously throughout the periods specified herein.

32. Claims Information and Loss Runs

CONTRACTOR shall make available to the CITY, through its records or the records of its insurer, information regarding a specific claim. Any loss run information available from CONTRACTOR or its insurer will be made available to the CITY upon request.

33. Labor Disputes

If CONTRACTOR has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Agreement, CONTRACTOR shall give notice immediately, including all relevant information, to the CITY Community Development Director. The CITY is prohibited by law from engaging in collective bargaining with any labor union representing transit employees and it is the sole responsibility of CONTRACTOR to manage all collective bargaining agreements.

- a) *Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by Agreement shall be decided by CITY's Community Development Director, who shall reduce the decision to writing and mail or otherwise furnish a copy to CONTRACTOR. The decision of the Community Development Director shall be final and conclusive unless within ten (10) days from the date of receipt of such copy CONTRACTOR mails or otherwise furnishes a written appeal addressed to the City Manager, with a copy to the Assistant City Manager and the City's Purchasing Manager. The determination of such appeal by the City Manager shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent or capricious, arbitrary, or not supported by substantial evidence. In connection with any appeal proceedings under this clause CONTRACTOR shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, and unless otherwise directed in writing by CITY, CONTRACTOR shall proceed diligently with performance in accordance with the City Manager's decision.*
- b) *The duties and obligations imposed by the Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the CITY or CONTRACTOR shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any*

breach thereunder, except as may be specifically agreed in writing.

34. Non-appropriation Clause

CONTRACTOR acknowledges that the City of Independence is a governmental entity, and the Agreement validity is based upon the availability of public funding under the authority of its statutory mandate.

In the event that public funds are unavailable and not appropriated for the performance of the CITY'S obligations under this Agreement, then this Agreement shall automatically expire thirty (30) days after written notice to CONTRACTOR of the unavailability and non-appropriation of public funds. It is expressly agreed that the CITY shall not activate this non-appropriation provision solely for its convenience or to circumvent the requirements of this Agreement.

35. Public Records

CONTRACTOR acknowledges that records in the custody of the CITY are public records and subject to public records requests. CITY may provide copies of such records, including copyrighted records, in response to public record requests, except that, upon request of and indemnify by CONTRACTOR, the CITY will not disclose records that meet all of the requirements of a trade secret as set forth in RSMo 610.021(14) Missouri Revised State Statutes, that are specifically designated as a "trade secret" or "confidential" at the time of the initial disclosure by CONTRACTOR, and that are otherwise entitled to protection under RSMo 610.021(14) Missouri Revised State Statutes.

36. Examination and Retention of Records

CONTRACTOR shall maintain all books, records, documents, accounting ledgers, databases and similar materials relating to work performed for CITY under this Agreement for at least three (3) years following the date of final payment to CONTRACTOR by CITY. All records stored on a computer database must be in a format compatible with the CITY'S. Any duly authorized representative(s) to CITY shall have access to such records for the purpose of inspection, audit, and copying at reasonable times, during CONTRACTOR'S usual and customary business hours. CONTRACTOR will provide proper facilities to CITY representative(s) for such access and inspection.

CONTRACTOR must adhere to the CITY'S records retention policy regarding all public transportation documents (see attachment N). Furthermore, any duly authorized representative(s) of the CITY shall be permitted to observe and inspect any or all of CONTRACTOR'S facilities and activities during CONTRACTOR'S usual and customary business hours for the purposes of evaluating and judging the nature and extent of CONTRACTOR'S compliance with the provision of this Agreement. In such instances, CITY representative(s) shall not interfere with or disrupt such activities.

