REQUEST FOR PROPOSAL
Services
R20-067 PB

Date issued: May 27, 2020

Buy America Pre-Award Audits, In-Plant Inspections, and Post Delivery Audits

THE CITY OF COLORADO SPRINGS
The City of Colorado Springs requests Firm Fixed Price (FFP), as detailed in this Request for Proposal (RFP), for Buy America Audits & Inspections.
SECTION INDEX

SECTION I PROPOSAL INFORMATION
SECTION II PROPOSAL CONTENT
SECTION III EVALUATION FACTORS
SECTION IV SPECIAL CONTRACT TERMS AND CONDITIONS/SPECIAL SOLICITATION PROVISIONS
SECTION V EXHIBITS
SECTION VI SCHEDULES
SECTION I – PROPOSAL INFORMATION

1.0 PROPOSAL INFORMATION

Section I provides general information to potential Offerors, such as proposal submission instructions and other similar administrative elements. This RFP is available on Rocky Mountain E-Purchasing System (www.rockymountainbidsystem.com).

All addenda or amendments shall be issues through the Rocky Mountain E-Purchasing System and may not be available through any other source.

1.1 RFP SCHEDULE OF EVENTS

The upcoming schedule of events is as follows:

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issue Request for Proposal</td>
<td>May 27, 2020</td>
</tr>
<tr>
<td>Pre-Proposal Conference</td>
<td>June 10, 2020 12:30 PM MST</td>
</tr>
<tr>
<td></td>
<td>via Webex</td>
</tr>
</tbody>
</table>

We will hold a pre-proposal conference via Webex. This meeting is not mandatory. However all Offerors are encouraged to attend.

Webex information

Join by phone +1-415-655-0003 US Toll
Meeting Number/Access code: 281 267 182
Password: Transit

Join by video system or application
Dial 281267182@csgov.webex.com

You can also dial 173.243.2.68 and enter your meeting number.

Join using Microsoft Lync or Microsoft Skype for Business
Dial 281267182.csgov@lync.webex.com

Cut Off Date for Questions       | June 15, 2020 at 3 PM MST

Questions about the RFP must be submitted via the BidNet website. A written response to any inquiry may be provided in the form of an Amendment to the solicitation. See 1.7
Amendments. Questions must be received no later than June 15, 2020 at 3 PM MST.

DO NOT CONTACT ANY OTHER INDIVIDUAL AT THE CITY OF COLORADO SPRINGS REGARDING THIS SOLICITATION.

The only acceptable method of submitting questions is by email to the Contracting Specialist. Faxes or physical mail delivery are not acceptable.

Proposal Due Date       June 26, 2020 at 3 PM MST
Interviews (if applicable) TBD
Award of Contract       TBD
Notice to Proceed        TBD

1.2 PROPOSAL ISSUE DATE

Request for Proposal (RFP) Number R20-067 is being issued and posted on www.bidnetdirect.com on May 27, 2020.

***************NO LATE OFFERS WILL BE ACCEPTED***************

1.3 SUBMISSION OF PROPOSAL

A. Proposals are to be submitted electronically on the Bidnet procurement Platform (www.bidnetdirect.com).

B. Proposals shall be received on or before: June 26, 2020 at 3 PM MST.

C. The cost of Proposal preparation is not a reimbursable cost. Proposal preparation shall be at the Proposer's sole expense and is the Proposer's total and sole responsibility.

1.4 SPECIAL TERMS

Please note the following definitions of terms as used herein:

The term “City” means the City of Colorado Springs.

The term “Contractor” or “Consultant” means the Offeror whose offer is accepted and is awarded the contract to provide the products or services specified in the RFP.
The term “Offer” means the proposal.

The term “Offeror” means the person, firm, or corporation that submits a formal proposal or offer and that may or may not be successful in being awarded the contract.

The term “Project” refers to Buy America Audits & Inspections.

The term “Request for Proposal” or “RFP” means this solicitation of a formal, negotiable proposal/offer. Any offer that is accepted will be the offer that is deemed by the City of Colorado Springs to be most advantageous in terms of the criteria designated in the RFP.

1.5 RFP OBJECTIVE

The objective of this RFP is to provide sufficient information to enable qualified Offerors to submit written proposals to the City of Colorado Springs. The RFP is not a contractual offer or commitment to purchase products or services. The Offeror may present options and variables to the scope while still meeting the minimum requirements of this solicitation. Innovative proposals/solutions are encouraged and considered in the selection and/or award.

All information included in proposals must be legible. Any and all corrections and erasures must be initialed by Offeror. Each proposal shall be accompanied by a cover letter signed by an authorized representative of the Offeror. The contents of the proposal submitted by the successful Offeror may become part of any contract awarded as a result of this solicitation.

1.6 CONFIDENTIAL OR PROPRIETARY INFORMATION

If an Offeror believes that parts of an offer are confidential, then the Offeror must so specify. The Offeror must include in bold letters the term “CONFIDENTIAL” on that part of the offer which the Offeror believes to be confidential. The Offeror must submit in writing specific detailed reasons, including any relevant legal authority, stating why the Offeror believes the material to be confidential. Vague and general claims as to confidentiality will not be accepted. The City of Colorado Springs will be the sole judge as to whether a claim is acceptable. Decisions regarding the confidentiality of information will be made when requests are made to make the information public. All offers and parts of offers, which are not marked as confidential, will automatically be considered public information after the contract is awarded. The successful offer may be considered public information even though parts are marked confidential.

1.7 AMENDMENTS
Amendments to this RFP may be issued at any time prior to the time set for receipt of proposals. Offerors are required to acknowledge receipt of any amendments issued to this RFP by returning a signed copy of each amendment issued. Signed copies of each amendment must be received on or before the time set for receipt of offers.

The City of Colorado Springs will post all amendments on the Rocky Mountain E-Purchasing System (www.rockymountainbidsystem.com). It is the Offeror's responsibility to check the website for posted amendments or contact the Contracts Specialist listed to confirm the number of amendments which have been issued.

1.8 WITHDRAWAL OR MODIFICATION OF OFFERS

Any Offeror may modify or withdraw an offer in writing at any time prior to the deadline for submission of an offer.

1.9 ACCEPTANCE

Any offer received and not withdrawn shall be considered an offer, which may be accepted by the City of Colorado Springs based on initial submission without discussions or negotiations.

By submitting an offer in response to this solicitation, the Offeror agrees that any offer it submits may be accepted by the City of Colorado Springs at any time within 90 calendar days from the date of submission deadline.

The City of Colorado Springs reserves the right (a) to reject any or all offers,(b) to waive informalities and minor irregularities in offers received, and/or (c) to accept any portion of an offer if deemed in the best interest of the City of Colorado Springs. Failure of the Offeror to provide in its offer any information requested in the RFP may result in rejection of the offer for non-responsiveness.

1.10 PROPOSAL PREPARATION COST

The cost of proposal preparation is not a reimbursable cost. Proposal preparation shall be at the Offeror's sole expense and is the Offeror's total and sole responsibility.

1.11 AWARD

The City of Colorado Springs intends to make an award using the evaluation criteria listed in this RFP to determine the best value, considering all factors and criteria in the proposals submitted. Best value means the expected outcome of an acquisition that, in the City's estimation, provides the greatest overall benefit in response to the requirements detailed in the RFP. The City of Colorado
Springs reserves the right to reject any or all offers and to not make an award.

1.12 PERFORMANCE PERIOD

The performance period of any contract awarded as a result of this RFP is anticipated to be as follows.

Base Year: August 1st, 2020 – September 30th, 2021
Option Year 1: August 1st, 2021 – September 30th, 2022
Option Year 2: August 1st, 2022 – September 30th, 2023
Option Year 3: August 1st, 2023 – September 30th, 2024
Option Year 4: August 1st, 2024 – September 30th, 2025

1.13 DEBRIEFING

Offerors not selected may request a debriefing on the selection process as well as discussion of the strengths and weaknesses of their proposal upon receipt of notification that their offer was not selected.

A debriefing may be scheduled by contacting the Contracts Specialist listed above. The Contracts Specialist must receive a written request for debriefing no later than ten (10) calendar days after issuance of a notification that the Offeror’s offer was not selected.

1.14 SUBSTANTIVE PROPOSALS

By responding to this RFP, the Offeror certifies (a) that Offeror’s proposal is genuine and is not made in the interest of, or on behalf of, an undisclosed person, firm, or corporation; (b) that Offeror has not directly or indirectly induced or solicited any other offerors to put in a false or sham proposal; (c) that Offeror has not solicited or induced any other person, firm, or corporation to refrain or abstain from proposing an offer or proposal; (d) that Offeror has not sought by collusion to obtain for themselves any advantage over any other offerors or over the City of Colorado Springs; and (e) that Offeror has not violated or caused any person to violate, and shall not violate or cause any person to violate, the City’s Code of Ethics contained in Article 3, of Chapter 1 of the City Code and in the City’s Procurement Rules and Regulations.

1.15 OFFEROR’S QUALIFICATIONS

Each Offeror must complete Exhibit 6 – Qualification Statement.

No contract will be awarded to any Offeror who is in arrears to the City, upon any debt or contract, or who is in default, in any capacity, upon any obligation to the City or is deemed to be irresponsible or unreliable by the City based on past performance.
1.16 NON-COLORADO ENTITIES

If Offeror is a foreign entity, Offeror shall comply with C.R.S. section 7-90-801, “Authority to transact business or conduct activities required,” and section 7-90-802, “Consequences of transacting business or conducting activities without authority.”

Before or at the time that the contract is awarded to an entity organized or operating outside the State of Colorado, such entity shall obtain authorization to do business in the State of Colorado, designate a place of business herein, and appoint an agent for service of process.

Such entity must furnish the City of Colorado Springs with a certificate from the Secretary of the State of Colorado to the effect that a certificate of authority to do business in the State of Colorado has been issued by that office and is still valid. The entity shall also provide the City with a certified copy of the designation of place of business and appointment of agent for service of process from the Colorado Secretary of State, or a letter from the Colorado Secretary of State that such designation of place of business and agent for service of process has been made.

1.17 PROCUREMENT RULES AND REGULATIONS

All projects advertised by the City of Colorado Springs are solicited in accordance with the City's Procurement Rules and Regulations. The City's Procurement Rules and Regulations can be reviewed and/or downloaded from the City website www.coloradosprings.gov. The Contracts Specialist may also provide a softcopy of the Rules and Regulations upon request. Any discrepancies regarding conflicting statements, decisions, irregularities, clauses, or specifications will be rectified utilizing the City's Procurement Rules and Regulations, when applicable. It is the Offeror’s responsibility to advise the Contracts Specialist listed in this RFP of any perceived discrepancies prior to the date and time the offer is due.

1.18 FAIR TREATMENT OF OFFERORS

The City Procurement Services Division shall be responsible for ensuring the procurement of products, commodities, and services are in a manner that affords all responsible businesses a fair and equal opportunity to compete. If an Offeror believes that a procurement is not conducted in a fair and equitable manner, the Offeror is encouraged to inform the City Procurement Services Manager as soon as possible.

1.19 ORDER OF PRECEDENCE
Any inconsistency in this solicitation shall be resolved by giving precedence in the following order:

(a) Sections I-IV of this Solicitation
(b) Statement of Work
(c) Other Appendices, Schedules, Exhibits, or Attachments

1.20 SALES TAX

The successful Offeror, if awarded a contract, shall apply to the Colorado Department of Revenue for a tax-exempt certificate for this project. The certificate does not apply to City of Colorado Springs Sales and Use Tax which shall be applicable and should be included in all proposals. The tax exempt project number and the exemption certificate only apply to County, PPRTA (Pikes Peak Rural Transportation Authority), and State taxes when purchasing construction and building materials to be incorporated into this project.

Furthermore, the exemption does not include or apply to the purchase or rental of equipment, supplies or materials that do not become a part of the completed project or structure. In these instances, the purchase or rental is subject to full taxation at the current taxation rate.

The Offeror and all subcontractors shall include in their Offer City of Colorado Springs Sales and Use Tax on the work covered by the offer, and all other applicable taxes.

Forms and instructions can be downloaded at https://coloradosprings.gov/sales-tax/page/additional-sales-tax-forms?mlid=30771. Questions can be directed to the City Sales Tax Division at (719) 385-5903.

Our Registration Numbers are as follows:
City of Colorado Springs
Federal I.D.: 84-6000573
Federal Excise: A-138557
State Sales Tax: 98-03479

1.21 INTERPRETATION OF PLANS AND SPECIFICATIONS

Any change to proposal forms, plans, or specifications prior to the opening of proposals will be issued by the City in the form of an Amendment. Certain individuals may be named in the RFP that have authority to provide information, clarification or interpretation to Offerors prior to opening of proposals. Information obtained from persons other than those named individuals is invalid and shall not be used for proposal purposes.

1.22 COMBINATION OR CONDITIONAL PROPOSALS
If an RFP is issued for projects in combination and separately, the Offeror may submit proposals either on the combination or on separate units of the combination. The City reserves the right to make awards on combination or separate proposals to the advantage of the City. Combination proposals will be considered, only when specified.

1.23 ANTI-COLLUSION AFFIDAVIT

The Offeror by signing their proposal submitted to the City is certifying that the Offeror has not participated in any collusion or taken any action in restraint of free competitive bidding. This statement may also be in the form of an affidavit provided by the City and signed by the Offeror. The original of the signed anti-collusion affidavit, if separately required and provided with the RFP, shall be submitted with the proposal. The proposal will be rejected if it does not contain the completed anti-collusion affidavit.
SECTION II – PROPOSAL CONTENT

2.0 PROPOSAL CONTENT

Section II provides instructions regarding the format and content required for proposals submitted in response to this solicitation.

2.1 PROPOSAL FORMAT

Offeror’s written proposal should include concise, but complete, information, emphasizing why the Offeror is best or best qualified to provide the required services. The Offeror’s written proposal should include the information in the format outlined below and must be limited to no more than twenty-five (25) pages. A page shall be defined as 8-1/2" x 11"; single sided, with one inch margins, and a minimum font of Times New Roman 10. The only exception to the 8-1/2" x 11" paper size is the proposed project schedule. It may be submitted on 11” x 17” paper. Each 11” x 17” page for the schedule shall be counted in the overall page limitations above. Each section of the proposal should be labeled to clearly follow the requirements sections identified in this section of the RFP. The following listed Exhibits and Schedules must be filled out and returned with the proposal and are not counted against the page limit:

- Exhibit 1 Proposal Certification
- Exhibit 3 Exceptions
- Exhibit 4 Minimum Insurance Requirements
- Exhibit 5 Qualification Statement
- Exhibit 7 Federal Clauses/Certificates

Schedule A Price Sheet

2.2 COVER LETTER

The cover letter shall be no more than three pages. The cover letter shall contain at least the following information:

A. RFP Number and Project Name.
B. Statement that the Offeror is qualified to perform the work.
C. Certification Statement that the information and data submitted are true and complete to the best knowledge of the individual signing the letter.
D. Name, telephone number, email address, and physical address of the individual to contact regarding the proposal.
E. The signature of an authorized principal, partner, or officer of the Offeror.
2.3 PROPOSAL CERTIFICATION

The Offeror must fill out and submit Exhibit 1 with its Proposal.

