

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: April 9, 2024
PUBLIC HEARING DATE: Not Applicable

CONTACT PERSON(S) NAME AND PHONE NUMBER:
Anthony R. Dekeyzer, Director of Mass Transit, (915) 212-3306
K. Nicole Cote, Managing Director (915) 212-1092

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: No. 7 – Enhance and Sustain El Paso's Infrastructure Network

SUBGOAL: 7.3 – Enhance regional comprehensive transportation system

SUBJECT:

Discussion and action on the request that the City Manager be authorized to sign Agreement 2024-0401 Bus Cleaning Services by and between the City of El Paso and both WorkQuest f/k/a TIBH Industries, Inc., a private non-profit corporation and the certifying party, and Goodwill Services, the performing party, to provide interior bus cleaning services for fixed route buses and vans managed by the City of El Paso's Sun Metro (Mass Transit) Department for a term of three (3) years from the effective date of the Agreement and one (1) two-year option to extend, which may be exercised by the City Manager or designee administratively. This is a service requirement contract at a currently estimated cost to the City of El Paso of \$487,104.00 for the initial term and an estimated \$1,119,098.40 if the option to extend is exercised.

BACKGROUND / DISCUSSION:

This contract will allow Sun Metro to get interior bus cleaning services for its current fixed route fleet of buses and vans.

SELECTION SUMMARY:

General Exemption under Texas Local Government Code Section 252.022(a)(13) services performed by blind or severely disabled persons and Chapter 122 of the Texas Human Resources Code: Purchasing from People with Disabilities.

CONTRACT VARIANCE:

The difference based in comparison to the previous contract is as follows: An increase of \$137,921.64 for the initial term, which represents a 39.50% increase due to price increases in labor cost and adding an additional number of buses and vans for cleanings.

PROTEST

N/A

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

Amount: \$487,104.00

Funding Source: General Funds

Account: 560-3200-60050-522060- P6018

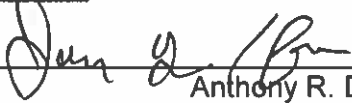
HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? ☒ YES ☐ NO

PRIMARY DEPARTMENT: Mass Transit (Sun Metro)

SECONDARY DEPARTMENT: Purchasing & Strategic Sourcing

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



Anthony R. Dekeyzer, Director of Mass Transit

Project Form
Non-Competitive

*****Posting Language Below*****

Please place the following item on the Regular Agenda for the Mass Transit Board Meeting of April 9, 2024.

Strategic Goal 7 - Enhance and Sustain El Paso's Infrastructure Network

The linkage to the Strategic Plan is subsection: 7.3 Enhance a regional comprehensive transportation system

Award Summary:

Discussion and action on the request that the City Manager be authorized to sign Agreement 2024-0401 Bus Cleaning Services by and between the City of El Paso and both WorkQuest f/k/a TIBH Industries, Inc., a private non-profit corporation and the certifying party, and Goodwill Services, the performing party, to provide interior bus cleaning services for fixed route buses and vans managed by the City of El Paso's Sun Metro (Mass Transit) Department for a term of three (3) years from the effective date of the Agreement and one (1) two-year option to extend, which may be exercised by the City Manager or designee administratively. This is a service requirement contract at a currently estimated cost to the City of El Paso of \$487,104.00 for the initial term and an estimated \$1,119,098.40 if the option to extend is exercised. This contract will allow Sun Metro to get interior bus cleaning services for its current fixed route fleet of buses and vans.

Contract Variance:

The difference based in comparison to the previous contract is as follows: An increase of \$137,921.64 for the initial term, which represents a 39.50% increase due to price increases in labor cost and adding an additional number of buses and vans for cleanings.

Department:	Mass Transit (Sun Metro)
Award to:	WorkQuest f/k/a TIBH Industries, Inc. and Goodwill Services
City & State:	Austin, TX
Items:	N/A
Initial Term:	3 Years
Option Term:	2 Years
Total Contract Time:	5 Years
Annual Estimated Award:	\$ 162,368.00
Initial Term Estimated Award:	\$ 487,104.00(Year 1-3)
Annual Estimated Award	\$ 308,478.00 (Year 4)
Annual Estimated Award	\$ 323,516.40 (Year 5)
Option Term Estimated Award:	\$ 631,994.40 (Year 4-5)
Total Estimated Award:	\$1,119,098.40
Account(s):	560 – 3200 – 60050 – 522060 – P6018
Funding Source(s):	General Funds
District(s):	All

Non-Competitive Procurement under Local Government General Exemption: Section 252.022(a)(13) services performed by blind or severely disabled persons and Chapter 122 of the Texas Human Resources Code: Purchasing from People with Disabilities.