The following will be incorporated in CONTRACTOR'S record keeping/reporting plan:

- a) The program should utilize automated data processing to facilitate the efficient compilation and comprehensive analysis of the required data and reports.
- b) Passenger trip data will be collected each day and separated by route. Twice each year (Fall and Spring) passenger trip data by transit stop on all routes will be collected and a report will be prepared and presented to the CITY.
- c) Passenger trip data will be collected each day and separated by route. Twice each year (Fall and Spring) passenger trip data by transit stop on all routes will be collected and a report will be prepared and presented to the CITY.
- d) CONTRACTOR will allow the CITY access and inspection of records and reports. Further, any duly authorized representative of the CITY shall be permitted to observe and inspect any or all of the Contractor's subcontracted facilities and activities for the purposes of evaluating and judging the nature and extent of CONTRACTOR'S compliance with the provisions of this Agreement. In such instances, the CITY'S representative(s) will not interfere with or disrupt such activities.
- e) CONTRACTOR must compile general public transit information regarding the operations, including vehicle revenue hours, vehicle mileage, passenger trips, passenger mile calculations, preventable and non-preventable accidents and

service failures for the preparation of the National Transit Database (NTD) report. This report. This information is critical for the CITY's request and receipt of federal funds. CONTRACTOR must ensure that all deadlines established by FTA for receipt of report and any follow-up responses are adhered to.

CONTRACTOR shall maintain, and the CITY and its representatives shall have the right to examine, all books, records, documents, accounting procedures and practices and other evidence sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of the Agreement. The materials described above as well as any relevant database and computer tapes or disks containing such information shall be made available at the office of CONTRACTOR at all reasonable times for inspection, audit, and reproduction during the term of the Agreement, and for three years from the final date of settlement of payment under the Agreement.

In the event of litigation or settlement of claims arising from the performance of this Agreement, CONTRACTOR agrees to maintain same until such litigation, appeals, claims or exceptions related thereto have been disposed of.

CONTRACTOR shall permit CITY, the Secretary of Transportation, the Comptroller General of the United States, and, as applicable, the Kansas City Area Transportation Authority, to inspect all work, materials, construction sites, payrolls, and other data and records, and to audit the books, records, and accounts of CONTRACTOR relating to its performance under this Agreement.

CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed, and to include this clause in all subcontracts.

CONTRACTOR agrees that, during the course of this Agreement and any extensions thereof and for three years thereafter, it, and all sub-contractors and third-party entities will maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to this Agreement. In the event of litigation or settlement of claims arising from the performance of this Agreement, CONTRACTOR agrees to maintain same until such litigation, appeals, claims or exceptions related thereto have been disposed of.

37. Contractor-Supplied Vehicles

The CITY or a newly awarded private transportation provider shall have the option, upon expiration or termination of the Agreement, to purchase all or any part of capital equipment used by CONTRACTOR in the performance of the work specified in the Agreement at a price equal to that portion of the original cost of the equipment which has not been amortized as of the date the Agreement expires or is terminated. Amortization shall be deemed to be made in accordance with generally accepted accounting principles. Federal funds will be used to support the Agreement, as such CONTRACTOR will adhere to the Federal requirement of 'Buy America' in the purchase and provision of transit vehicles.

Any transit vehicles purchased for use under this Agreement must be Buy America compliant. Buy America requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR Part 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 70 percent (70%) domestic content.

38. Performance Standards

CONTRACTOR will perform all fixed-route transit SERVICES required by the Agreement according to the performance standards set forth below. CONTRACTOR'S plans and procedures, submitted with their Proposal, shall incorporate actions necessary to provide service according to these standards. Standards will be measured periodically as determined by the CITY.

The CITY has developed these standards with which CONTRACTOR is expected to comply to ensure that the CITY's transit SERVICES, employee performance and vehicles meet CITY standards.

The CITY has established specific performance standards related to the following:

- a) Accidents
- b) On-time performance

- c) Rider complaints
- d) Vehicle cleanliness

39. Accidents

The CITY is highly desirous of providing a safe system for its citizens. Safety will be measured by the number of accidents or each 1,000 miles of operations. The goal that has been established for the accident rate is .05 accidents per 1,000 revenue miles. This indicator will use the definition found in the National Transit Database standards.

To assist the CITY staff, CONTRACTOR is required to report all passenger or vehicle accidents to CITY promptly within four (4) hours of occurrence and follow up with required detailed written accident report within forty-eight (48) hours.