2.4 ORGANIZATIONAL BACKGROUND AND OVERVIEW

The Offeror must provide a brief history and overview of its company and its organizational structure, with special emphasis on how this project will fit within that structure. Also include principal place of business location(s), office locations, size of firm, and financial stability (annual public reports or private financial statements shall be included in an appendix or under separate cover; private financial information will be kept confidential by the City).

2.5 PROPOSAL NARRATIVE/TECHNICAL AND MANAGEMENT APPROACH

In the proposal narrative/technical and management approach section, the Offeror should explain what the Offeror will do and how it will perform if awarded a contract.

2.5.1 TECHNICAL AREA

The Offeror must explain its overall solution, considering the scope of work or statement of work provided. The content must include, but not necessarily be limited to, the following information.

A. Understanding of and Compliance with Technical Requirements

In the Technical Area, the Offeror should address each work area in sufficient detail to demonstrate a clear and full understanding of the work necessary to complete the project. The proposal should not merely parrot the requirements of the RFP. Further, the Offeror should provide evidence of sufficient planning to ensure the work is completed on schedule and within budget. It is highly recommended that the Offeror provide sufficient content and detail to answer completely the following questions:

1. Does the proposal demonstrate a firm understanding of the requirements and goals of the Statement of Work, as well as industry standards and reasonable expectations for a company in the industry?
2. Does the proposal fully and completely address each requirement and goal of the Statement of Work?
3. Does the proposal provide solutions to indicate that requirements and goals will be met on schedule?
4. Does the technical solution seem realistic?
5. Does it generally appear that the Offeror knows and thoroughly understands the business and the RFP requirements?
B. Project Approach

In the Technical Area, the Offeror should clearly present proposed solutions and indicate that it has performed adequate planning to accomplish project tasks as defined in the Statement of Work. Innovations, efficiencies, and detailed specifics are all encouraged.

The Offeror must at least address the following areas:

1. Schedule Management. Discuss Offeror’s approach to schedule management including updating and reporting progress of the work.
2. Quality Control. Discuss Offeror’s quality control plan, processes and approach to ensure that the City receives a quality product.
3. Safety. Discuss Offeror’s approach and commitment to safety for its workers, the public, and City employees, if services are accomplished on a City site.
4. Potential issues that Offeror foresees with this project and how Offeror would make adjustments if encountered.

It is highly recommended that the Offeror provide sufficient content and detail to answer completely the following questions.

1. Does the proposal include a complete plan to accomplish each requirement, including subcontracting (if applicable)?
2. Does the proposal demonstrate that appropriate and qualified personnel and equipment will be provided to carry out the requirement?
3. Is the proper level of effort directed toward each requirement? Does the level of effort look unrealistically low or unreasonably high?

2.5.2 MANAGEMENT AREA

The Offeror must explain its method of managing the work to be performed. The content must include, but no necessarily be limited to, the following information.

A. Program Management Controls

In the Management Area, the Offeror should provide:

1. A plan of operation, to include management of personnel, workload, schedule, and budget
2. An organization chart which demonstrates clear and effective lines of authority, responsibility, and communication for management, supervisory, and technical personnel. The plan should address which job classification or personnel will be assigned to each task and how that determination is made. Basic human resource management concepts should be addressed, including hiring, firing, discipline, incentive plans, etc.
3. If the Offeror plans to subcontract more than 10% of the work, include information on how the Offeror plans to manage its subcontractors.

4. A detailed schedule for the project showing the key activities and how they will meet or improve the City’s timeframe and maximize efficiency to provide the best value to the City and minimize impacts to the public. The schedule shall be based on the Offeror’s understanding and approach to the work as addressed above. Schedules should address controls to ensure the project will remain on schedule and on budget. Schedules submitted for this project shall assume a start date of XXXXXXXXXXXXX.

It is highly recommended that the Offeror provide sufficient content and detail to answer completely the following questions.

1. Does the proposal address the issues above in sufficient detail to demonstrate a sophisticated and mature management control system?
2. Are program management controls consistent with the technical portion of the proposal, especially regarding schedule and level of effort?
3. Do the plan and controls indicate that the Offeror will obtain, keep, and efficiently utilize high-quality personnel?
4. Does the proposal explain how the Offeror will address corrective actions in case of delays (e.g. expediting materials, additional resources, etc.)?
5. Does the proposal explain how the Offeror will remain within schedule and budget?

B. Past Performance/Relevant Experience and Key Personnel

In the Management Area, the Offeror should provide at least three references or name contracts demonstrating that it successfully provided services/products that are the same or similar to those required in the RFP. The proposal should adequately explain how the projects were completed on schedule and within budget. It is highly recommended that the Offeror provide sufficient content and detail to answer completely the following questions.

1. Does the proposal include at least three references or past performance citations?
2. Are the references or past performance citations relevant to the requirements of the Statement of Work of the RFP?
3. Does the Offeror explain how they were successful on the projects provided as past performance?
4. Does the Offeror apply the past performance to the City requirement in such a way as to demonstrate added value due to experience?

Key Personnel

In the Management Area, resumes must be provided for all personnel considered key, as required by the RFP. Resumes do not count toward the page limit. It is
highly recommended that the Offeror provide sufficient content and detail to answer completely the following questions. Explain how the key personnel were related to the projects cited as relevant past performance.

1. Does the Offeror provide complete resumes, including education, experience, background information, accomplishments, and other pertinent information?
2. Does the Offeror provide resumes for all key personnel, as required by the RFP?
3. Do the resumes demonstrate adequate professional, technical, and management levels to accomplish the work effectively and efficiently?

2.6 PRICE AREA

In the Price Area, the Offeror should provide a detailed breakdown of the price for each year of performance. The price must be all-inclusive and include all unit costs for material, labor, other direct costs (e.g. travel), indirect costs (i.e. overhead and general and administrative costs), and profit/fee. Offers must include sufficient detail to allow insight into the fairness and reasonableness of the price. If the contract type will be Time and Material (T&M) labor categories, labor rates, separated profit, and estimated material costs must be included in detail.

In addition, although price may not be the most important factor, it is still very important to the City of Colorado Springs. The Offeror’s pricing must be competitive as compared to the budget amount, market pricing in the industry, and the pricing of other Offerors. It is highly recommended that the Offeror provide sufficient content and detail to answer completely the following questions.

1. How does the price compare to the industry competition?
2. If low, is it unrealistically low?
3. If high, is there demonstrated added value for the additional cost?
4. Is the price itemized, so that it is clear how the cost was built? If so, do the costs look appropriate for the task?
5. Does the Offeror leave applicable costs out of the calculations? For instance, some will say travel is not included and will be an extra cost. This should be considered when comparing to other Offerors.
6. Are there additional costs not addressed that the City would incur if the Offeror were awarded the contract? If so, include those costs when comparing to the budget amount and the competition.

2.7 EXCEPTIONS

All Offerors must complete Exhibit 3, Exceptions Form and return it with their proposal. Some terms and conditions are not negotiable. Exceptions may be grounds for rendering the proposal unacceptable without further discussions.
2.8 INSURANCE REQUIREMENTS

All Offerors must complete Exhibit 4, Minimum Insurance Requirements and return with their proposal. Lack of responsiveness in this area may be grounds for rendering the proposal unacceptable without further discussions.
SECTION III – EVALUATION FACTORS

3.0 EVALUATION AND AWARD

Section III provides information regarding evaluation criteria and scoring. It also includes information regarding proposal selection and award of the resultant contract.

3.1 EVALUATION CRITERIA

3.1.1 TECHNICAL AREA -- UNDERSTANDING OF AND COMPLIANCE WITH TECHNICAL REQUIREMENTS
   See Section II - Item 2.5.1A

3.1.2 TECHNICAL AREA -- PROJECT APPROACH
   See Section II - Item 2.5.1B

3.1.3 MANAGEMENT AREA -- PROGRAM MANAGEMENT CONTROLS
   See Section II - Item 2.5.2A

3.1.4 MANAGEMENT AREA -- PAST PERFORMANCE/RELEVANT EXPERIENCE/KEY PERSONNEL
   See Section II – Item 2.5.2B

3.1.5 PRICE/COST AREA -- PRICE/COST
   See Section II – Item 2.6

3.1.6 EXCEPTIONS AND INSURANCE
   See Section II – Items 2.8 and 2.9

3.2 RANKING

A. The order of ranking or importance in the evaluation shall be as follows:

   First: Price
   Second: Qualifications
   Third: Ability to Meet Schedule
   Fourth: Proposer Approach & Work Plans
B. Area Scoring

The score for each area will be determined by adding the sum of each area. The area evaluation factors are as follows:

Price: 40
Qualifications: 30
Ability to Meet Schedule: 20
Proposer Approach & Work Plans: 10

C. Final/Overall Scoring

The final proposal score will be determined by adding the area scoring. The sum of the area scores will be the final/overall score.

3.3 SELECTION COMMITTEE

A selection committee will review all proposals. Through this process, the City will determine which proposals are acceptable or unacceptable. The City will notify, in writing, the Offerors whose proposals are deemed to be unacceptable. Those Offerors offering proposals deemed to be acceptable by the City will be evaluated and scored by the selection committee. This scoring will determine which Offerors are considered to be in the competitive range and may be the basis for an award decision without further steps.

If the selection committee elects not to award based upon evaluation scoring, it may engage in a forced elimination process. To inform this process, it may require oral presentations or interviews with the Offerors considered to be in the competitive range. If oral presentations or interviews are conducted, they may also be scored, or they may simply be considered as information supporting the forced elimination process. The selection committee may request revisions to the proposal from each of the Offerors at the conclusion of the interviews. The intent of the forced elimination process is to reach consensus. The decision will be based on all relevant factors, and based upon perception of best value. The final decision may or may not exactly reflect scoring ranking.

The City also reserves the right to request best and final offers from all Offerors at any point in the proposal evaluation process.

3.4 AWARD OF CONTRACT

It is anticipated that there will be negotiations or discussions with Offerors. However, the City reserves the right to award without negotiations or discussions. The City also reserves the right to award a contract not necessarily or merely to the Offeror with the most advantageous price. The City intends to award to the Offeror that demonstrates the best value to the City and the most substantiated ability to fulfill the requirements contained in this Request for
Proposal. A contract prepared by the City will be finalized and/or negotiated with the successful Offeror. In the event a contract cannot be negotiated with the top ranked Offeror, the City may enter into negotiations with the second highest ranked Offeror, or the City may decide to call for new proposals. Immediately after the notice of award, the successful Offeror will begin planning in conjunction with the City of Colorado Springs staff (to be designated by the City) to ensure fulfillment of all its obligations. The successful Offeror may be expected to attend regular meetings as required by the City to assist in the preparation for startup.
SECTION IV – SPECIAL CONTRACT TERMS AND CONDITIONS

4.0 SPECIAL CONTRACT TERMS AND CONDITIONS/SPECIAL SOLICITATION PROVISIONS

In addition to the special contract terms and conditions listed below, the City’s sample contract, see Exhibit 2, contains contract terms and conditions.
## SECTION V – EXHIBITS

### 5.0 EXHIBITS

<table>
<thead>
<tr>
<th>Exhibit</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Proposal Certification</td>
</tr>
<tr>
<td>2</td>
<td>Sample Contract</td>
</tr>
<tr>
<td>3</td>
<td>Exceptions</td>
</tr>
<tr>
<td>4</td>
<td>Minimum Insurance Requirements</td>
</tr>
<tr>
<td>5</td>
<td>Qualification Statement</td>
</tr>
<tr>
<td>6</td>
<td>Evaluation Scoresheet</td>
</tr>
<tr>
<td>7</td>
<td>Federal Clauses/Certificates</td>
</tr>
</tbody>
</table>
EXHIBIT 1  PROPOSAL CERTIFICATION

Check or Mark the space after each number to indicate compliance.

1. ______ Address of Offeror’s Principal Place of Business:


Does Offeror have an established office or facility in Colorado Springs?

Yes _____  No _____

If yes, indicate address below if different than Principal Place of Business.

Colorado Springs Facility - Year established __________

Address of Colorado Springs Facility:


Percent of Work to be Performed from Principal Place of Business? ______

Percent of Work to be Performed from Colorado Springs Facility? ______

2. ______ Indicate your ability to provide a certificate of insurance evidencing the required coverage types and limits specified in Minimum Insurance Requirements Exhibit. (The certificate of insurance must reflect the City of Colorado Springs as an Additional Insured, as applicable.)

Indicate your ability to comply with the following requirements:

The City shall be added as an Additional Insured to all liability policies:

Yes _____  No _____

Your property and liability insurance company is licensed to do business in Colorado:

Yes _____  No ____
Provide the name of your property and liability insurance company here:

Name: ___________________________________________________________

Your property and liability insurance company has an AM best rating of not less than B+ and/or VII:

Yes _____  No _____

Worker’s Compensation Insurance is carried for all employees and covers work done in Colorado.

Yes _____  No _____

3. ______ Provide one (1) copy of current financial statements (if required). Enclose financial information in a separate envelope; do not bind with the other proposal copies. If review of the information is to be restricted to the City’s financial officer, it must be marked accordingly.

4. ______ Provide the completed and signed proposal. (Proposals must be identified as specified in this RFP document). All required Exhibits are attached.

By signing below, the Offeror certifies that no person or firm other than the Offeror or as otherwise indicated has any interest whatsoever in this offer or any Contract that may be entered into as a result of this offer and that in all respects the offer is legal and firm, submitted in good faith without collusion or fraud.

Offeror has appointed ______________________ as the Offeror’s representative and contact for all questions or clarifications in regard to this Offeror.

Telephone: (__) ____________

Email: ______________________

The undersigned acknowledges and understands the terms, conditions, Specifications and all Requirements contained and/or referenced and are legally authorized by the Offeror to make the above statements or representations.

(Name of Company)   (Signature)

(Address)   Date

(City, State and Zip)   (Telephone Number)
Offeror hereby acknowledges receipt of the following amendments, if applicable. Offeror agrees that it is bound by all Amendments identified herein.