The Purchasing & Strategic Sourcing and Mass Transit (Sun Metro) Departments recommend award as indicated to WorkQuest f/k/a TIBH Industries, Inc., a private nonprofit corporation and the certifying party, and Goodwill Services, the performing party under the exemption listed above.

It is requested that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this award.

In accordance with this award, the City Manager or designee is authorized to exercise future options if needed.

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED BY THE MASS TRANSIT DEPARTMENT BOARD OF THE CITY OF EL PASO:

That the City Manager be authorized to sign Agreement 2024-0401 Bus Cleaning Services by and between the City of El Paso and both WorkQuest f/k/a TIBH Industries, Inc., a private non-profit corporation and the certifying party, and Goodwill Services, the performing party, to provide interior bus cleaning services for fixed route buses and vans managed by the City of El Paso's Sun Metro (Mass Transit) Department for a term of three (3) years from the effective date of the Agreement and one (1) two-year option to extend, which may be exercised by the City Manager or designee administratively. This is a service requirement contract at a currently estimated cost to the City of El Paso of \$487,104.00 for the initial term and an estimated \$1,119,098.40 if the option to extend is exercised.

APPROVED this _____ day of _____, 2024.

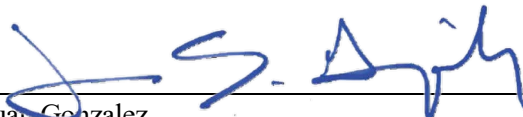
THE CITY OF EL PASO

Oscar Lesser
Chairman

ATTEST:

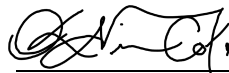
Laura D. Prine
Secretary

APPROVED AS TO FORM:



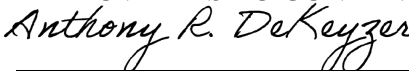
Juan Gonzalez
Assistant City Attorney

APPROVED AS TO FORM:



K. Nicole Cote, Managing Director
Purchasing & Strategic Sourcing

APPROVED AS TO CONTENT:



Anthony R. Dekeyzer, Director Mass Transit
Sun Metro (Mass Transit) Department

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND DONATIONS FORM

In compliance with Title 2, Chapter 2.92, Section 2.92.080

Introduction:

Individuals or entities benefiting by a City Council Agenda item must disclose contributions or donations made to current members of Council under the City's Ethics Code. The information on this form is being captured for transparency purposes and will be noted on the relevant City Council Agenda. **Contributions and Donations do NOT disqualify an applicant from doing business with the City.**

Definitions:

- "Contribution" A direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term includes a loan or extension of credit, other than those expressly excluded by the Texas Election Code, and a guarantee of a loan or extension of credit.
- "Contributor" A person making a contribution, including the contributor's spouse.
- "Donation" Cash and the value of any in-kind contributions or gifts to the council member for use by their office or in their district.
- "Donor" An individual and spouse, a business entity, or an individual who owns a business entity in whole or in part, or is operated by the individual, that is the subject of a council agenda item.
- "Benefiting" Shall include but not be limited to any contract, bid award, franchise, permit, zoning or rezoning, and other award that council will vote on.

Instructions: Please read and complete this form carefully. If you have made campaign contributions or donations to any current City Council member(s) totaling an aggregate of \$500 or more during their campaign(s) or term(s) of City office, you are required to disclose the information as specified below. If you have not made such contributions or donations past the limit specified in the ordinance, you are required to affirm your compliance with the municipal code. Please submit this completed form along with your application or proposal to the relevant city department. Failure to disclose campaign contributions or donations as required by the ordinance may result in a violation of the City's Ethics Code requirements, and sanctions under the Ethics Code 2.92.