40. On-Time Performance

The on-time performance goal for this contract is to have 90% of all runs be within - 1/+5.5 minutes of each and every time point. The data provided to CITY will show route and segment (time point to time point breakdown) to allow CITY staff to work with CONTRACTOR on developing a solution if circumstances are out of CONTRACTOR'S abilities to improve on-time performance. It is imperative that CONTRACTOR dispatchers document thoroughly extenuating circumstances that prevent a route from achieving optimal on-time performance on any particular day/run. The on-time performance metrics, defining 'on-time' for fixed route Services, follow the public transit industry standard of -1 minute to +5.5 minutes of a time point/mid-line/end-of-line. This on-time performance is directly related to the Automated Passenger Counter technology and the data produced from the vehicle runs tracked on a daily basis.

41. Rider Complaints

Rider complaints are managed through a contract with the Kansas City Area Transportation Authority (KCATA). All calls regarding customer service are to be referred to the KCATA for follow-up and resolution.

42. Vehicle Cleanliness

Clean vehicles reinforce the image the CITY wishes to project and adds to the riders' overall satisfaction with the service. CONTRACTOR is responsible for the following duties, as described in item 20 of 'Scope of Services':

- a) Daily cleaning, including sanitizing the interior of all vehicles;
- b) Twice a week cleaning of the exterior of all vehicles;
- c) Major detail interior cleaning every fourteen (14) days;
- d) Removal of graffiti or damage components within 24 hours;
- e) Minor vehicle body damage components within 24 hours;

43. Reporting

To support the CITY's evaluation of CONTRACTOR'S performance, CONTRACTOR is required to submit required and detailed monthly financial invoices accompanied with statistical reports and documentation as outlined in Article 4 on page 1, under 'Scope of Work - Contractor Duties and Responsibilities' within fifteen (15) calendar days of the end of the month.

44. Missed Trips

Since any time a trip is missed, the hardship on the rider is excessive; CONTRACTOR is expected to have no missed trips in a month. A missed trip is defined as each has been established for the accident rate is .05 accidents per 1,000 revenue miles. This indicator will use the definition found in the National Transit Database standards.

To assist the CITY staff, CONTRACTOR is required to report all passenger or vehicle accidents to CITY promptly within four (4) hours of occurrence and follow up with required detailed written accident report within forty-eight (48) hours.

45. Texting While Driving and Distracted Driving

Consistent with Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. Section 402 note, and DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, CONTRACTOR agrees to promote policies and initiatives for its employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to encourage each subcontractor to do the same.

46. Seat Belt Use Policy

CONTRACTOR agrees to comply with terms of Executive Order 13043 "Increasing Seat Belt use in the United States" and is encouraged to include those requirements in each subcontract awarded for work relating to this Agreement.

47. Transit Operation Restrictions

- a) CONTRACTOR agrees to comply with 49 U.S.C. § 5323(d) and FTA regulations, "Charter Service," 49 CFR Part 604, which provide that recipients and sub-recipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service agreement required by these regulations is incorporated by reference and made part of this Agreement.
- b) CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655 of the United States Department of Transportation and Federal Transit Administration Regulations. CONTRACTOR agrees to produce any documentation necessary to establish its compliance with Part 40 and Part 655, and permit any authorized representative of the U. S. Department of Transportation, the Federal Transit Administration or CITY, to inspect all collection and testing facilities, to review all records associated with the implementation of the drug and alcohol testing program and audit and review the testing process as required under 49 CFR Part 40 and Part 655.
- c) CONTRACTOR agrees to comply with the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. § 8103 et seq., the U.S. DOT applicable Federal regulations that affect its third party procurements in effect now and as may be later amended and to follow the most recent edition and any revisions of FTA Circular 4220.1, "Third Party Contracting Guidance," and amendments thereto, to the extent consistent with applicable Federal laws, regulations, and guidance, except as FTA determines otherwise in writing.
- d) If CONTRACTOR is unwilling or unable to comply with the regulations, CITY reserves the right to discontinue using CONTRACTOR for safety-sensitive duties. Contractors, such as CONTRACTOR that bid on safety-sensitive work will be considered non-responsive if they do not have or are not able to supply documentation that a DOT/FTA compliant drug and alcohol testing program has been established.
- e) CONTRACTOR will not use FTA assisted facilities or equipment to support exclusive school bus operations except as permitted by 49 U.S. C. § 5323(f) or (g) and FTA regulations "School Bus Operations," 49 CFR Part 605, to the extent consistent with 49 U.S.C. § 5323 (f) or (g).
- e) Protection of Animals. A third-party CONTRACTOR providing Services involving the use of animals must comply with the Animal Welfare Act, 7 U.S.C. Sections 2131 et seq., and Department of Agriculture regulations, "Animal Welfare," 9 CFR Subchapter A, Parts 1, 2, 3, and 4.