AMENDMENT #1 DATED: ______________
AMENDMENT #2 DATED: ______________
AMENDMENT #3 DATED: ______________

Please Note the attached Representations and Certifications must be initialed by Offeror in the spaces provided and returned with this certification.
REPRESENTATIONS AND CERTIFICATIONS
Exhibit 1 Continued

1. INSURANCE REQUIREMENTS

Offeror shall comply with all insurance requirements and will submit the Insurance Certificates prior to performance start date. If limits are different from the stated amounts, Offeror shall explain variance. Certain endorsements and “additionally insured” statements may require further clarification and specific statements on a project specific basis and should have been described in the Offeror’s proposal.

Initials for 1

2. ETHICS VIOLATIONS

a) The Offeror shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in this clause in its own operations and direct business relationships.
b) Offeror certifies the Offeror has not violated or caused any person to violate, and shall not violate or cause any person to violate, the City’s Code of Ethics contained in Article 3, of Chapter 1 of the City Code and in the City’s Procurement Rules and Regulations.
c) When the Offeror has reasonable grounds to believe that a violation described in this clause may have occurred, the Offeror shall promptly report the possible violation to the City Contracts Specialist in writing.
d) The Offeror must disclose with the signing of this proposal, the name of any officer, director, or agent who is also an employee of the City and any City employee who owns, directly or indirectly, an interest of ten percent (10%) or more in the Offeror’s firm or any of its branches.
e) In addition, the Offeror must report any conflict or apparent conflict, current or discovered during the performance of the Contract, to the City Contracts Specialist.
f) The Offeror shall cooperate fully with the City or any agency investigating a possible violation on behalf of the City. If any violation is determined, the Offeror will properly compensate the City.
g) The Offeror agrees to incorporate the substance of this clause (after substituting “Contractor” for “Offeror”) in all subcontracts under this offer.

Initials for 2
3. ILLEGAL ALIENS

If Offeror has any employees or subcontractors, Offeror shall comply with § 8-17.5-101, et seq., C.R.S. regarding Illegal Aliens – Public Contracts for Services, and this section of this Agreement. 8-17.5-102 includes, in part, that:

1. Offeror shall not:
   a. Knowingly employ or contract with an illegal alien to perform work under this Agreement; or
   b. Enter into a contract with a subcontractor that fails to certify to Offeror that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

2. Offeror has verified or attempted to verify that Offeror does not employ any illegal aliens and will participate in the E-Verify Program or State Department program in order to confirm eligibility of all employees who are newly hired to perform work under public contract for services.

3. Offeror will not use E-Verify Program or State Department program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.

4. If Offeror obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Provider shall:
   a. Notify the subcontractor and the City within three days that Offeror has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
   b. Terminate the subcontract with the subcontractor if within three days of receiving such notice, the subcontractor does not stop employing or contracting with the illegal alien. However, the Offeror shall not terminate the contract with the subcontractor if during this three day period:
      i. The subcontractor provides information which establishes that the subcontractor has not knowingly employed or contracted with an illegal alien, and
      ii. The Offeror will not employ the illegal aliens in the performance of any City contract.

5. Offeror shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in §8-17.5-102(5), C.R.S.

6. If Offeror violates this provision, the City may terminate the contract for a breach of contract. If the Agreement is terminated, the Offeror shall be liable for actual and consequential damages.

Initials for 3

4. COOPERATION WITH OTHER CONTRACTORS

Other City activities/contracts may be in progress or start during the performance of this
contract. The Offeror shall coordinate the work harmoniously with the other contractors or City personnel, if applicable.

Initials for 4

5. INTERNET USE

Should the Offeror require access to City Internet resources in the performance of this requirement, a “Contractor’s Internet Use Agreement” form must be separately signed by each individual having access to the City Network. The completed Contractor’s Internet Use Agreement will be maintained with this agreement. Inappropriate use of the City Network will be grounds for immediate termination of any awarded contact.

Initials for 5

6. LITIGATION

If awarded a contract, Offeror shall notify the City within five (5) calendar days after being served with a summons, complaint, or other pleading in any matter which has been filed in any federal or state court or administrative agency. The Offeror shall deliver copies of such document(s) to the City’s Procurement Services Manager. The term "litigation" includes an assignment for the benefit of creditors, and filings of bankruptcy, reorganization and/or foreclosure.

Initials for 6

7. CONTRACTOR’S REGISTRATION INFORMATION

Offeror’s firm verifies and states that they are (check all that apply):

_______ Large Business (i.e. do not qualify as a small business or non-profit)
_______ Nonprofit
_______ Small Business
_______ Minority Owned Business/Small Disadvantaged Business
_______ Woman Owned Business
Veteran Owned Business

Service-Disabled Veteran Owned Business

HUBZone Business

Note: The City accepts self-certification for these categories in accordance with Small Business Administration (SBA) standards. The SBA size standards are found on the SBA website https://www.sba.gov/content/am-i-small-business-concern.

8. CONTRACTOR PERSONNEL

a) The Offeror shall appoint one of its key personnel as the “Authorized Representative” who shall have the power and authority to interface with the City and represent the Offeror in all administrative matters concerning this proposal and any awarded contract, including without limitation such administrative matters as correction of problems modifications, and reduction of costs.

b) The Authorized Representative shall be the person identified in the Offeror’s proposal, unless the Offeror provides written notice to the City naming another person to serve as its Authorized Representative. Communications received by the City Contracts Specialist from the Authorized Representative shall be deemed to have been received from the Offeror.

The individual, ________________________________ (Name)
with position, ________________________________ (Title)
Can be reached at
Work telephone number: ______________________
Home telephone number: ______________________
Cellular telephone number: ____________________
E-mail address: ______________________________

9. OFFEROR’S CERTIFICATION

The undersigned hereby affirms that:

a) He/She is a duly authorized agent of the Offeror;

b) He/She has read and agrees to the City’s standard terms and conditions attached.

c) The offer is presented in full compliance with the collusive prohibitions of the City of Colorado Springs. The Offeror certifies that no employee of its firm has discussed, or
compared the offer with any other offeror or City employee and has not colluded with any other offeror or City employee.

d) The Offeror certifies that it has checked all of its figures, and understands that the City will not be responsible for any errors or omissions on the part of the Offeror in preparing its proposal.

e) By submitting an offer the Offeror certifies that it has complied and will comply with all requirements of local, state, and federal laws, and that no legal requirements have been or will be violated in making or accepting this solicitation.

I hereby certify that I am submitting the proposal based on my company's capabilities to provide quality products and/or services on time.

____________
Initials for 9

10. OFFEROR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS:

1. The Offeror certifies to the best of its knowledge and belief, that (i) the Offeror and/or any of its Principals
   a. Are ( ), Are not ( ) presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
   b. Have ( ), Have not ( ), within a three year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, local) contract or subcontract; violation of Federal or state antitrust statutes related to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, tax evasion, or receiving stolen property; and
   c. Are ( ), Are not ( ) presently indicated for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in any paragraphs above.

2. The Offeror shall provide immediate written notice to the City Contracts Specialist if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reasons of changed circumstances.

3. The certification in paragraph 1. above, is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City Contracts Specialist may terminate the contract resulting from this solicitation for default. Termination for default may result in additional charges being levied for the costs incurred by the City to initiate activities to replace the awarded Contractor.
11. ACCEPTANCE OF CITY CONTRACTS SPECIALIST’S SOLE AUTHORITY FOR CHANGES

Unless otherwise specified in the Contract, the Offeror hereby agrees that any changes to the scope of work, subsequent to the original contract signing, shall be generated in writing and an approval signature shall be obtained from the City Contracts Specialist prior to additional work performance.

12. CITY CONTRACTOR SAFETY PROGRAM

The Offeror hereby agrees to adhere to a worker safety program for contractor employees on a City job site or location. By initialing below, the Offeror has reviewed the information and will abide by the City Policy which is available for review:


13. ACCEPTANCE OF CITY ENVIRONMENTALLY PREFERRED PURCHASING (EPP) POLICY

The City of Colorado Springs is committed to buying more environmentally preferable goods and services, as long as they meet performance needs, are available within a reasonable time and at a reasonable cost. The Offeror hereby acknowledges review of this policy by initialing below.


14. FRAUD, WASTE, AND ABUSE

Everyone has a duty to report any suspected unlawful act impacting the City of Colorado Springs operations and its enterprises. Anyone who becomes aware of the existence or apparent existence of fraud, waste, and abuse in City of Colorado Springs
is encouraged to report such matters to the City Auditor’s Office in writing or on the telephone hotline 385-2387 (ADTR). Written correspondence can be mailed to:

City Auditor  
P.O. Box 2241  
Colorado Springs CO 80901

Or via email CityAuditManagement@springsgov.com. Any of these mechanisms allow for anonymous reporting. For more information, please go to the website https://coloradosprings.gov/cityfraud.

Initials for 14

Name of Company:

Federal Tax ID Number:

DUNS Number:

Principle Place of Business:

Signature of Authorized Representative

Printed Name:

Title:

Date:
EXHIBIT 2   SAMPLE CONTRACT

SERVICES CONTRACT

<table>
<thead>
<tr>
<th>Contract Number:</th>
<th>Project Name/Title</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Vendor/Contractor</th>
<th>Contact Name:</th>
<th>Telephone:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Email Address:</th>
<th>Address:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Federal Tax ID #:</th>
<th>Please check one:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Corporation</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>City Contracting Specialist</th>
<th>Name &amp; Phone#</th>
<th>City Dept Rep</th>
<th>Name &amp; Phone# &amp; Department Name</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NOT TO EXCEED Contract Amount:</th>
<th>City Account #:</th>
<th>Acct Code (5)</th>
<th>Fund (3)</th>
<th>Dept (4)</th>
<th>Project (7)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Contract Type:</th>
<th>Period of Performance:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. INTRODUCTION

THIS TYPE CONTRACT ("Contract") is made and entered into this ___ day of __________, 20xx, by and between the City of Colorado Springs, a Colorado municipal corporation and home rule city, in the County of El Paso, State of Colorado, (the "City"), and ______________________ (the "Contractor").

THE CITY AND THE CONTRACTOR HEREBY AGREE AS Follows:

The City has heretofore prepared the necessary Contract Documents for the following Activity: XXXXXXXX.

The Contractor did on the ___ day of __________, 20xx, submit to the City the Contractor's written offer and proposal to do the work therein described under the terms and conditions therein set forth and furnish all materials, supplies, labor, services, transportation, tools, equipment, and parts for said work in strict conformity with the accompanying Contract Documents, which are attached hereto and incorporated herein by this reference, including the following:

1. This Contract Document
2. Appendix A – Additional Terms and Conditions
3. Appendix B – Contractor’s Proposal,
5. Appendix D – Project Schedule
6. Appendix E – Insurance Requirements
2. COMPENSATION/CONSIDERATION

If FFP:

THIS FIRM FIXED PRICE CONTRACT is established at firm fixed amount of $xxxxxxx.

Subject to the terms and conditions of the Contract Documents, Contractor shall provide all materials, supplies, labor, services, transportation, tools, equipment, and parts to perform ______________ services for the City of Colorado Springs in a good and workmanlike manner to the satisfaction of the City for the total contract amount designated above and in the Notice of Award, to be paid by the City to the Contractor.

If T&M

Subject to the terms and conditions of the Contract Documents, Contractor shall provide all materials, supplies, labor, services, transportation, tools, equipment, and parts to perform ______________ services for the City of Colorado Springs in a good and workmanlike manner to the satisfaction of the City for the estimated price of ____________________________, not to exceed $_____________ (“Not to Exceed estimate”). If the performance of this Contract involves the services of others or the furnishing of equipment, supplies, or materials, the Contractor agrees to pay for the same in full. At the time of payment by the City, the Contractor shall certify in writing that said payments have been so made.

This is a Time and Material (T&M) type contract. The Not to Exceed estimate is in accordance with the Contractor’s T&M proposal and rates, as included in the attached proposal, dated XXXXXX. All labor charges shall be in accordance with the T&M rates provided therein. Invoiced hours shall be subject to City review and approval before payable.

The parties estimate that performance of this Contract will not exceed the Not to Exceed estimate. The Contractor shall notify the City Contracts Specialist in writing whenever it has reason to believe that the costs the Contractor expects to incur under this Contract in the following 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified herein; or the total cost for the performance of this Contract will be either greater or substantially less than had been previously estimated. As part of the notification, the Contractor shall provide the Contracts Specialist a revised estimate of the total cost of performing this Contract.

The City is not liable for any costs above the Not to Exceed estimate, and the Contractor is not obligated to continue performance under this Contract (including actions under the Termination clause of this Contract) or otherwise incur costs in excess of the Not to Exceed estimate specified herein, until the City Contracts Specialist
(i) notifies the Contractor in writing that the estimated cost has been increased and

(ii) provides a revised estimated total not to exceed price of performing this Contract.

3. TERM OF CONTRACT

It is further agreed that the Contractor will start work promptly and continue to work diligently until completed. The Contract Period of Performance shall be as follows:

<table>
<thead>
<tr>
<th>Performance Period</th>
<th>Dates</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base Year:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Option Year One:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Option Year Two:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Option Year Three:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Option Year Four:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Option years may be exercised unilaterally by the City at the City’s sole discretion. Pricing for option years shall be as indicated above. The City may elect not to exercise an option at any time before start of an option at no additional cost to the City. Further, the City shall have the unilateral option of extending services beyond the term of the Contract, including all options, for a period not to exceed a total of six (6) months if additional time is necessary to solicit and award a new Contract. Options to extend services shall be exercised upon written notification (mailed or otherwise furnished) to the Contractor at least fifteen (15) days prior to the expiration date of the Contract, or to extend Contract for up to four additional one year option periods at the City’s sole discretion.

The total value of this Contract for all years shall not exceed $XXXXXXX. The value and current funding is $XXXXXXX for the base year.

OR

Contractor will start work promptly after the Notice to Proceed and continue to work diligently until completed. The Contractor shall complete all work on an as ordered basis throughout the Contract period which is _____ Calendar Days after the Notice-to-Proceed (“Period of Performance”) as per the specifications and drawings. The Contractor shall provide a two-year guarantee on all work performed under this Contract after the job has been completed and accepted.
4. INSURANCE

The Contractor shall provide and maintain acceptable Insurance Policy(s) consistent with the Minimum Insurance Requirements attached as Appendix E, which includes Property, Liability and Professional Errors and Omissions coverage, and as otherwise listed in Appendix E. The City of Colorado Springs shall be reflected as an additional insured on the Property and Liability policy(s).