~~Contributor / Donor Information:~~

Full Name	Fred M. Weber, Jr.
Business Name	WorkQuest
Agenda Item Type	Agreement 2024-0401 Bus Cleaning Services
Relevant Department	Sun Metro (Mass Transit)

Disclosure Affirmation: Please check the appropriate box below to indicate whether you have made campaign contributions or donations totaling an aggregate of \$500 or more to any City Council member(s) during their campaign(s) or term(s) of City office specified in Section 2.92.080 of the El Paso Municipal Code.

☒

I have **NOT** made campaign contributions or donations totaling an aggregate of \$500 or more to any City Council member(s) during their campaign(s) or term(s) of City office, as specified in Section 2.92.080 of the El Paso Municipal Code.

OR

☐

I have made campaign contributions or donations totaling an aggregate of \$500 or more to the following City Council member(s) during their campaign(s) or term(s) of City office:

OFFICE	CURRENT COUNCIL MEMBER NAME	AMOUNT (\$)
Mayor		
District 1		
District 2		
District 3		
District 4		
District 5		
District 6		
District 7		
District 8		

Declaration: I hereby affirm that the information provided in this disclosure form is true and accurate to the best of my knowledge. I understand that this disclosure is required by Title 2, Chapter 2.92 of the El Paso Municipal Code and is subject to verification by the city authorities. Further, **I understand that upon submission of this form, I must disclose any subsequent contributions or donations prior to the relevant council meeting date.**

Signature: _____

Date: _____

03/14/24

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND DONATIONS FORM

In compliance with [Title 2, Chapter 2.92, Section 2.92.080](#)

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- "Contributor" A person making a contribution, including the contributor's spouse.
- "Donation" Cash and the value of any in-kind contributions or gifts to the council member for use by their office or in their district.
- "Donor" An individual and spouse, a business entity, or an individual who owns a business entity in whole or in part, or is operated by the individual, that is the subject of a council agenda item.
- "Benefiting" Shall include but not be limited to any contract, bid award, franchise, permit, zoning or rezoning, and other award that council will vote on.

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Contributor / Donor Information:

Full Name	Melinda Jordan
Business Name	Goodwill Industries of El Paso/Goodwill Services
Agenda Item Type	Agreement 2024-0401 Bus Cleaning Services
Relevant Department	Sun Metro (Mass Transit)

Disclosure Affirmation: Please check the appropriate box below to indicate whether you have made campaign contributions or donations totaling an aggregate of \$500 or more to any City Council member(s) during their campaign(s) or term(s) of City office specified in Section 2.92.080 of the El Paso Municipal Code.



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OR

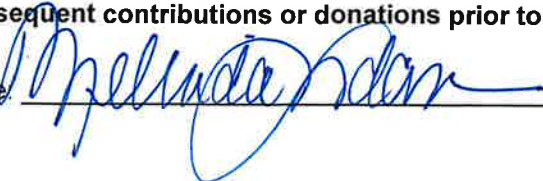


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OFFICE	CURRENT COUNCIL MEMBER NAME	AMOUNT (\$)
Mayor		
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Declaration: I hereby affirm that the information provided in this disclosure form is true and accurate to the best of my knowledge. I understand that this disclosure is required by Title 2, Chapter 2.92 of the El Paso Municipal Code and is subject to verification by the city authorities. Further, **I understand that upon submission of this form, I must disclose any subsequent contributions or donations prior to the relevant council meeting date.**

Signature: _____



Date: _____

3-19-24

STATE OF TEXAS

COUNTY OF EL PASO

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§
§

**SERVICE AGREEMENT
CONTRACT NO. 2024-0401**

This Service Agreement (“**Agreement**”) is between the City of El Paso by and through its Mass Transit Department Board (“**City**”), WorkQuest, a Texas private non-profit corporation (“**WorkQuest**”), and Goodwill Services, a private non-profit corporation (“**Goodwill**”). WorkQuest and Goodwill shall be referred to collectively as the “**Contractor**”.

WHEREAS, the City and the Contractor have entered into previous Agreements for Interior Bus Cleaning Services where Contractor agreed to provide City with services for interior bus cleaning for its coach buses and vans (“**Original Agreement**”); and

WHEREAS, the parties wish to continue the contractual relationship for the aforementioned services as described under this Agreement; and

WHEREAS, this agreement is in compliance with Chapter 122 of the Texas Human Resources Code.