48. Federal Regulations and Requirements

CONTRACTOR will comply or implement programs meeting regulations and requirements of the Federal Government and ensure that staff is trained on any future changes to these federal regulations concerning public transit and make necessary administrative and operational changes to meet these requirements. These requirements include the following items:

- a) National Transit Database (NTD)
- b) FTA Drug and Alcohol Testing Requirements

c) *Additional Federal Requirements*

49. Changes to Federal Requirements

CONTRACTOR shall at all times comply with all applicable Federal Transit Administration (FTA) regulations, policies, procedures and directives, including without limitation, those listed directly or by reference in the Master Agreement between the CITY and FTA (FTA MA 30 dated November 7, 2022), as they may be amended or promulgated from time to time during the term of this Agreement. CONTRACTOR'S failure to comply shall constitute a material breach of this Agreement. CONTRACTOR agrees to include this clause in all subcontracts at any tier. It is further agreed that the clause shall not be modified, except to identify the subcontractors who will be subject to its provisions.

50. Additional Federal Requirements

It is understood and agreed that CONTRACTOR may be obligated by and to CITY for any specifications or documentation required of CITY under these clauses. In particular, the CITY will require that CONTRACTOR annually certify by CONTRACTOR'S CEO (or equivalent) that it is in compliance with all federal requirements. Furthermore, CONTRACTOR understands that timely notice must be provided to the CITY, in writing, on any area of service not complying with federal requirements accompanied by a corrective action plan and timeline.

CONTRACTOR, and any subcontractors acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Agreement, 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 CONTRACTOR, or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from this Agreement.. It is further agreed that the clause shall be included in each subcontract and shall not be modified, except to identify the subcontractor who will be subject to its provision.

51. Civil Rights

- 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, CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, sexual orientation, gender identity, national origin, disability or age. In addition, CONTRACTOR agrees to comply with applicable Federal implementing regulations and other implementing regulations that the Federal Transit Administration (FTA) may issue. Refer to Exhibit B, Title VI Plan.*
- b) *Equal Employment Opportunity. The following equal employment opportunity requirements apply to this Contract:*
- 1) *Race, Color, Creed, National Origin or Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42. U.S.C. §2000e, et seq., and Federal transit laws at 49 U.S.C. §5332, CONTRACTOR agrees to comply with all applicable equal opportunity requirements of the U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor" 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Contract. 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, sex, sexual orientation, gender identity, national origin, disability 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, CONTRACTOR agrees to comply with any implementing requirements FIA may issue.*
 - 2) *In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC§ 5332, CONTRACTOR agrees to refrain from discrimination against present and prospective employees for reasons of*

age. In addition, CONTRACTOR agrees to comply with any implementing requirements FTA may issues.

- 3) In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, 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, CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
- c) ADA Access Requirements. Race, Color, Creed, National Origin or Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, et seq., and Federal transit laws at 49 U.S.C. §5332, CONTRACTOR agrees to comply with all applicable equal opportunity requirements of the U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor" 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S. C. 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Contract. 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, sex, sexual orientation, gender identity, national origin, disability 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, CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
- d) CONTRACTOR understands that it is required to include this Article in all subcontracts. Failure by CONTRACTOR to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the CITY deems appropriate.

52. Disadvantaged Business Enterprise (DBE)

This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE's) is 10 percent. CITY's overall goal for DBE participation is 5.75 percent.

There is no DBE Commitment established for this Agreement.