Further, Contractor understands and agrees that Contractor shall have no right of coverage under any existing or future City comprehensive, self, or personal injury policies. Contractor shall provide insurance coverage for and on behalf of Contract that will sufficiently protect Contractor, or Contractor’s agents, employees, servants or other personnel, in connection with the services which are to be provided by Contractor pursuant to this Contract, including protection from claims for bodily injury, death, property damage, and lost income. Contractor shall provide worker’s compensation insurance coverage for Contractor and all Contractor personnel. Contractor shall file applicable insurance certificates with the City and shall also provide additional insurance as indicated in this Contract. **A CURRENT CERTIFICATE OF INSURANCE IS REQUIRED PRIOR TO COMMENCEMENT OF SERVICES LISTING THE CITY AS ADDITIONALLY INSURED.**

5. RESPONSIBILITY OF THE CONTRACTOR

A. The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all Scope of Work services furnished by the Contractor under this Contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in services provided under this Contract to the satisfaction of the City.

B. The City’s review, approval of, acceptance of, or payment for the services required under this Contract shall not be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the City for any and all damages to the City caused by the Contractor’s negligent performance of any of the services furnished under this Contract.

C. The rights and remedies of the City provided for under this Contract are in addition to any other rights and remedies provided by law.

D. If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

6. WORK OVERSIGHT

A. The extent and character of the work to be done by the Contractor shall be subject to the general approval of the City’s delegated Project Manager.
B. If any of the work or services being performed does not conform with Contract requirements, the City may require the Contractor to perform the work or services again in conformity with Contract requirements, at no increase in Contract amount. When defects in work or services cannot be corrected by re-performance, the City may (1) require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements and (2) reduce the Contract price to reflect the reduced value of the work or services performed.

C. If the Contractor fails to promptly perform the defective work or services again or to take the necessary action to ensure future performance is in conformity with Contract requirements, the City may (1) by Contract or otherwise, perform the services and charge to the Contractor any cost incurred by the City that is directly related to the performance of such work or service or (2) terminate the Contract for breach of contract.

7. SUBCONTRACTORS, ASSOCIATES, AND OTHER CONTRACTORS

A. Any subcontractor, outside associates, or other contractors used by the Contractor in connection with Contractor's work under this Contract shall be limited to individuals or firms that are specifically identified by the Contractor in the Contractor's proposal and agreed to by the City. The Contractor shall obtain the City's Project Manager’s written consent before making any substitution of these subcontractors, associates, or other contractors.

B. The Contractor shall include a flow down clause in all of its subcontracts, agreements with outside associates, and agreements with other contractors. The flow down clause shall cause all of the terms and conditions of this Contract, including all of the applicable parts of the Contract Documents, to be incorporated into all subcontracts, agreements with outside associates, and agreements with other contractors. The flow down clause shall provide clearly that there is no privity of contract between the City and the Contractor's subcontractors, outside associates, and other contractors.

8. KEY PERSONNEL

The key personnel listed in the proposal and/or below will be the individuals used in the performance of the work. If any of the listed key personnel leave employment or are otherwise not utilized in the performance of the work, approval to substitute must be obtained by the Contractor from the City's Project Manager. Any substitute shall have the same or a higher standard of qualifications that the key personnel possessed at the time of Contract award.
9. START AND CONTINUANCE OF WORK

It is further agreed that the Contractor will start work promptly and continue to work diligently until this Contract is completed.

10. APPROPRIATION OF FUNDS

This Contract is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Contract, with respect to any financial obligation of the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Contract at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Contract, including any sub-agreement, schedule, or exhibit thereto, by the City. As used herein, the term “appropriation” shall mean and include the due adoption of an appropriation ordinance and budget and the approval of a Budget Detail Report (Resource Allocations) which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Contract.

11. CHANGES

The Contractor and the City agree and acknowledge as a part of this Contract that no change order or other form or order or directive may be issued by the City which requires additional compensable work to be performed, which work causes the aggregate amount payable under the Contract to exceed the amount appropriated for this Contract as listed above, unless the Contractor has been given a written assurance by the City that lawful appropriations to cover the costs of the additional work have been made or unless such work is covered under a remedy-granting provision of this Contract. The Contractor and the City further agree and acknowledge as a part of this Contract that no change order or other form or order or directive which requires additional compensable work to be performed under this Contract shall be issued by the City unless funds are available to pay such additional costs, and, regardless of any remedy-granting provision included within this Contract, the Contractor shall not be entitled to any additional compensation for any change which increases or decreases the Contract completion date, or for any additional compensable work performed under this Contract, and expressly waives any rights to additional compensation, whether by law or equity, unless, prior to commencing the additional work, the Contractor is given a written change order describing the change in Contract completion date or the additional compensable work to be performed, and setting forth the amount of compensation to be paid, and
such change order is signed by the authorized City representative, as defined below. The amount of compensation to be paid, if any, shall be deemed to cover any and all additional, direct, indirect or other cost or expense or profit of the Contractor whatsoever. It is the Contractor's sole responsibility to know, determine, and ascertain the authority of the City representative signing any change order under this Contract.

No change, amendment, or modification to this Contract shall be valid unless duly approved and issued in writing by the City of Colorado Springs Procurement Services Division. The City shall not be liable for any costs incurred by the Contractor resulting from work performed for changes not issued in writing by the City of Colorado Springs Procurement Services Division.

The following personnel are authorized to sign changes, amendments, or modifications to this Contract.

The Project Manager: Changes up to $14,999.99
The City of Colorado Springs Chief of Staff: Changes up to $499,999.99
The Mayor of the City of Colorado Springs: Unlimited

12. ASSIGNMENT

No assignment or transfer by the Contractor of this Contract or any part thereof or of the funds to be received thereunder by the Contractor will be recognized unless such assignment has had the prior written approval of the City and the surety has been given due notice of such assignment. Such written approval by the City shall not relieve the Contractor of the obligations under the terms of this Contract. In addition to the usual recitals in assignment contracts, the following language must be included in the assignment:

It is agreed that the funds to be paid to the assignee under this assignment are subject to a prior lien for services rendered or materials supplied for the performance of the work called for in said contract in favor of all persons, firms, or corporations rendering such services or supplying such materials.

13. CHOICE OF LAW

This Contract is subject to and shall be interpreted under the law of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs, Colorado, a Colorado home rule city. Court venue and jurisdiction shall be exclusively in the Colorado District Court for El Paso County, Colorado. The Parties agree that the place of performance for this Contract is deemed to be in the City of Colorado Springs, El Paso County, State of Colorado. The Contractor shall ensure that the Contractor and the Contractor's employees, agents, officers and subcontractors are familiar with, and comply with, applicable Federal, State, and Local laws and regulations as now written or hereafter amended.
14. WORKERS’ COMPENSATION INSURANCE

Contractor shall take out and maintain during the Period of Performance, Colorado Worker’s Compensation Insurance for the Contractor and all employees of the Contractor. If any service is sublet by the Contractor, the Contractor shall require the subcontractor to provide the same coverage for the subcontractor and subcontractor’s employees. Workers’ Compensation Insurance shall include occupational disease provisions covering any obligations of the Contractor in accord with the provisions of the Workers’ Compensation Act of Colorado.

15. INDEMNIFICATION

Contractor agrees that the Contractor shall indemnify, defend and hold harmless the City, its officers, employees and agents, from and against any and all loss, damage, injuries, claims, cause or causes of action, or any liability whatsoever resulting from, or arising out of, or in connection with the Contractor’s obligations or actions under this Contract caused by any willful or negligent error, omission or act or a failure to observe any applicable standard of care by the Contractor or any person employed by it or anyone for whose acts the Contractor is legally liable. In consideration of the award of this Contract, to the extent damages are covered by insurance, the Contractor agrees to waive all rights of subrogation against the City, its subsidiary, parent, associated and/or affiliated entities, successors, or assigns, its elected officials, trustees, employees, agents, and volunteers for losses arising from the work performed by the Contractor for the City. The indemnification obligation shall survive the expiration or termination of this Contract.

16. INDEPENDENT CONTRACTOR

In the performance of the Contractor's obligations under this Contract, it is understood, acknowledged and agreed between the parties that the Contractor is at all times acting and performing as an independent contractor, and the City shall neither have nor exercise any control or direction over the manner and means by which the Contractor performs the Contractor’s obligations under this Contract, except as otherwise stated within the Contract terms. The City shall not provide any direction to the Contractor on the work necessary to complete the project. Contractor understands that it is an independent contractor responsible for knowing how to perform all work or tasks necessary to complete project. The Contractor understands and agrees that the Contractor and the Contractor's employees, agents, servants, or other personnel are not City employees. The Contractor shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation or benefit to the Contractor or any of the Contractor's employees, agents, servants or other personnel performing services or work under this Contract, whether it is of a direct or indirect nature. Further in that regard, it is expressly understood and agreed that for such purposes neither the Contractor nor the Contractor's employees, agents, servants or other personnel shall be entitled to
any City payroll, insurance, unemployment, worker’s compensation, retirement or any other benefits whatsoever.

17. APPLICABLE LAW AND LICENSES

In the conduct of the services or work contemplated in this Contract, the Contractor shall ensure that the Contractor and all subcontractors comply with all applicable state, federal and City and local law, rules and regulations, technical standards or specifications. The Contractor shall qualify for and obtain any required licenses prior to commencement of work.

18. PRIOR AGREEMENTS

This is a completely integrated Contract and contains the entire agreement between the parties. Any prior written or oral agreements or representations regarding this Contract shall be of no effect and shall not be binding on the City. This Contract may only be amended in writing, and executed by duly authorized representatives of the parties hereto.

19. INTELLECTUAL PROPERTY

The Parties hereby agree, and acknowledge, that all products, items writings, designs, models, examples, or other work product of the Contractor produced pursuant to this Contract are works made for hire, and that the City owns, has, and possesses any and all ownership rights and interests to any work products of the Contractor made under this Contract, including any and all copyright, trademark, or patent rights, and that compensation to the Contractor for Agreement and acknowledgment of this intellectual property right section of this Contract is included in any compensation or price whatsoever paid to the Contractor under this Contract. It is the intent of the parties that the City shall have full ownership and control of the Contractor's work products produced pursuant to this Contract, and the Contractor specifically waives and assigns to the City all rights which Contractor may have under the 1990 Visual Artists Rights Act, federal, and state law, as now written or later amended or provided. In the event any products, items writings, designs, models, examples, or other work product produced pursuant to this Contract is deemed by a court of competent jurisdiction not to be a work for hire under federal copyright laws, this intellectual property rights provision shall act as an irrevocable assignment to the City by the Contractor of any and all copyrights, trademark rights, or patent rights in the Contractor's products, items writings, designs, models, examples, or other work product produced pursuant to this Contract, including all rights in perpetuity. Under this irrevocable assignment, the Contractor hereby assigns to the City the sole and exclusive right, title, and interest in and to the Contractor's products, items writings, designs, models, examples, or other work product produced pursuant to this Contract, without further consideration, and agrees to assist the City in registering and from time to time enforcing all copyrights and other rights and protections relating to the Contractor's products, items writings,
designs, models, examples, or other work product in any and all countries. It is the Contractor's specific intent to assign all right, title, and interest whatsoever in any and all copyright rights in the Contractor's products, items writings, designs, models, examples, or other work product produced pursuant to this Contract, in any media and for any purpose, including all rights of renewal and extension, to the City. To that end, the Contractor agrees to execute and deliver all necessary documents requested by the City in connection therewith and appoints the City as Contractor's agent and attorney-in-fact to act for and in Contractor's behalf and stead to execute, register, and file any such applications, and to do all other lawfully permitted acts to further the registration, prosecution, issuance, renewals, and extensions of copyrights or other protections with the same legal force and effect as if executed by the Contractor; further, the parties expressly agree that the provisions of this intellectual property rights section shall be binding upon the parties and their heirs, legal representatives, successors, and assigns.

20. WAIVERS

No waiver of default by the City of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the Contractor shall be construed, or shall operate, as a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained to be performed, kept, and observed by the Contractor.

21. THIRD PARTIES

It is expressly understood and agreed that enforcement of the terms and conditions of this Contract, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this Contract shall give or allow any such claim or right of action by any other or third person or entity on such Contract. It is the express intention of the Parties hereto that any person or entity, other than the Parties to this Contract, receiving services or benefits under this Contract shall be deemed to be incidental beneficiaries only.

22. TERMINATION

A. Termination for Convenience.
By signing this Contract, Contractor represents that it is a sophisticated business and enters into the Contract voluntarily, has calculated all business risks associated with this Contract, and understands and assumes all risks of being terminated for convenience, whether such risks are known or not known. Contractor agrees that the City may terminate this Contract at any time for convenience of the City, upon written notice to the Contractor. Contractor expressly agrees to and assumes the risk that the City shall not be liable for any costs or fees of whatsoever kind and nature if termination for convenience occurs before Contractor begins any work or portion of the work. Contractor further expressly agrees and assumes the risks that the City shall not be liable for any unperformed work, anticipated profits, overhead,
mobilizations costs, set-up, demobilization costs, relocation costs of employees, layoffs or severance costs, administrative costs, productivity costs, losses on disposal of equipment or materials, cost associated with the termination of subcontractors, costs associated with purchase orders or purchases, or any other costs or fees of any kind and nature, if Contractor has started or performed portions of the Contract prior to receiving notice from the City. The City shall be liable only for the portions of work Contractor actually satisfactorily completed up to the point of the issuance of the Notice of Termination for convenience. Upon receipt of this notice the Contractor shall immediately: discontinue all services affected (unless the notice directs otherwise), and deliver to the City all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Contract, whether completed or in process.

B. Termination for Cause: The occurrence of any one or more of the following events ("Event of Default") will justify termination for cause:

i. Contractor’s failure to perform the work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule as adjusted from time to time.

ii. Contractor’s disregard of the laws or regulations of any public body having jurisdiction.

iii. Contractor’s disregard of the authority of Project Manager.

iv. Contractor’s violation in any material provision of the Contract Documents.

v. Contractor’s failure to make prompt payments to its subcontractors, and suppliers of any tier, or laborers or any person working on the work by, through, or under the Contractor or any of them, any all of their employees, officers, servants, members, and agents.

vi. Contractor files a petition commencing a voluntary case under the U.S. Bankruptcy Code, or for liquidation, reorganization, or an arrangement pursuant to any other U.S. or state bankruptcy Laws, or shall be adjudicated a debtor or be declared bankrupt or insolvent under the U.S. Bankruptcy Code, or any other federal or state laws relating to bankruptcy, insolvency, winding-up, or adjustment of debts, or makes a general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due, or if a petition commencing an involuntary case under the U.S. Bankruptcy Code or an answer proposing the adjudication of Contractor as a debtor or bankrupt or proposing its liquidation or reorganization pursuant to the Bankruptcy Code or any other U.S. federal or state bankruptcy laws is filed in any court and Contractor consents to or acquiesces in the filing of that pleading or the petition
or answer is not discharged or denied within sixty (60) Calendar Days after it is filed.

vii. A custodian, receiver, trustee or liquidator of Contractor, all or substantially all of the assets or business of Contractor, or of Contractor’s interest in the Work or the Contract, is appointed in any proceeding brought against Contractor and not discharged within sixty (60) Calendar Days after that appointment, or if Contractor shall consent to or acquiesces in that appointment.

viii. Contractor fails to commence correction of defective work or fails to correct defective work within a reasonable period of time after written notice.