NOW THEREFORE, the parties agree as follows:

1. **TERM.** The initial term of this Agreement (“**Term**”) begins on the Effective Date and terminates three years later. For purposes of this Agreement the “**Effective Date**” is the date when the City Manager, or designee, signs this Agreement on behalf of the City.
 - a. **OPTION.** The parties have agreed upon an option to renew for one additional, two-year term. If either party wishes to exercise the option to renew, then the notifying party must notify the other party in writing of the desire to exercise of the option prior to the end of the Term of this Agreement. Both parties must agree in writing, prior to the end of Term, to exercise the option to renew in order for the option to renew to take effect. If either party declines to exercise the option to renew, then this Agreement will terminate at the end of the Term and in accordance to the provisions of this Agreement.
2. **SCOPE OF SERVICES.** The Contractor will perform the services as described in **Exhibit “A”** (the “**Services**”). Contractor will provide all materials, permits, licenses, personnel, and all other items necessary to complete the Services.
3. **PAYMENT.** In consideration for the Services, the City will pay Contractor the unit prices identified in **Exhibit B**. The Contractor will invoice the City on a monthly basis using the unit prices described in **Exhibit “B”**. Notwithstanding anything to the contrary, the Contractor agrees that the total amount paid by the City during the initial Term of this Agreement shall not exceed \$487,104. Notwithstanding anything to the contrary, the Contractor agrees that the total amount paid by the City under this Agreement for the additional, two-year option term may not exceed \$631,994.40. The total, estimated aggregated payment to Contractor under this Agreement shall not exceed \$1,119,098.40;

including exercised Option(s). The Contractor will send an invoice to the City on the last day of each month for Services performed. The Contractor will include the City's purchase order number in the invoice and send the invoice to

**City of El Paso
Mass Transit Department
ATTN: Director
PO Box 2037
El Paso, Texas 79950**

Payment of the invoices will be made in accordance with the City's standard payment procedure. Upon verification and approval of such billing, the City shall process and send payment to WORKQUEST. WORKQUEST will send the appropriate amount, within a reasonable time, to Goodwill as may be determined by WORKQUEST and Goodwill. Receipt of payment by WORKQUEST constitutes payment in full by the City to both WORKQUEST and Goodwill and WORKQUEST and Goodwill discharge fully the City from such obligation. Goodwill expressly agrees that its sole recourse for nonpayment is with WORKQUEST once the City renders payment to WORKQUEST under this Agreement.

4. **INDEPENDENT CONTRACTOR.** Nothing in this Agreement creates an employer/employee relationship. The City is not subject for any obligations or liabilities of the Contractor. Neither party has any authority to act as the agent of the other party.
5. **INDEMNIFICATION. CONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND HOLD THE CITY HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, LIABILITIES AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE ACTS, OMISSIONS, OPERATION, CONDUCT OR MANAGEMENT OF CONTRACTOR'S ACTIVITIES, ITS USE OF CITY PREMISES, OR FROM ANY BREACH ON THE PART OF CONTRACTOR OF ANY TERMS OF THIS AGREEMENT OR AGREEMENTS WITH THIRD PARTIES, OR FROM ANY ACT OR NEGLIGENCE OF CONTRACTOR, ITS AGENTS, CONTRACTORS, EMPLOYEES, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF CITY. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST CITY BY REASON OF ANY SUCH CLAIM, CONTRACTOR, UPON RECEIPT OF WRITTEN NOTICE FROM CITY, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO CITY. Without modifying the conditions of preserving, asserting or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to Contractor every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. Contractor will 1) investigate or cause the investigation of accidents or**

occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as the Contractor may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. Contractor will pay all judgments finally establishing liability of the City in actions defended by Contractor pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by Contractor, and premiums on any appeal bonds. The City, at its election, will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss of or damage to the Contractor's property from any cause.