- a) CONTRACTOR shall not discriminate on the basis of race, color national origin, or sex in the performance of this Agreement. CONTRACTOR shall carry out applicable requirements of 49 CFR. Part 26 in the award and administration of this DOT-assisted contract. Failure by CONTRACTOR to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as CITY deems appropriate. Each subcontract CONTRACTOR signs with a subcontractor must include the assurance in this paragraph (see 49 C.F.R. 26.13(b)).
- b) CONTRACTOR may not substitute, remove or terminate a DBE subcontractor without CITY's prior written consent. Written consent of termination may only be given if CONTRACTOR has demonstrated good cause. Before submitting its request to terminate or substitute a DBE subcontractor, CONTRACTOR must give notice in writing to the DBE subcontractor, with a copy to CITY, of its intent to request to terminate and/or substitute, and the reason for the request. CONTRACTOR must give the DBE five days to respond to CONTRACTOR's notice and advise CITY and CONTRACTOR of the reasons, if any, why it objects to the proposed termination of its subcontract and why CITY should not approve CONTRACTOR 's action. If required in a particular case as a matter of public necessity (e.g., safety), the response period may be shortened.
- c) Good Cause. Good cause includes the following circumstances:
 - 1) The listed DBE subcontractor fails or refuses to execute a written contract; or
 - 2) The listed DBE subcontractor fails or refuses to perform the work to its normal industry standards. Provided,

however, that the good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of CONTRACTOR; or

- 3) The listed DBE subcontractor fails or refuses to meet CONTRACTOR's reasonable, nondiscriminatory bond requirements; or
 - 4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness; or
 - 5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1200 or applicable state law; or
 - 6) The DBE subcontractor is not a responsible CONTRACTOR; or
 - 7) The listed DBE subcontractor voluntarily withdraws from the project and provides CONTRACTOR written notice of its withdrawal;
 - 8) The listed DBE is ineligible to receive DBE credit for the type of work required;
 - 9) A DBE owner dies or becomes disabled with the result that the listed DBE CONTRACTOR is unable to complete its work on the contract;
 - 10) Other documented good cause that compels CITY to terminate the DBE subcontractor. Provided the good cause does not exist if the CONTRACTOR seeks to terminate a DBE it relied upon to obtain the contract so that CONTRACTOR can self-perform the work for which the DBE contractor was engaged or so that CONTRACTOR can substitute another DBE or non-DBE contractor.
- d) Before submitting its request to terminate or substitute a DBE subcontractor, CONTRACTOR must give notice in writing to the DBE subcontractor, with a copy to CITY, of its intent to request to terminate and/or substitute, and the reason for the request. CONTRACTOR must give the DBE five days to respond to CONTRACTOR 's notice and advise the CITY and CONTRACTOR of the reasons, if any, why it objects to the proposed termination of its subcontract and why CITY should not approve CONTRACTOR's action. If required in a particular case as a matter of public necessity (e.g., safety), the response period may be shortened.

53. Certifications and Assurances

The CITY'S Certifications and Assurances will be available prior to _____.

54. National Transit Database (NTD)

CONTRACTOR will submit to CITY on monthly basis information pertaining to the NTD requirements. CONTRACTOR must complete all Monthly Safety and Security Reports and Ridership NTD reports at least five (5) days prior to the NTD Monthly Report deadlines.

Should FTA request revisions or explanations for any portion of the annual NTD report, CONTRACTOR will provide data for follow-up report in a timely manner - at least five days prior to FTA deadline. This will allow CONTRACTOR to enter and edit relevant operating data into the NTD database. CONTRACTOR is responsible for final submittal of all NTD reports (reports, forms and process are subject to change based on NTD development/evolution. The following sections of the Annual NTD Report must be completed by CONTRACTOR two weeks prior to the Annual Reporting deadline:

- a) NTD Sampling Plan/Report in compliance with NTD-approved processes;
- b) Revenue Vehicle Inventory (A-30) for fixed route SERVICES;
- c) Reduced Reporting (RR-20) - Small Systems Waiver;
- d) Federal Funding Allocation Statistics (FFA-10) for fixed route system;

55. FTA Drug and Alcohol Testing Requirements

CONTRACTOR agrees to establish and implement a Drug and Alcohol Testing Program that complies with 49 CFR Parts 653 and 654. Furthermore, CONTRACTOR is required to complete and submit all necessary annual Drug and Alcohol Testing Reports such as DAMIS at least five (5) business days prior to DAMIS reporting deadlines. CONTRACTOR is responsible for acquiring a user ID and password to ensure CONTRACTOR is able to enter and edit relevant data to meet the FTA's reporting requirements.