If one or more of the events identified in Paragraphs i-viii above occur, City may give Contractor written notice of the event and direct the event be cured. Any such Notice to Cure will provide Contractor a minimum of ten (10) calendar days to prepare and submit to the Project Manager a plan to correct the Event of Default. If such plan to correct the Event of Default is not submitted to the Project Manager within ten (10) days after the date of the written notice or such plan is unacceptable to the City, the City may, give Contractor (and the Surety, if any) written notice that Contractor’s services are being terminated for cause. Upon delivery of the termination notice, City may terminate the services of Contractor in whole or in part, exclude Contractor from the site, and take possession of the work and of all Contractor’s tools, appliances, equipment, and machinery at the project site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the work all materials and equipment stored at the site or for which City has paid Contractor but which are stored elsewhere, and finish the work as City may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until Certificate of Completion of the work. In the event City terminates this Contract for Cause and the cost of completing the work exceeds the unpaid balance of the Contract price, Contractor shall pay City for any costs of completion which exceed the Contract price when combined with all amounts previously paid to Contractor. When exercising any rights or remedies under this paragraph City shall not be required to obtain the lowest price for the work performed. Should the cost of such completion, including all proper charges, be less than the original Contract price, the amount so saved shall accrue to the City. Neither the City nor any officer, agent or employee of the City shall be in any way liable or accountable to the Contractor or the Surety for the method by which the completion of the said work, or any portion thereof, may be accomplished or for the price paid.

Where Contractor’s services have been so terminated by City, the termination will not affect any rights or remedies of City against Contractor or Surety then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by City will not release Contractor from liability.
C. Termination Notice. Upon receipt of a termination notice, whether for convenience or cause, the Contractor shall immediately: discontinue all services affected (unless the notice directs otherwise), and deliver to the City all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Contract, whether completed or in process.

D. Removal of Equipment. Except as provided above, in the case of termination of this Contract before completion from any cause whatever, the Contractor, if notified to do so by the City, shall promptly remove any part or all of Contractor’s equipment and supplies from the property of the City, failing which the City shall have the right to remove such equipment and supplies at the expense of the Contractor.

23. BOOKS OF ACCOUNT AND AUDITING

The Contractor shall make available to the City if requested, true and complete records, which support billing statements, reports, performance indices, and all other related documentation. The City’s authorized representatives shall have access during reasonable hours to all records, which are deemed appropriate to auditing billing statements, reports, performance indices, and all other related documentation. The Contractor agrees that it will keep and preserve for at least seven years all documents related to the Contract which are routinely prepared, collected or compiled by the Contractor during the performance of this Contract.

The City’s Auditor and the Auditor’s authorized representatives shall have the right at any time to audit all of the related documentation. The Contractor shall make all documentation available for examination at the Auditor’s request at either the Auditor’s or Contractor’s offices, and without expense to the City.

24. ILLEGAL ALIENS

Illegal Aliens - Public Contracts for Services - Compliance with Title 8, Article 17.5, Colorado Revised Statutes: The Contractor acknowledges, understands, agrees, and certifies that: In the performance of any work or the provision of any services by the Contractor under this Contract, the Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract; or enter into a contract with any subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or under the subcontract to this Contract. The Contractor certifies in accord with Section 8-17.5-102(1) C.R.S. that, on the date the Contractor signs this Contract, the Contractor does not knowingly employ or Contract with an illegal alien who will perform work under this Contract and that the Contractor shall participate in the e-verify program or Colorado Department of Labor and Employment program in order to confirm the employment eligibility of all employees who are newly hired for employment or to perform work under this Contract. The Contractor is expressly prohibited from using the e-verify program or Colorado Department of Labor and Employment program procedures to undertake pre-
employment screening of job applicants while this Contract and any services under this Contract are being performed. If the Contractor obtains actual knowledge that a subcontractor performing work under this Contract for services knowingly employs or contracts with an illegal alien, the Contractor shall notify the subcontractor and the City within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien, and terminate the subcontract with the subcontractor if within three days of receiving the notice the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the Contract with the subcontractor if during the three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor shall comply with any request by the City, federal government, or the Colorado Department of Labor and Employment made in the course of an investigation. If the Contractor violates or fails to comply with any provision of C.R.S. 8-17.5-101 et seq, the City may terminate this Contract for breach of contract. If this Contract is so terminated, the Contractor shall be liable for any actual and consequential damages to the City.

25. COMPLIANCE WITH IMMIGRATION REFORM AND CONTROL ACT OF 1986

Contractor certifies that Contractor has complied with the United States Immigration Reform and Control Act of 1986. All persons employed by Contractor for performance of this Contract have completed and signed Form I-9 verifying their identities and authorization for employment.

26. LABOR

The Contractor shall employ only competent and skilled workmen and foremen in the conduct of work on this Contract. The Contractor shall at all times enforce strict discipline and good order among Contractor's employees. The Project Manager shall have the authority to order the removal from the work of any person, including Contractor's or any subcontractor's employees, who refuses or neglects to observe any of the provisions of these Plans or Specifications, or who is incompetent, abusive, threatening, or disorderly in conduct and any such person shall not again be employed on the Project.

In no event shall the City be responsible for overtime pay.

27. GRATUITIES

A. This Contract may be terminated if the Mayor, the Mayor's designee, and/or the Procurement Services Manager determine, in their sole discretion, that the Contractor or any officer, employee, agent, or other representative whatsoever, of the Contractor offered or gave a gift or hospitality to a City officer, employee, agent or Contractor for the purpose of influencing any decision to grant a City contract or to obtain favorable treatment under any City contract.
B. The terms "hospitality" and "gift" include, but are not limited to, any payment, subscription, advance, forbearance, acceptance, rendering or deposit of money, services, or anything of value given or offered, including but not limited to food, lodging, transportation, recreation or entertainment, token or award.

C. Contract termination under this provision shall constitute a breach of contract by the Contractor, and the Contractor shall be liable to the City for all costs of reletting the contract or completion of the project. Further, if the Contractor is terminated under this provision, or violates this provision but is not terminated, the Contractor shall be subject to debarment under the City’s Procurement Regulations. The rights and remedies of the City provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

28. NON-DISCRIMINATION

A. In accord with section 24-34-402, C.R.S., the Contractor will not discriminate against any employee or applicant for employment because of disability, race, creed, color, sexual orientation, religion, age, national origin, or ancestry. But, with regard to a disability, it is not a discriminatory or an unfair employment practice for an employer to take into consideration disability if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the person from the job, and the disability has a significant impact on the job. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their disability, race, creed, color, sexual orientation, religion, age, national origin, or ancestry. Such actions 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.

B. The 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.

C. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to disability, race, creed, color, sexual orientation, religion, age, national origin, or ancestry.

D. Contractor will cooperate with the City in using Contractor's best efforts to ensure that Disadvantaged Business Enterprises are afforded the maximum opportunity to compete for subcontracts or work under this Contract.
29. ORDER OF PRECEDENCE

Any inconsistency in this Contract shall be resolved by giving precedence in the following order:

A. This Contract document with its terms and conditions
B. The Statement of Work
C. Other Appendices, Attachments, Exhibits, or Schedules

30. HEADINGS

The section headings contained in this Contract are for reference purposes only and shall not affect the meaning or interpretation of this Contract.

31. DISPUTES

A. All administrative and contractual disputes arising from or related to this Contract shall be addressed in the following manner:
   i. If either Party disputes or disagrees with a Contract term or the other Party’s interpretation of a Contract term or has any other administrative or contractual dispute not addressed in the Unanticipated Circumstances provisions, such Party shall promptly give the other Party written notice of said dispute.
   ii. The Parties shall hold a meeting as soon as reasonably possible, but in no event later than thirty (30) calendar days from the initial written notice of the dispute, attended by persons with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute; provided, however, that no such meeting shall be deemed to vitiate or reduce the obligations and liabilities of the Parties or be deemed a waiver by a Party of any remedies to which such Party would otherwise be entitled unless otherwise agreed to by the Parties in writing.
   iii. If, within thirty (30) calendar days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to non-binding mediation and to bear equally the costs of the mediation.
   iv. The Parties will jointly appoint a mutually acceptable mediator. If they fail to do so within twenty (20) calendar days from the conclusion of the negotiation period, they shall each select a mediator. The two mediators will then appoint a third mediator who shall conduct mediation for the Parties as the sole mediator.
   v. The Parties agree to participate in good faith in the mediation and negotiations for a period of thirty (30) calendar days. The substantive and procedural law of the State of Colorado shall apply to the proceedings. If the Parties are not successful in resolving the dispute through mediation, then the Parties shall be free to pursue any other remedy afforded by the laws of the State of Colorado.
vi. Until final resolution of any dispute hereunder, the Contractor shall diligently proceed with the performance of this Contract as directed by the City. For purposes of this Contract, termination for convenience shall not be deemed a dispute. The City of Colorado Springs and the Contractor agree to notify each other in a timely manner of any claim, dispute, or cause of action arising from or related to this Contract, and to negotiate in good faith to resolve any such claim, dispute, or cause of action. To the extent that such negotiations fail, the City of Colorado Springs and the Contractor agree that any lawsuit or cause of action that arises from or is related to this Contract shall be filed with and litigated only by the Colorado District Court for El Paso County, CO.

32. DELIVERY

The City may cancel this Contract or any portion thereof if delivery is not made when and as specified, time being of the essence in this Contract. Contractor shall pay the City for any loss or damage sustained by the City because of failure to perform in accordance with this Contract.

33. PAYMENTS

All invoices shall be sent to the Project Manager identified in this Contract.

The City will pay the Contractor, upon submission of proper invoices, the prices stipulated in the Contract for services rendered and accepted, less any deductions provided in this Contract within 30 days (Net 30). The City will not pay late fees or interest. Any discount payment terms offered on the invoice may be taken by the City.

Each invoice must contain at least the following information:

Contract number, issued purchase order number, invoice number, invoice date, timeframe covered by invoice, type and amount of labor and materials used for that time period, dollar amount in unit price, extended price, and total value of invoice.

IF T&M

The City will make payments for services on a monthly basis for services performed during the previous month in accordance with this Contract. All labor Invoices shall include labor categories, rates, hours worked, and total amounts per category. All labor categories and rates charged must be included in this Contract. No other categories or rates will be allowed or payable. All labor invoices are subject to City approval.

Materials will be payable on a reimbursable basis with no additional profit, fee, overhead, handling, or General and Administrative (G&A) costs. All costs for
materials shall be approved by the City Contracts Specialist before the costs are incurred and payable.

The City will pay the Contractor, upon submission of proper invoices, the prices stipulated in the Contract for services rendered and accepted, less any deductions provided in this Contract within 30 days (Net 30). The City will not pay late fees or interest. Any discount payment terms offered on the invoice may be taken by the City.

34. INSPECTION OF SERVICES

The Contractor is responsible for performing or having performed all inspections and tests necessary to substantiate that the services furnished under this Contract conform to Contract requirements, including any applicable technical requirements for specified manufacturers’ parts. This clause takes precedence over any City inspection and testing required in the Contract’s specifications, except for specialized inspections or tests specified to be performed solely by the City.

A. Definition of “services”, as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Contractor shall provide and maintain an inspection system acceptable to the City covering the services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the City during Contract performance and for as long afterwards as the Contract requires.

C. The City has the right to inspect and test all services called for by the Contract, to the extent practicable at all times and places during the term of the Contract. The City will perform inspections and tests in a manner that will not unduly delay the work.

D. If the City performs inspections or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

35. SECURITY

The City maintains security requirements regarding access to City buildings and other City workplaces and worksites on City property. All Contractor personnel accessing City buildings, workplaces, or worksites, may be required to produce a valid, Government issued picture identification. Contractor personnel lacking such identification may not be allowed access to such sites. No costs incurred by the Contractor due to City security requirements shall be allowable or payable under this Contract.
36. TIME IS OF THE ESSENCE

In as much as the Contract concerns a needed or required service, the terms, conditions, and provisions of the Contract relating to the time of performance and completion of work are of the essence of this Contract. The Contractor shall begin work on the day specified and shall prosecute the work diligently so as to assure completion of the work within the number of calendar days or date specified, or the date to which the time for completion may have been extended.

37. EMPLOYMENT OF LABOR

The Contractor shall comply with, and defend and hold the City harmless from any violation of all laws and lawful rules and regulations, both of the State of Colorado and of the United States, relating to Workmen's Compensation, unemployment compensation, Social Security, payment for overtime, and all other expenses and conditions of employment under this Contract.

38. SALES TAX

The Contractor must have a tax-exemption certificate from the Colorado Department of Revenue for this project. The certificate does not apply to City of Colorado Springs Sales and Use Tax which shall be applicable. The tax exempt project number and the exemption certificate only applies to County, PPRTA (Pikes Peak Rural Transportation Authority), and State taxes when purchasing construction and building materials to be incorporated into this project.

Furthermore, the exemption does not include or apply to the purchase or rental of equipment, supplies or materials that do not become a part of the completed project or structure. Such purchases and rentals are subject to full applicable taxation.

All contracts with subcontractors must include the City of Colorado Springs Sales and Use Tax on the work covered by the Contract, and other taxes as applicable.

Note: For all equipment, materials and supplies incorporated into the work purchased from vendors or suppliers not licensed to collect City Sales Tax (i.e. out of state suppliers, etc.), City Use Tax is due and payable to the City. The Contractor shall execute and deliver, and shall cause the Contractor’s subcontractors to execute and deliver to the City Sales Tax Office, ST 16 forms listing all said equipment, materials and supplies and the corresponding use tax due, along with payment for said taxes. Any outstanding taxes due may be withheld from the final payment due the Contractor and may result in suspension of Contractor from bidding on City projects.
Forms and instructions can be downloaded at [https://coloradosprings.gov/sales-tax/page/additional-sales-tax-forms?mlid=30771](https://coloradosprings.gov/sales-tax/page/additional-sales-tax-forms?mlid=30771) Questions can be directed to the City Sales Tax Division at (719) 385-5903.