6. **INSURANCE.** The Contractor shall provide and maintain the following insurance in full force and effect at all times during the term of this Agreement. City shall be provided with complete copies of policies and endorsements of insurance evidencing the required insurance prior to the commencement of this Agreement and thereafter with certificates, policy, and endorsements evidencing renewal or replacement of said policies of insurance at least fifteen (15) days prior to the expiration or cancellation of any such policies. Failure by Contractor to comply with the insurance requirements at all times during the Term of this Agreement constitutes a material breach.
- a) **Liability Insurance.** For the duration of this Agreement, the Contractor shall carry, in a solvent company authorized to do business in the State of Texas, public liability insurance to: a) cover the Contractor and its employees in the minimum amount of \$1,000,000 per occurrence; and, b) protect the general public and the City in the minimum amounts of \$1,000,000 per occurrence for bodily injury or wrongful death and \$1,000,000 per occurrence for property damage. The Contractor will ensure that the Liability insurance provides coverage for products and completed operations.
 - b) **Workers Compensation.** The Contractor will procure workers compensation insurance as required under law. If the Contractor is required to provide workers compensation insurance under law, then the Contractor will provide the City the following: A third-party policy of Workers' Compensation insurance coverage providing Statutory Benefits according to the Workers Compensation Act of the State of Texas and/or any other state or federal law as may be applicable to the work and shall cover all of the persons engaged in the provision of Services under this Agreement.
 - c) **Auto Liability.** Automobile Liability Insurance covering all owned, hired, and non-owned motor vehicles used by Contractor, its employees, contractors or agents, in connection with the work being performed under this Agreement with limits of liability not less than \$1,000,000 for each occurrence Combined Single Limit for Bodily Injury and \$500,000 Property Damage.

- d) Form of Policies. The insurance required herein may be in one or more policies of insurance, the form of which must be approved by the City's Risk Manager. City prefers that the general liability and auto liability coverages be provided by either the same insurance carrier or the same insurance group.
- e) Issuers of Policies. The issuer of any policy must have a certificate of authority to transact insurance business in the State of Texas. Each issuer must be responsible, reputable, and have financial capability consistent with the risks covered. Each issuer shall be subject to approval by the City's Risk Manager in his sole discretion as to conformance with these requirements.
- f) Insured Parties. Each policy, except those for Workers' Compensation, must name the City of El Paso (and their elected and appointed officials, officers, agents and employees) as Additional Insured parties on the original policy and all renewals or replacements during the term of this Agreement.
- g) Deductibles, Endorsements, and Aggregates. A policy may contain deductible amounts only if the City's Risk Manager approves the amount and scope of the deductible. Any endorsements and/or aggregates that limit coverage must also be approved in advance by the City's Risk Manager.
- h) Material Change in Policy(ies). Prior to any material change in any policy required herein, City will be given thirty (30) days advance written notice by registered mail. Further, City will be immediately notified of any reduction or possible reduction in aggregate limits of any such policy where such reduction, when added to any previous reductions, would exceed twenty-five percent (25%) of the aggregate limits.
- i) Cancellation. Each policy must expressly state that it may not be canceled or non-renewed unless thirty (30) days advance notice of cancellation or intent not to renew is given in writing to the City's Purchasing Manager by the insurance company.
- j) Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the City, their elected and appointed officials, officers, agents or employees.
- k) Endorsement of Primary Insurance. Each policy must contain an endorsement that such policy is primary insurance to any other insurance available to the Additional Insured with respect to claims arising hereunder and that the insurance applies separately to each insured.
- l) Any requests by the Contractor to provide alternative forms of insurance, insurance amounts, or waivers, must be approved by the City's Risk Manager in writing. If the City's Risk Manager grants a waiver or accepts an alternative form of insurance, then the Contractor will have been

deemed to comply with the particular insurance provision for which the waiver or substitute was granted.