56. Severability and Intent

Should any part of this Agreement be declared to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision will not affect the validity of the remainder of the Agreement, which will continue in full force and effect. Except as is expressly provided herein, the Agreement is not intended to be a third-party beneficiary Agreement and confers no rights on anyone other than the CITY and the CONTRACTOR.

57. Lobbying Restrictions

The CONTRACTOR is bound by its certification contained in its offer to the CITY regarding the use of federal or non-federal funds to influence, or attempt to influence, any federal officer or employee regarding the award, execution, continuation, or any similar action of any federal grant or other activities as defined in 31 U.S.C. 1352, and 49 CFR Part 20. The Contractor agrees to comply with this requirement throughout the term of the Contract.

The CONTRACTOR agrees to include these requirements in all subcontracts at all tiers exceeding \$100,000 and to obtain the same certification and disclosure from all subcontractors (at all tiers).

58. National Intelligent Transportation Systems Architecture and Standards

The CONTRACTOR agrees to conform to the extent applicable to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and CONTRACTOR agrees to comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455, January 8, 2001, and any further implementing directives, except to the extent FTA determines otherwise in writing.

59. Privacy Act Requirements

- a) The CONTRACTOR agrees to comply with, and assures the compliance of its employees and subcontractors with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552. Among other things, the CONTRACTOR agrees to obtain the express consent of the CITY and/or the Federal Government before the CONTRACTOR or its employees operate a system of records on behalf of the CITY or Federal Government.
- b) The CONTRACTOR understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to all individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Agreement.
- c) The CONTRACTOR agrees that strict privacy will be maintained in the collection, storage, use, transfer, access to and/or security of personnel information. CONTRACTOR agrees to protect such information, and to limit the use of the information to that required by the contract.

60. Suspension of Work

CITY may order CONTRACTOR, in writing, to suspend, delay, or interrupt all or any part of the work under this Agreement for the period of time that CITY determines appropriate for the convenience of CITY.

61. Conflicts of Interest

In accordance with 2 C.F.R. § 200.112, CONTRACTOR certifies that it has no other activities or relationships that would make CONTRACTOR unable, or potentially unable to render impartial assistance or advice to CITY, or that would impair CONTRACTOR'S objectivity in performing work under this Agreement, or that would result in an unfair competitive advantage to CONTRACTOR or to another third party performing the project work.

62. Prohibited Interests

- a) *No elected or appointed official, members of Boards & Commissions, employees or authorized volunteers acting within the scope of duties or agents of the CITY who has participated or will participate in the selection, award, or administration of this Agreement, nor any member of his or her immediate family, business partner or any organization which employs, or intends to employ any of the above during such period, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof, to any share or part of this Agreement, or to any benefit arising there from. This shall not be construed to prevent any such person from owning stock in a publicly owned corporation.*
- b) *No member of, or delegates to, the Congress of the United States shall be admitted to any share or part of the Agreement, or to any benefit arising there from. This shall not be construed to prevent any such person from owning stock in a publicly owned corporation.*