Our Registration Numbers are as follows:
City of Colorado Springs
Federal I.D.: 84-6000573
Federal Excise: A-138557
State Sales Tax: 98-03479

The Contractor’s payment or exemption of State of Colorado, El Paso County and City Sales and Use Taxes shall be as specified herein.

39. SEVERABILITY

If any terms, conditions, or provisions of this Contract shall be held unconstitutional, illegal, or void, such finding shall not affect any other terms, conditions, or provisions of this Contract.

40. LIABILITY OF CITY EMPLOYEES

All authorized representatives of the City are acting solely as agents and representatives of the City when carrying out and exercising the power or authority granted to them under the Contract. There shall not be any liability on them either personally or as employees of the City.

41. USE OF CITY NAME OR LOGO

Except as otherwise provided in this Contract, the Contractor shall not refer to this Contract or the City of Colorado Springs in any advertising or promotions in such a manner as to state or imply that the product or service provided is endorsed or preferred by the City of Colorado Springs, its employees, or its Departments, or is considered by these entities to be superior to other products or services. Any use of the name or logo of the City of Colorado Springs in advertising or promotions must be approved in writing by the City of Colorado Springs Contracts Specialist assigned to the Contract prior to such use.

42. TRAVEL

If travel expenses are included as a line item in this Contract, all travel expenses incurred and billable by the Contractor are subject to City approval. Air travel shall be limited to the round trip "economy coach" fare. Travel from the Colorado Springs Airport is encouraged. Unless there are extenuating circumstances, the Contract should take advantage of lower airfares by purchasing tickets more than 14 days in advance of travel. In-state travel by air must be more economical than travel by private vehicle. Use of a private vehicle may be reimbursed per mile at the current rate published by the IRS annually. Short-term parking, long-term parking or cab
fare associated with airport departure and arrival may be allowable expenses. Valet parking will not be allowed unless it is the least expensive or only option. Car rental rates may be reimbursed for car rentals no greater than the intermediate or standard classification. The City will not reimburse any other travel methods or expenses. The City will pay for lodging, meals, and miscellaneous expenses on a per diem basis only, in accordance with the current per diem rates published by the IRS annually. The City will not pay for Contractor expenses exceeding the per diem rates. Receipts for all reimbursable expenses must be provided with the Contractor's invoice.

43. APPENDICES

The following Appendices are made a part of this Agreement:

1. Appendix A – Additional Terms and Conditions
2. Appendix B – Contractor's Proposal,
4. Appendix D – Project Schedule
5. Appendix E – Insurance Requirements
CONTRACT SIGNATURE PAGE

The Contractor certifies in accord with Section 8-17.5-102(1) C.R.S. that, on the date the Contractor signs this Contract, the Contractor does not knowingly employ or Contract with an illegal alien who will perform work under this Contract and that the Contractor shall participate in the e-verify program or Colorado Department of Labor and Employment program in order to confirm the employment eligibility of all employees who are newly hired for employment or to perform work under this Contract. The Contractor is expressly prohibited from using the e-verify program or Colorado Department of Labor and Employment program procedures to undertake pre-employment screening of job applicants while this Contract and any services under this Contract are being performed.

IN WITNESS WHEREOF, the parties have caused these presents to be executed on the day and the year first above written.

This Contract is executed in one (1) original copy.

<table>
<thead>
<tr>
<th>THE CITY OF COLORADO SPRINGS, COLORADO:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<p>| SECOND PARTY: |</p>
<table>
<thead>
<tr>
<th>SAMPLE CONTRACT ONLY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate Name</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Signature</td>
</tr>
<tr>
<td>Date</td>
</tr>
<tr>
<td>Title</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT 3  EXCEPTIONS

Print the words "no exceptions"(here)___________________________ if there are no exceptions taken to any of the terms, conditions, or specifications of these proposal documents or contract.

If there are exceptions taken to any of the terms, conditions, or specifications of the proposal document or contract, they must be clearly stated on a separate sheet of paper attached to this sheet and returned with your proposal.

**Note:** All potential Offerors are hereby advised that exceptions taken may be considered during the evaluation phase which may affect the final scoring of proposals. Offerors stipulating that the City must use their contract or agreement may be determined non-responsive and their Proposal determined unacceptable.

Company Name: 

Address: 

(City, State and Zip Code)

Authorized Signature: 

Date: 

Printed Name/Title: 

Return this form with your Proposal.
EXHIBIT 4  MINIMUM INSURANCE REQUIREMENTS

The following listed minimum insurance requirements shall be carried by all contractors and consultants unless otherwise specified in the City’s solicitation package, Special Provisions or Standard Specifications.

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>X</td>
<td>Commercial General Liability for limits not less than $1,000,000 combined single limit for bodily injury and property damage for each occurrence. Coverage shall include blanket contractual, broad form property damage, products and completed operations.</td>
</tr>
<tr>
<td>2.</td>
<td>X</td>
<td>Workers’ Compensation and Employers Liability as required by statute. Employers Liability coverage is to be carried for a minimum limit of $100,000.</td>
</tr>
<tr>
<td>3.</td>
<td>X</td>
<td>Automobile Liability covering any auto (including owned, hired, and non-owned autos) with a minimum of $1,000,000 each accident combined single limit.</td>
</tr>
<tr>
<td>4.</td>
<td></td>
<td>Excess Liability for limits not less than $1,000,000 combined single limit for bodily injury and property damage for each occurrence.</td>
</tr>
<tr>
<td>5.</td>
<td></td>
<td>Builders Risk or Installation Floater Insurance: Contractor shall purchase and maintain property insurance written on a builder’s risk “all-risk” or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property.</td>
</tr>
<tr>
<td>6.</td>
<td></td>
<td>Professional Liability Insurance covering any damages caused by an error, omission or any negligent Acts with limits of not less than $1,000,000 per occurrence and in the aggregate. The coverage shall have an extended reporting period of 2 years following the date of substantial completion of the project for reporting of claims.</td>
</tr>
<tr>
<td>7.</td>
<td></td>
<td>Pollution Legal Liability Insurance shall apply to sudden and gradual pollution conditions resulting from the escape of release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants (including asbestos). If the coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under this contract is completed. Policy limits shall be no less than $1,000,000 per loss with $2,000,000 aggregate coverage.</td>
</tr>
<tr>
<td>8.</td>
<td></td>
<td>Technology Errors and Omissions Liability including Network Security and Privacy Liability not less than $3,000,000 per loss with a $3,000,000 aggregate.</td>
</tr>
<tr>
<td></td>
<td>a.</td>
<td>The policy shall provide a waiver of subrogation.</td>
</tr>
<tr>
<td></td>
<td>b.</td>
<td>The insurance shall provide coverage for liability arising from theft, dissemination and/or use of confidential information stored or transmitted in electronic form.</td>
</tr>
<tr>
<td></td>
<td>c.</td>
<td>Network Security Liability arising from the unauthorized access to, use of or tampering to gain access to your services including denial of service, unless caused by a mechanical or electrical failure Liability arising from the introduction of a computer virus into, or otherwise causing damage</td>
</tr>
</tbody>
</table>
to, a customer’s or third person’s computer, computer system, network or similar computer
related property and the data, software, and programs thereon.

<table>
<thead>
<tr>
<th>9.</th>
<th>Employee Crime Coverage shall include employee dishonesty, forgery or alteration and computer fraud. If Contractor is physically located on CITY premises, third party fidelity coverage extension shall apply. The policy shall include coverage for all directors, officers, agents and employees of the Contractor. Coverage limit will be not less than $1,000,000 per loss.</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>The bond or policy shall include coverage for extended theft and mysterious disappearance. The bond or policy shall not contain a condition requiring an arrest and conviction.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>10.</th>
<th>Liquor Legal Liability Insurance: If the event producer is a business that manufactures, distributes, sells, or serves alcoholic beverages, and intends to serve or sell alcoholic beverages at an event, they must also submit a Certificate of Insurance providing proof of a liquor legal liability insurance policy or properly endorsed general liability policy.</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>If this event producer hires a vendor to serve or sell alcoholic beverages, rather than providing the alcohol themselves, they must submit a Certificate of Insurance from the vendor providing proof of a liquor legal liability insurance policy or properly endorsed general liability policy.</td>
</tr>
<tr>
<td>b.</td>
<td>In either case, the minimum acceptable limit of liability per claim and aggregate is $1,000,000. This requirement applies to the business or group which serves or sells the alcohol.</td>
</tr>
</tbody>
</table>

Except for workers’ compensation and employer’s liability insurance, the City of Colorado Springs must be named as an additional insured. Certificates of Insurance must be submitted before commencing the work and provide 30 days’ notice prior to any cancellation, non-renewal, or material changes to policies required under the contract.

All coverage furnished by contractor is primary, and any insurance held by the City of Colorado Springs is excess and non-contributory.

The undersigned certifies and agrees to carry and maintain the insurance requirements indicated above throughout the contract Period of Performance.

__________________________________________
(Name of Company)

___________________________________________
(Signature)                                (Date)
EXHIBIT 5  QUALIFICATION STATEMENT

CITY OF COLORADO SPRINGS
QUALIFICATION STATEMENT

This statement will provide information which will enable the City to evaluate the qualifications of your firm and staff with regard to the requirements of this Request for Proposal. Please complete this form in its entirety and submit it (in the number of copies requested) along with the other required proposal documents. If a request in the Qualification Statement is contained in the proposal, indicate the section in the proposal where that information can be found.

(PRINT)
FIRM NAME: ____________________________
ADDRESS: ______________________________
CITY STATE ZIP: _________________________
AUTHORIZED REPRESENTATIVE: ____________
TITLE: _________________________________
AUTHORIZED SIGNATURE: __________________
PHONE: ___________________ FAX: __________
E-MAIL ADDRESS: _______________________

1. TYPE OF BUSINESS

CORPORATION [ ]
PARTNERSHIP [ ]
OTHER: _____________________________

2. TYPE OF LICENSE & LOCATION

INDIVIDUAL [ ]
JOINT VENTURE [ ]

3. TYPE OF SERVICE TO BE PROVIDED FOR RFP: __________________________

4. NUMBER OF YEARS IN BUSINESS: __________________________

5. ON A SEPARATE SHEET PROVIDE A BRIEF HISTORY OF YOUR FIRM, STAFF SIZE AND EXPERIENCE. SUBMIT A RESUME FOR THE PROJECT MANAGER AND EACH KEY PERSONNEL ASSIGNED TO THIS PROJECT.

6. WHAT OTHER NAME(S) HAS YOUR COMPANY OPERATED UNDER: ________________

7. HAVE YOU OR YOUR FIRM EVER FAILED TO COMPLETE ANY WORK AWARDED TO YOU? YES [ ] NO [ ] IF “YES”, EXPLAIN:

8. HAS ANY OFFICER OR PARTNER OF YOUR ORGANIZATION EVER BEEN AN OFFICER OR PARTNER OF ANOTHER ORGANIZATION THAT FAILED TO COMPLETE A CONTRACT WITHIN THE LAST FIVE (5) YEARS? YES [ ] NO [ ]
IF “YES”, EXPLAIN:
9. HAS YOUR FIRM OR ANY PARTNERS OR OFFICERS EVER BEEN INVOLVED IN ANY BANKRUPTCY ACTION? YES ☐ NO ☐ IF “YES”, EXPLAIN:

________________________________________________________________________

________________________________________________________________________

10. ARE YOU PRESENTLY INVOLVED IN ANY LITIGATION WITH ANY GOVERNMENT AGENCY? YES ☐ NO ☐ IF “YES”, EXPLAIN TYPE, KIND, PLAINTIFF, DEFENDANT, ETC., AND STATE THE CURRENT STATUS:

________________________________________________________________________

________________________________________________________________________

11. BANK REFERENCE: ____________________________
ADDRESS: ____________________________
CONTACT: ____________________________
PHONE: ____________________________

12. LIST THREE (3) SIMILAR PROJECTS (LOCAL OR STATE-WIDE) FROM LAST FIVE (5) YEARS—INCLUDE LOCATION OF PROJECT, SIZE OF PROJECT (CONTRACT AMOUNT), CONTACT NAME, ADDRESS, TELEPHONE NUMBERS.
NOTE: DETAILED INFORMATION ON THESE PROJECTS MAY ALSO BE REQUESTED IN THE RFP PACKAGE.
1. Location of Project: ____________________________
   Size of Project: ____________________________
   Contact Name and Title: ____________________________
   Contract Address: ____________________________
   Contact telephone and FAX Numbers: ____________________________

2. Location of Project: ____________________________
   Size of Project: ____________________________
   Contact Name: ____________________________
   Contact Address: ____________________________
   Contact telephone and FAX Numbers: ____________________________

3. Location of Project: ____________________________
   Size of Project: ____________________________
   Contact Name: ____________________________
   Contact Address: ____________________________
   Contact telephone and FAX Numbers: ____________________________

13. LIST CURRENT SIMILAR PROJECTS (LOCAL OR STATE-WIDE) UNDER CONTRACT—INCLUDE LOCATION OF PROJECT, SIZE OF PROJECT (CONTRACT AMOUNT) CONTACT NAME, ADDRESS, TELEPHONE NUMBERS.
NOTE: DETAILED INFORMATION ON THESE PROJECTS MAY ALSO BE REQUESTED IN THE RFP PACKAGE.
1. Location of Project: ____________________________
   Size of Project: ____________________________
   Contract Amount: ____________________________
Contact Name and Title:
Contact Address:
Contact telephone and FAX Numbers:

2. Location of Project:
Size of Project:
Contract Amount:
Contact Name and Title:
Contact Address:
Contact telephone and FAX Numbers:

3. Location of Project:
Size of Project:
Contract Amount:
Contact Name and Title:
Contact Address:
Contact telephone and FAX Numbers:

14. LIST OF SUB-CONTRACTORS TO BE USED FOR THIS PROJECT:
(INCLUDE NAME, ADDRESS, TELEPHONE NUMBER, TYPE OF WORK)
1. Name:
Address:
Telephone Number:
Type of Work:
2. Name:
Address:
Telephone Number:
Type of Work:
3. Name:
Address:
Telephone Number:
Type of Work:

IF ADDITIONAL INFORMATION IS PROVIDED ON A SEPARATE SHEET FOR ANY OF THE ITEMS, CLEARLY SPECIFY WHERE IT CAN BE LOCATED IN YOUR PROPOSAL PACKAGE.
**EXHIBIT 6 – EVALUATION SCORESHEET**

**PROPOSAL EVALUATION SCORE SHEET**

**SOLICITATION NUMBER AND TITLE:** R20-067 PB BUY AMERICA AUDITS & INSPECTIONS

**Proposer’s Name:** ____________________________

**Evaluator’s Name:** ____________________________

<table>
<thead>
<tr>
<th>Evaluation Factor: Best Value</th>
<th>Weight</th>
<th>Rating Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Price</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>Qualifications</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>Ability to Meet Schedule On Short Notice</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>Proposers Approach &amp; Work Plan</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td><strong>Total - All Evaluation Points</strong></td>
<td><strong>100</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Overall Proposal Strengths:**

**Overall Proposal Weaknesses:**
EXHIBIT 7 – FEDERAL CLAUSES/CERTIFICATES

Fly America Requirements
Contractor shall comply with 49 USC 40118 (the “Fly America” Act) in accordance with General Services Administration regulations 41 CFR 30110, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

Energy Conservation
Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

Access to Records and Reports
The following access to records requirements apply to this Contract:
1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at $250,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other nonprofit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).
FTA does not require the inclusion of these requirements in subcontracts.

**Federal Changes**

Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the recipient and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor’s failure to comply shall constitute a material breach of the contract.

**No Government Obligation to Third Parties**

(1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**Program Fraud and False or Fraudulent Statements or Related Acts**

(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, “Program Fraud Civil Remedies,” 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.

(3) US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate. (3)

Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**Termination**

a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient’s best interest. Contractor shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient’s property, contractor shall account for same, and dispose of it as the recipient directs.

b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other
provisions of the contract, the recipient may terminate this contract for default. Termination shall be
effected by serving a notice of termination to contractor setting forth the manner in which contractor is in
default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for
services performed in accordance with the manner of performance set forth in the contract. If it is later
determined by the recipient that contractor had an excusable reason for not performing, such as a strike,
fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after
setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the
termination as a termination for convenience.
c. Opportunity to Cure (General Provision) the recipient 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 notice of termination shall state the time period in which cure is
permitted and other appropriate conditions If contractor fails to remedy to the recipient's satisfaction the
breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after
receipt by contractor or written notice from the recipient setting forth the nature of said breach or default,
the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any
such termination for default shall not in any way operate to preclude the recipient from also pursuing all
available remedies against contractor and its sureties for said breach or default.
d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any
breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall
not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this
Contract.
e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written
notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract
is terminated, the recipient shall be liable only for payment under the payment provisions of this
contract for services rendered before the effective date of termination.
f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the
services within the time specified in this contract or any extension or if the contractor fails to comply with
any other provisions of this contract, the recipient may terminate this contract for default. The
recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default.
Contractor shall only be paid the contract price for supplies delivered and accepted, or services
performed in accordance with the manner or performance set forth in this contract. If, after termination for
failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and
obligations of the parties shall be the same as if termination had been issued for the recipient's
convenience.
g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to
perform the services, including delivery services, within the time specified in this contract or any extension
or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this
contract for default. The recipient shall terminate by delivering to contractor a notice of termination
specifying the nature of default. Contractor shall only be paid the contract price for services performed in
accordance with the manner of performance set forth in this contract. If this contract is terminated while
contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect
and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall
agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be
resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is
determined that contractor was not in default, the rights and obligations of the parties shall be the same
as if termination had been issued for the recipient's convenience.
h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any
separable part, with the diligence that will insure its completion within the time specified, or any extension,
or fails to complete the work within this time, or if contractor fails to comply with any other provisions of
this contract, the recipient may terminate this contract for default. the recipient shall terminate by
delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient
may take over the work and compete it by contract or otherwise, and may take possession of and use any
materials, appliances, and plant on the work site necessary for completing the work. Contractor and its
sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to
complete the work within specified time, whether or not contractor's right to proceed with the work is
terminated. This liability includes any increased costs incurred by the recipient in completing the work.
Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses. If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

j. Termination for Convenience or Default (CostType Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice or termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, parties shall be the same as if termination had been issued for the recipient's convenience.

k. Termination for Convenience or Default (CostTypeContracts) the recipient may terminate this contract, or any portion of it, by serving a notice or termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, parties shall be the same as if termination had been issued for the recipient's convenience.

**Government Wide Debarment and Suspension**

(Nonprocurement) The Recipient agrees to the following:

1. It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party
Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, 
"Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies 
on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any 
amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 
U.S.C. § 6101 note, (b) It will review the U.S. GSA “System for Award Management,” https:// 
www.sam.gov, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require 
each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, 
ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and 
suspension requirements, and 2 Reviews the “System for Award Management” at https://www.sam.gov, if 
necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, 
debars, or takes any similar action against a Third Party Participant or individual, the Recipient will 
provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient 
is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA 
Headquarters Office, or (c) FTA Chief Counsel.

Contracts Involving Federal Privacy Act Requirements
The following requirements apply to the Contractor and its employees that administer any system of 
records on behalf of the Federal Government under any contract:
(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the 
Among other things, the Contractor agrees to obtain the express consent of the Federal 
Government before the Contractor or its employees operate a system of records on behalf of the Federal 
Government. The Contractor understands that the requirements of the Privacy Act, including the civil and 
criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply 
with the terms of the Privacy Act may result in termination of the underlying contract.
(2) The Contractor also agrees to include these requirements in each subcontract to administer any 
system of records on behalf of the Federal Government financed in whole or in part with Federal 
assistance provided by FTA.

Civil Rights Requirements
The following requirements apply to the underlying contract:
The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and 
regulations, and follow applicable Federal guidance, except as the Federal Government determines 
otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal 
Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that 
civil rights statute, including compliance with equity in service:
a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures 
that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA’s 
“Nondiscrimination” statute): (1) FTA’s “Nondiscrimination” statute prohibits discrimination on the basis 
of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender 
identity and (2) The FTA “Nondiscrimination” statute’s prohibition against discrimination includes: (a) 
Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination 
in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. 
Follow: 1 The most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for 
Federal Transit Administration Recipients,” to the extent consistent with applicable Federal 
laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) 
Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA 
program specific guidelines for Title VI when administering its projects funded under the Tribal 
Transit Program,
b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each 
Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, 
(2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 
2000d et seq., (b) U.S. DOT regulations, “Nondiscrimination in Federally Assisted Programs of the 
Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 C.F.R. part 21, 
and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and
(3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, “Title VI and Title VI Dependent Guidelines” for Federal Transit Administration Recipients,” to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued, c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246, Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with FTA Circular 4704.10 other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of “Employer”. (3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking “construction” as recognized by Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of “Employer”. (3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246, Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note, d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as “Disadvantaged Business Enterprises” (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to with: (a) Section 1101(b) of Map21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding $250,000 in a Federal fiscal year must: 1) Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2) Implement a DBE program approved by FTA, and 3) Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration
of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient’s DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3730 et seq. (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part under Map21 and previous legislation.

e. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of disability, including:


f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including:


j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.
k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

**Patent and Rights Data Contracts involving experimental, developmental, or research work**

**Patent Rights**

A. General. The Recipient agrees that:

1. Depending on the nature of the Project, the Federal Government may acquire patent rights when the Recipient or Third Party Participant produces a patented or patentable:
   - (a) Invention,
   - (b) Improvement, or
   - (c) Discovery,

2. The Federal Government’s rights arise when the patent or patentable information is:
   - (a) Conceived under the Project, or
   - (b) Reduced to practice under the Project, and

3. When a patent is issued or patented information becomes available as described in Patent Rights section A(2), the Recipient agrees to:
   - (a) Notify FTA immediately, and
   - (b) Provide a detailed report satisfactory to FTA,

B. Federal Rights. The Recipient agrees that:

1. Its rights and responsibilities, and the rights and responsibilities of each Third Party Participant, in that federally funded invention, improvement, or discovery will be determined as provided by applicable Federal laws, regulations, and guidance, including any waiver thereof, and

2. Unless the Federal Government determines otherwise in writing, irrespective of the Recipient’s status or the status of any Third Party Participant as a large business, a small business, a State government, a State instrumentality, a local government, an Indian tribe, a nonprofit organization, an institution of higher education, or an individual, the Recipient agrees to transmit the Federal Government’s patent rights to FTA as specified in: (a) 35 U.S.C. § 200 et seq., and (b) U.S. Department of Commerce regulations, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” 37 C.F.R. part 401, and

C. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19:

1. License fees and royalties for patents, patent applications, and inventions derived from the Project are program income, and

2. The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except: (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research type project, and (b) As FTA determines otherwise in writing.

**Rights in Data and Copyrights**

A. Definition of “Subject Data.” means recorded information:
(1) Copyright. Whether or not copyrighted, and
(2) Delivery. That is delivered or specified to be delivered under the Underlying Agreement,
B. Examples of “Subject Data.” Examples of “subject data”:
(1) Include, but are not limited to:
(a) Computer software, (b) Standards, (c) Specifications, (d) Engineering drawings and associated lists,
(e) Process sheets, (f) Manuals, (g) Technical reports, (h) Catalog item identifications, and (i) Related information, but
(2) Do not include: (a) Financial reports, (b) Cost analyses, or (c) Other similar information used for Project administration,
C. General Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the Recipient’s Project supported by the Underlying Agreement: (1) Prohibitions. The Recipient may not: (a) Publish or reproduce any subject data in whole or in part, or in any manner or form, or (b) Permit others to do so, but
(2) Exceptions. The prohibitions of Rights in Data and Copyrights C(1) do not apply to: (a) Publications or reproductions for the Recipient’s own internal use, (b) An institution of higher learning, (c) The portion of subject data that the Federal Government has previously released or approved for release to the public, or (d) The portion of data that has the Federal Government’s prior written consent for release,
D. Federal Rights in Data and Copyrights. The Recipient agrees that: for release to the public, or (d) The portion of data that has the Federal Government’s prior written consent for release,
D. Federal Rights in Data and Copyrights. The Recipient agrees that:
(1) License Rights. The Recipient must provide a license to its “subject data” to the Federal Government, which license is:
(a) Royaltyfree, (b) Nonexclusive, and (c) Irrevocable,
(2) Uses. The Federal Government’s license must permit the Federal Government to take the following actions provided those actions are taken for Federal Government purposes: (a) Reproduce the subject data, (b) Publish the subject data, (c) Otherwise use the subject data, and (d) Permit other entities or individuals to use the subject data, and
E. Special Federal Rights in Data for Research, Development, Demonstration, Deployment, and Special Studies Projects. In general, FTA’s purpose in providing Federal funds for a research, development, demonstration, deployment, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to the Recipient and its Third Party Participants, therefore, the Recipient agrees that:
(1) Publicly Available Report. When the Project is completed, it must provide a Project report that FTA may publish or make available for publication on the Internet,
(2) Other Reports. It must provide other reports pertaining to the Project that FTA may request,
(3) Availability of Subject Data. FTA may make available to any FTA Recipient or any of its Third Party Participants at any tier of the Project, either FTA’s copyright license to the subject data or a copy of the subject data, except as the Federal Government determines otherwise in writing,
(4) Identification of Information. It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA,
(5) Incomplete Project. If the Project is not completed for any reason whatsoever, all data developed under the Project becomes “subject data” and must be delivered as the Federal Government may direct, but
(6) Exception. Rights in Data and Copyrights Section E does not apply to an adaptation of automatic data processing equipment or program that is both: (a) For the Recipient’s use, and (b) Acquired with FTA capital program funding,
F. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19:
(1) License fees and royalties for copyrighted material or trademarks derived from Project are program income, and
(2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except: (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research type project, and (b) As FTA determines otherwise in writing,
G. Hold Harmless. Upon request by the Federal Government, the Recipient agrees that:
(1) Violation by Recipient. (a) If it willfully or intentionally violates any: 1 Proprietary rights, 2 Copyrights, or 3 Right of privacy, and (b) Its violation occurs from any of the following uses of Project data: 1 Publication, 2 Translation, 3 Reproduction, 4 Delivery, 5 Use, or 6 Disposition, then (c) It will indemnify, save, and hold harmless against any liability, including costs and expenses of: 1 The Federal Government’s officers acting within the scope of their official duties,
2 The Federal Government’s employees acting within the scope of their official duties, and
3 Federal Government’s agents acting within the scope of their official duties, but (2) Exceptions. The Recipient will not be required to indemnify the Federal Government for any liability described in Rights in Data and Copyrights section G(1) if: (a) Violation by Federal Officers, Employees or Agents. The violation is caused by the wrongful acts of Federal employees or agents, or (b) State law. If indemnification is prohibited or limited by applicable State law,
H. Restrictions on Access to Patent Rights. Nothing in this Rights in Data and Copyrights section pertaining to rights in data either:
(1) Implies a license to the Federal Government under any patent, or
(2) May be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent,
I. Data Developed Without Federal Funding or Support. The Recipient understands and agrees that in certain circumstances it may need to provide data developed without any Federal funding or support to FTA. Nevertheless:
(1) Protections. Rights in Data and Copyrights Sections A, B, C, and D generally do not apply to data developed without Federal funding, even though that data may have been used in connection with the Project, and
(2) Identification of Information. The Recipient understands and agrees that the Federal Government will not be able to protect data developed without Federal funding from unauthorized disclosure unless that data is clearly marked “Proprietary” or “Confidential,” and
J. Requirements to Release Data. The Recipient understands and agrees that the Federal Government may be required to release Project data and information the Recipient submits to the Federal Government as required by:
(1) The Freedom of Information Act, 5 U.S.C. § 552,
(2) Another applicable Federal law requiring access to Project records,
(3) U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other NonProfit Organizations,” specifically 49 C.F.R. § 19.36(d), or
(4) Other applicable Federal regulations and guidance pertaining to access to Project records.
Disadvantaged Business Enterprise (DBE) – Applicability – Contracts over $10,000 awarded on the basis of a bid or proposal offering to
(3) U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other NonProfit Organizations,” specifically 49 C.F.R. § 19.36(d), or
(4) Other applicable Federal regulations and guidance pertaining to access to Project records.
Disadvantaged Business Enterprise (DBE) – Applicability – Contracts over $10,000 awarded on the basis of a bid or proposal offering to use DBEs
a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient’s overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.
b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
c. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.  
d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race neutral means throughout the period of performance. e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor’s receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor’s work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor’s work by the recipient and contractor’s receipt of the partial retainage payment related to the subcontractor’s work.  
f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.  

Prompt Payment  
The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.  

Incorporation of Federal Transit Administration (FTA) Terms  
The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.  