63. Prohibited Weapons and Materials

- a) Missouri Revised Statutes, Section 571.107 (RSMo. §571.107) allows government units and businesses to prohibit persons holding a concealed carry endorsement from carrying concealed firearms on its premises. Accordingly, CITY has adopted the following rules prohibiting weapons, whether concealed or not, and whether or not the individual carrying the weapon has an endorsement or permit to carry.
- b) No weapon, including firearms concealed or not, or other instrument intended for use as a weapon, or any object capable of inflicting serious bodily injury upon another person or property may be carried in or on any facility or property of CITY, including vehicles of CONTRACTOR'S parked on CONTRACTOR'S property or leased facilities, or vehicles used in transporting CITY customers, even if a person has a permit to carry a concealed weapon, unless authorized in writing to do so by CITY. For the purposes hereof, a weapon shall include, but not be limited to, a firearm, knife, sword, or any instrument of any kind known as blackjack, billy club, club, sandbag and metal knuckles.
- c) No explosives, flammable liquids, acids, fireworks, other highly combustible materials, radioactive materials or biochemical materials may be carried on or in any CITY property, facility or vehicle, including CONTRACTOR'S vehicles parked on CITY property or leased facilities, or vehicles used in transporting any CITY customer, except as authorized in writing by CITY.
- d) Any CONTRACTOR, subcontractor, employee or agent thereof, who has a firearm or other weapon, including those used for recreational purposes, in his/her possession, including on his/her person, in a vehicle on an ATA facility, in a vehicle carrying CITY customers, or accessible such as in first aid kits, toolboxes, purses, lunch or carrying bags, etc., at any time while performing CITY contracted Services or on CITY property, including parking lots, concealed or not, shall be immediately prohibited from performing any further CITY work, even if the person has a permit to carry a concealed weapon.
- e) Any CITY CONTRACTOR, subcontractor, employee or agent thereof, while performing CITY contracted Services or on any CITY property or facilities, who has in his/her possession, carries, transports, displays, uses, flourishes, or threatens another person with a weapon, radioactive material, biochemical material or other dangerous weapon, object or material, which has the capability of inflicting bodily injury, shall be immediately prohibited from performing any further CITY work.

64. Notice of Legal Matters.

If this project is federally funded and is expected to equal or exceed \$25,000, KCATA agrees to notify the FTA Chief Counsel or FTA Regional VII legal counsel of a current or prospective legal matter that may affect the Federal government. Contractor agrees this affirmative notification provision will apply to subcontractors and suppliers and is to be included in all agreements at all tiers. Failure to include this notice may be deemed a material breach of contract.

65. Continuity of Service

CONTRACTOR recognizes that the Services under this Agreement are vital to the CITY and must be continued without interruption and that, upon Agreement expiration, a successor may continue them. CONTRACTOR agrees to (1) furnish phase-in training and (2) exercise its best efforts and cooperation to affect an orderly and efficient transition to a successor.

CONTRACTOR shall, upon the CITY's written notice, (1) furnish phase-in, phase-out Services for up to 90 days after this Agreement expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out Services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan and shall be subject to the CITY's approval. CONTRACTOR shall provide sufficient experienced personnel during the phase-in period to ensure that the Services called for by this Agreement are maintained at the required level of proficiency.

66. Prohibition on Certain Telecommunications and Video Surveillance Equipment.

Contractor represents that it is and will be compliant at all times with 2 CFR § 200.216 and will not provide telecommunications and/or video surveillance services or equipment to the CITY in the performance of any contract, subcontract or other contractual instrument resulting from a solicitation or RFP that have been manufactured by a supplier (including any subsidiary or affiliate of those entities) that is considered prohibited or not approved under this regulation. This statute is not limited to entities that use end-products produced by those companies; and also covers the use of any equipment, system, or services that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

67. Disclaimer of Federal Government Obligation or Liability.

The Contractor, and any subcontractors acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Contractor, or any other party (whether or not a party to this Contract) pertaining to any matter resulting from this Contract. It is further agreed that the clause shall be included in each subcontract and shall not be modified, except to identify the subcontractor who will be subject to its provision.

68. Federal Tax Liability and Recent Felony Convictions.

- a) Pursuant to 48 CFR Parts 1, 4, 9, 12 and 52 the Contractor affirmatively represents and certifies that:
- 1) The Contractor does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and if there is a federal tax liability that it is being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability;
 - 2) Was not convicted of the felony criminal violation under any Federal law within the preceding twenty-four (24) months; and
 - 3) Have not more than ninety (90) days prior to certification been notified of any unpaid federal tax assessment for which the liability remains unsatisfied.
- b) Contractor is described as any private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association.

3. *The Contractor agrees to include these requirements in all subcontracts at all tiers, regardless of value, and to obtain the same certification and disclosure from all subcontractors (at all tiers).*

70. Electronic Version of Contract

The CITY may convert a signed original of the Agreement to an electronic record as deemed necessary by approved procedures and processes for converting paper records to electronic records for record retention purposes. Such electronic record of the Agreement shall be deemed for all purposes to be an original signed Agreement.