Other Federal Requirements:  

Full and Open Competition  
In accordance with 49 U.S.C. $ 5325(h) all procurement transactions shall be conducted in a manner that provides full and open competition.  

Prohibition Against Exclusionary or Discriminatory Specifications  
Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.  

Conformance with ITS National Architecture  
Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, “FTA National Architecture Policy on Transit Projects,” 66 Fed. Reg 1455 etseq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.  

Access Requirements for Persons with Disabilities
Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec.504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

**Notification of Federal Participation**
To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of $500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

**Interest of Members or Delegates to Congress**
No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising there from. Ineligible Contractors and Subcontractors Any name appearing upon the Comptroller General's list of ineligible contractors for federally assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

**Other Contract Requirements**
To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

**Compliance With Federal Regulations**
Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

**Real Property**
Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.3118.34, 49 CFR 19.3019.37, 49 CFR Part 24, 49 CFR 5326 as amended by Map21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

**Access to Services for Persons with Limited English Proficiency**
To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT.
Environmental Justice

Environmental Protections
Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

Geographic Information and Related Spatial Data
Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

Geographic Preference
All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic based hiring preferences as proposes to be amended in 2 CFR Part 1201 ).

Federal Single Audit Requirements
For State Administered Federally Aid Funded Projects Only
Non Federal entities that expend $750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non Profit Organizations" (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A133 Subpart B Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office.
(GAO). Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity’s fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A133 may result in suspension or termination of Federal award payments.

Catalog of Federal Domestic Assistance (CFDA) Identification Number
The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

Veterans Preference
As provided by 49 U.S.C. 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:
(1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53,
and (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

Safe Operation of Motor Vehicles
a. Seat Belt Use. The Recipient agrees to implement Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by: (1) Adopting and promoting on the job seat belt use policies and programs for its employees and other personnel that operate company owned vehicles, company rented vehicles, or personally operated vehicles, and (2) Including a “Seat Belt Use” provision in each third party agreement related to the Award. b. Distracted Driving, Including Text Messaging While Driving. The Recipient agrees to comply with: (1) Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225), (2) U.S. DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009, and (3) The following U.S. DOT Special Provision pertaining to Distracted Driving: (a) Safety. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award, (b) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, reevaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving, and (c) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34.b(3)(a) – (b) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

Catalog of Federal Domestic Assistance (CFDA) Identification Number
The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

The CFDA number for the Federal Transit Administration Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A133, "Audits of States, Local Governments, and NonProfit Organizations,"
Federal Awards (SEFA) and the Data Collection Form (SFSAC) required by OMB Circular A133

The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SFSAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SFSAC.

Organizational Conflicts of Interest

The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An Organizational Conflicts of Interest

The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.
PROMPT PAYMENT TO SUBCONTRACTORS

Subcontractors are subject to the provisions of 49 CFR §26.29

A. The Contractor is required to pay all Subcontractors for all work that the Subcontractor has satisfactorily completed, no later than thirty (30) calendar days after the Contractor has received payment from the City of Colorado Springs.

B. In addition, the contractor is required to return any retainage payments to those Subcontractors within thirty(30) calendar days after the Subcontractor’s work related to this contract, is satisfactorily completed.

D. The Contractor is required to include, in each subcontract, a clause requiring the use of appropriate arbitration mechanisms to resolve all payment disputes.

E. The City of Colorado Springs will not pay the Contractor for work performed unless and until the Contractor ensures that the Subcontractors have been promptly paid for the work they have performed under all previous payment requests, as evidenced by either canceled checks (submitted with contractor invoice at the completion of the contract) and the Contractor’s signature below that it will comply with the prompt payment requirements.

F. Failure to comply with these prompt payment requirements is a breach of the Contract, which may lead to any remedies permitted under law, including, but not limited to, Contractor suspension and/or debarment.

Date:__________________________________________________________
Signature:_____________________________________________________
Company Name:_________________________________________________
Title:__________________________________________________________
SUSPENSION & DEBARMENT CERTIFICATION

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

The certification in this clause is a material representation of fact relied upon by the City of Colorado Springs. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City of Colorado Springs, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 CFR PART 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Date: ____________________________________________________________

Signature: ________________________________________________________

Company Name: __________________________________________________

Title: ____________________________________________________________
SECTION VI

6.0 SCHEDULES

Schedule A  Price Sheet
Schedule B  Scope of Work
**SCHEDULE A – PRICE SHEET**

Please provide a fixed price for each bus category, and requirement, for MMT’s Buy America Audits and Inspections. Final assembly will take place at Gillig’s manufacturing facility in Livermore, California.

<table>
<thead>
<tr>
<th>2021</th>
<th>Buy America Pre-Award Audit</th>
<th>In-Plant Inspections Per Vehicle</th>
<th>Buy America Post-Delivery Audit</th>
</tr>
</thead>
<tbody>
<tr>
<td>29’ Heavy-Duty Bus</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>35’ Heavy-Duty Bus</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>40’ Heavy-Duty Bus</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Body on Chassis</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cutaway Chassis</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Option Years (2022-2025) Pricing Schedule**

Please provide a fixed price for each of the option years that may be needed for Pre- and Post-Award Buy America Audits and In Plant Inspections. Keep in mind that these Audits and Inspections may be conducted for manufacturers that may include, but are not limited to, Gillig, New Flyer, Proterra or BYD.

MMT currently has 22 buses and 10 cutaways scheduled for replacement during these option years but the total number of Audits and Inspections needed may increase based on MMT’s future expansion plans.

<table>
<thead>
<tr>
<th>2022</th>
<th>Buy America Pre-Award Audit</th>
<th>In-Plant Inspections Per Vehicle</th>
<th>Buy America Post-Delivery Audit</th>
</tr>
</thead>
<tbody>
<tr>
<td>29’ Heavy-Duty Bus</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>35’ Heavy-Duty Bus</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>40’ Heavy-Duty Bus</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Body on Chassis</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cutaway Chassis</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Year</td>
<td>Vehicle by Category</td>
<td>Buy America Pre-Award Audit</td>
<td>In-Plant Inspections Per Vehicle</td>
</tr>
<tr>
<td>------</td>
<td>---------------------</td>
<td>-------------------------------</td>
<td>----------------------------------</td>
</tr>
<tr>
<td>2023</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>29' Heavy-Duty Bus</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>35' Heavy-Duty Bus</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>40' Heavy-Duty Bus</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Body on Chassis</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Cutaway Chassis</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2024</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>29' Heavy-Duty Bus</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>35' Heavy-Duty Bus</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>40' Heavy-Duty Bus</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Body on Chassis</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Cutaway Chassis</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2025</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>29' Heavy-Duty Bus</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>35' Heavy-Duty Bus</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>40' Heavy-Duty Bus</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Body on Chassis</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Cutaway Chassis</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
SCHEDULE B – SCOPE OF WORK

Scope of Work: Buy America Pre-Award Audits, In-Plant Inspections, and Post-Delivery Audits

The purpose of this contract is to establish On-Call Pre-Award, In-Plant Inspections and Post-Delivery Buy America Audits for future procurements of Mountain Metropolitan Transit (MMT) rolling stock used in revenue service, to include new buses, cutaways, vans and cars. These services are intended to ensure each vehicle produced is manufactured in compliance with 49 CFR Part 661, “Buy America Requirements” and 49 CFR Part 663, “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases”, and that vehicles are manufactured in accordance with the task order specifications. This contract will be awarded on a base year with 4 possible option years. Option year pricing shall increase no more than the Denver/Boulder Consumer Price Index at the time the purchase order is generated, or 3%, whichever is less.

MMT vehicle purchases are based on available funding; therefore, MMT cannot guarantee the number of future inspections and audits. Contractors should take into consideration that MMT may award vehicle purchase contracts to any vehicle manufacturer in the Continental United States when submitting pricing.

MMT Responsibilities

MMT will furnish specifications, addenda, approved equals, and contract information for the vehicle purchases. MMT’s project manager will be responsible for the review and approval of all service and reports completed under this contract, as well as program administration for contract compliance, interpretation of the scope of work, schedule and budget. Other sections within MMT may also be involved in the administration of the contract.

Contractor Responsibilities

The Contractor shall perform as necessary: thorough inspections of the vehicles being manufactured; quality assurance in regards to fit and finish, technical accuracy, proper functionality, and correct operation of all components and subcomponents; and audits and certifications required for FTA Buy America regulations pertaining to rolling stock purchases throughout the term of this contract. MMT may have representatives at the plant during the early phases of the build process. The communication between the contracted inspector and MMT personnel is a critical element during the manufacturing process. MMT relies on the Contractor’s ability to plan and communicate effectively, as well as execute these aforementioned services during the production processes.

The Contractor shall be responsible for being aware of any changes in regulations, or updates which may warrant a change order or amendment to this service contract.

The Contractor shall immediately notify MMT of any changes that may occur for the duration of this service contract.

The Contractor shall correct or revise any deficiencies in its reports and services at no cost to MMT.

At no time during this service contract shall the Contractor jeopardize or add risk to any of MMT’s rolling stock procurements which would result in the late delivery of vehicles.
The Contractor shall possess thorough knowledge, expertise, and skills in regards to: public transit, quality assurance measures, Buy America requirements and provisions, FTA vehicle purchase provisions, factory and field product testing, and audit and project management. Inspectors and Auditors must have a minimum of three years’ experience with at least two years specifically related to the transit industry and independent from the manufacturer and the manufacturer’s agents.

**Buy America Pre-Award Audit**

Pre-Award Buy America audits are completed prior to awards and final contracts being executed with a vehicle manufacturer. The Contractor shall perform all Pre-Award Buy America audits. Minimum elements of the pre-award audits shall include:

- Buy America Certification through an audit, prepared by someone other than the manufacturer, or its agent, of the documentation provided by the manufacturer which lists:
  - All components and sub-components identified by the manufacturer of the parts, their country of origin, percentages, and costs
  - The location of the final assembly point for rolling stock, including a description of the activities that will take place at the final assembly point and proposed cost of the final assembly
  - Purchaser’s vehicle specification requirements certified by an audit that determines:
    - The rolling stock contracted for is the same product described in MMT’s Customer Meeting Notes/Specifications
    - The proposed manufacturer is a responsible manufacturer capable of producing the required vehicles.
  - A copy of the manufacturer’s Federal Motor Vehicle Safety Certificate

**Buy America Post-Delivery Audit**

Post-delivery Buy America audits are completed prior to title of rolling stock being transferred from the vehicle manufacturer to MMT. Minimum elements of the Post-Delivery Audits shall include:

- Buy America Certification through an audit, prepared by someone other than the manufacturer, or its agent, of the documentation provided by the manufacturer which lists:
  - All final components and sub-components identified by the manufacturer of the parts, their country of origin, and costs
  - The actual location of the final assembly point for rolling stock, including a description of the activities that took place at the final assembly point and the cost of the final assembly
  - Purchaser’s Vehicle Specification Certification audit that includes:
    - Accurate records of all vehicle assembly and construction activities
    - Address how the construction and operation of the vehicle fulfills the contract specifications
Visually inspect and road test the delivered vehicles

- Verification that final assembly activities were compliant with Buy America requirements
- A copy of the manufacturer’s Federal Motor Vehicle Safety Certificate

Buy America Audit Report Requirements:

Audit documentation shall include a signed letter from a representative of the manufacturer stating that all applicable information provided is true and accurate as of the date signed. For all required reports, two hardcopies, and one electronic version shall be submitted to MMT. All reports shall contain a minimum of the following:

- Introduction: Buy America background and discussion of requirements, including any recent changes. Post-Delivery audit shall also include any recent changes, and/or discussion relating to the comparison of the Pre-Award audit.
- Signature Pages: auditor’s certification, inspector’s certification, Buy America compliance certification, purchaser’s requirements certification, and Purchaser’s FMVSS compliance certification.
- Methodology: discussion of how the audit was conducted and the data/documentation that was reviewed.
- Certification: any necessary discussion about the vehicle and its compliance details, including a table of major components and subcomponents with percentages.
- Inspection: any discussion of visual inspections performed during production to include inspector’s notes and discrepancies found.
- Manufacturer/Supplier Buy America certification with complete vehicle parts listings and compliance percentages.
- Final Assembly: discussion and cost of final assembly process with a conclusion as to the reasonableness of the proposed and actual cost of final assembly.
- FMVSS: Manufacturer approvals and certifications.

Other Reporting Required:

MMT requires other reports to be provided as applicable to individual orders to ensure a maximum level of quality is built into each vehicle. These include:

- Detailed Vehicle Inspection Reports: These records shall be completed for each vehicle inspection and shall include, but is not limited to; suggested FTA inspection form, inspector’s notes, photographs of problem areas, correction of problem fixes, in-plant quality assurance forms, and in-plant quality control forms.
- Inspection Daily Status Reports: Reports are emailed directly to MMT’s project manager and will address any discrepancies or significant issues found during the inspection process.
Inspection Weekly Status Reports: Reports are emailed directly to MMT’s project manager and address the progress of each vehicle during the production cycle to include any concerns identified and the corrective actions taken.

Individual Vehicle Status Reports: Reports are emailed directly to MMT’s project manager when available and include current statuses, delivery start dates, and estimate arrival dates.

Vehicle and Quality Assurance In-Plant Inspection:

MMT has determined the following elements of the production process as critical, and requires the Contractor to ensure coverage during these stages of production. MMT reserves the right to make changes to this list at any time, and/or accept Contractor recommendations regarding this list. These elements include but are not limited to:

- Monitor critical joining of roof to side structures, HVAC unit assembly mounting to roof and side structures, body to chassis, and flooring structures
- Verify proper installation, adjustment, and alignment of chassis components to include axles, engines and transmissions, steering gear and column, slack adjusters, belt tensions, cooling systems, and suspension components
- Verify proper routing and installation of all air, oil, fuel, and coolant lines including proper mounting and securement of those lines, and ensure they are protected from abrasion, sharp edges, and pinch points
- Verify proper assembly and attachment of all body components
- Visually identify and confirm repairs of any air and/or fluid leaks
- Visually and functionally assure integrity of the electrical circuits, terminals, and wiring
- Inspect and ensure proper function of all components, installed systems, and subsystems. Note: some Information Technology systems will require that the vehicle is on-site at MMT before those systems can be properly tested.
- Verify uniformity, alignment, and proper installation of all components to include, but not limited to, access doors and hinges, floor coverings seat installations, interior and exterior panels, and moldings
- Inspect proper type, and application of all primers, paints, clear coats and under-coatings
- Visually verify proper front and rear axle alignment and include alignment report in each vehicle’s detailed inspection report
- Physically attend and verify manufacturer’s on-road vehicle performance and safety systems test, and water leak test for each vehicle