KANSAS CITY AREA TRANSPORTATION AUTHORITY
Request for Proposals (RFP) #24-7008-30B
Management and Operation of
Fixed Route Transit Services for Independence, Missouri

ADDENDUM #1

Issue Date: May 17, 2024

This Addendum is hereby made a part of the Request for Proposals and Project Documents to the same extent as if it were originally included therein and is intended to modify and/or interpret the bidding documents by additions, deletions, clarifications, or corrections. The Contractor shall acknowledge receipt of this Addendum on the "Receipt of Addenda" form (herein attached) and shall include the form in their proposal submittal.

PROPOSAL CLARIFICATIONS

1. The following language is ADDED to the RFP:

RFP Introduction Letter (page 2).

Performance Bond. A Performance Bond in the amount of ten percent (10%) of the full expected cost of the annual services to be performed and shall be renewed annually. See Section 2.49 for additional information.

RFP Section 2, "Scope of Services.

2.49 Bonding Requirements.

CONTRACTOR is required to provide a performance bond equal to 10% of the value of the contract. The bond must be issued by a surety legally authorized to do business in Missouri. The bond must be signed by Principal and Attorney-in-fact with the Power of Attorney attached. The bond is required to be maintained for the full term of the Agreement and failure to maintain it in place constitutes a default.

- CONTRACTOR shall furnish, at its own expense, a performance bond payable to CITY in the amount of ten percent (10%) of the full expected cost of the annual Services to be performed. A licensed surety company shall secure the bonds. The bond shall be renewed on an annual basis and shall remain valid and in effect for the full term of this CONTRACT.
- A cash deposit, certified check, irrevocable letter of credit (LOC), or other negotiable instrument may be accepted by CITY in lieu of a bond. The form of any substitution in lieu of a bond must be approved by CITY. The cash deposit, certified check, irrevocable LOC, or other negotiable instrument accepted in lieu of a bond must remain valid and in effect for the full term of this Contract.
- If used, the LOC shall be irrevocable, unconditional, and issued by an acceptable federally insured financial institution. The LOC must cover the entire period of performance or may be submitted with an initial expiration date which is a minimum period of one year from the date of issuance, with a provision which states that the LOC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of performance is completed. The period of performance shall end the later of 90 days following final payment, or until completion of any warranty period. CITY may require additional performance bond protection when the Contract Sum is increased.

2. The Sample Agreement will be issued in Addendum #2.

PROPOSER QUESTIONS

1. Q: Could you provide information on the current operator of the transit service in question?

A: The current contractor is TransDev (formerly First Transit).

2. Q: Are the drivers/operators of the transit service currently affiliated with any labor union?

A: Yes. Teamsters Local 41

3. Q: How many buses are currently deployed to facilitate the operation of this transit service?

A: Five operating with two spare buses for a total of seven.

4. Q: Why is there no DBE goal?

A: The fixed route services are operated with transit buses and all essential services are performed by the operator/prime contractor. There are no opportunities to break out routes for another provider to use small vehicles (i.e., sedans). Also, the drivers will be Union members.

Staff determined that the other opportunities for DBE participation (lawn care/snow removal, HVAC, office supplies, uniforms) are minimal (compared to actual expenses). However, the contractor is encouraged to utilize DBE firms wherever possible.

ATTACHMENT

- Receipt of Addenda Form

END OF ADDENDUM

KANSAS CITY AREA TRANSPORTATION AUTHORITY (KCATA)

Request For Proposals (RFP) #F24-7008-30B

Management and Operation of
Fixed Route Transit Services for Independence, Missouri

RECEIPT OF ADDENDA

Proposers shall return this form when submitting their Proposal Submittal. The form shall be signed and dated by an authorized representative of the firm. Failure to submit this form may deem the Proposer non-responsive. As additional addenda are issued, please notate date received below.

We hereby acknowledge that the Addenda noted below was received with all information that has been incorporated into the Request for Proposals as required.

Addendum #1 dated May 17, 2024 Date Received _____

Addendum #2 dated _____ Date Received _____

Addendum #3 dated _____ Date Received _____

Company Name _____ Date _____

Address/City/State/Zip _____

Authorized Signature _____ Printed Name _____

Telephone _____ Fax _____ Email _____