7. TERMINATION

- a) Termination by the City for Convenience. Either party may terminate this Agreement at any time if such party in its sole discretion determines that it is convenient to do so. Upon receipt of such notice, the notified party shall discontinue all services under this Agreement and cancel all existing orders and agreements chargeable to this Agreement. In the event the City terminates the Agreement under this provision, the Contractor shall submit a statement to the Director showing in detail the Services performed to the date of termination. The City shall pay only for services actually performed under this Agreement and not previously paid. If the Contractor terminates this Agreement under this provision, then the Contractor will refund any payments made by the City to the Contractor minus any expenses incurred by the Contractor in the performance of Services prior to termination. Contractor shall provide City proof of expenses deducted under this provision.
- b). Termination for Cause. Either party may terminate this Agreement in the event of default by the other party of any obligations under this Agreement and failure to cure such default after receiving notice and a 10 calendar day opportunity to cure such default. Upon termination for cause, Contractor shall discontinue all Services under this Agreement and cancel all orders and subcontracts chargeable to this Agreement. Contractor shall submit an invoice showing in detail the services performed under this Agreement to the date of termination. The City shall pay Contractor only for services which were actually performed under this Agreement and not previously paid.
- c). Additional Remedies. If the Director determines that any condition or action or inaction of Contractor poses an immediate threat to the health or safety of any person or to any property interest, the Director may give written notice to Contractor of such determination giving a reasonable opportunity to cure the action, inaction or condition which shall be at least twenty-four (24) hours. If Contractor has not cured such default within the time stated in the notice, the City shall have the right to terminate the Agreement immediately and obtain like services as necessary to preserve or protect the affected health, safety or property interests from another vendor in substitution for those due from Contractor at a cost determined by reasonable informal procurement procedures. The City may recover the difference between the cost of substitute services and the Agreement price as damages, deducting any such damages from any sums otherwise due and owing to Contractor. Failure of the City to obtain substitute services and charge Contractor under this clause shall not be a bar to any other remedy.

For purposes of this Agreement the term “**Director**” refers to the director of the Mass Transit Department of the City of El Paso.

- d) **General Termination Provisions.** This Agreement may be terminated at any time by mutual written agreement of the parties. In addition, this Agreement shall automatically terminate if the City Council of the City of El Paso fails to appropriate or budget money for the payment of the services under this Agreement. In such event and upon expiration, termination, or cancellation of this Agreement, Contractor shall be permitted ten (10) days within which to remove Contractor-owned equipment and materials from City's premises and Contractor shall account for and return all equipment and materials provided by City in good usable order, allowing for ordinary wear and tear.

- 10. AMENDMENT TO AGREEMENT.** This Agreement may be modified only by written agreement of all parties.
- 11. ASSIGNMENT-DELEGATION.** Contractor will not assign or delegate any right, interest, or obligation under this Agreement without the express prior written consent of the City. Improper attempts to assign, delegate, sublet or subcontract any rights or responsibilities granted herein shall be deemed an event of default, for which the City may terminate this Agreement.
- 12. WAIVER.** No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by all the parties.
- 13. GRATUITIES.** City may, by written notice to Contractor, cancel this Agreement without liability to Contractor if it is determined by the City that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the City with a view toward securing an agreement or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such an agreement. In the event this Agreement is canceled by City pursuant to this provision, City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Contractor in providing such gratuities.
- 14. WARRANTY-PRICE.** Contractor warrants that the price to be paid by City shall be no higher than Contractor's current prices on orders by others for services of the kind and specification covered by this Agreement for similar quantities under similar or like conditions and methods of purchase. If Contractor breaches this warranty, the cost of the services shall be reduced to Contractor's current prices on orders by others, or in the alternative, City may cancel this Agreement without liability. Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for commission, percentage,

brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business. For breach of violation of this warranty City shall have the right, in addition to any other right or rights, to cancel this Agreement without liability and to deduct from the Agreement price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

- 15. ADVERTISING.** Contractor shall not advertise or publish, without the Director's prior written consent, the fact that the City has entered into this Agreement, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.
- 16. AVAILABILITY OF FUNDS.** The awarding of this Agreement is dependent upon the availability of funding. In the event that funds do not become available, the Agreement may be terminated or the scope may be amended. A thirty (30) day written notice will be given to the Contractor and City shall incur no penalty or charge.
- 17. NOTICE.** Notices which are required to be given in accordance with the provisions of this Agreement shall be sent, postage prepaid, to the following:

CITY: City of El Paso
Mass Transit (Sun Metro) Department
Attn: Director, Mass Transit Department
10151 Montana Ave.
El Paso, Texas 79925

Copy to: City of El Paso
Attn: City Manager
300 North Campbell
El Paso, Texas 79901

Copy to: City of El Paso
Purchasing Department
300 North Campbell
El Paso, Texas 79901

CONTRACTOR(s): WorkQuest
Attn: Henry Hernandez
5503 Grissom Rd., Ste. 103
San Antonio, Texas 78238

Goodwill Services
Attn: Zenia Cordova
11460 Pellicano Dr.
El Paso, Texas 79936

18. **LAW GOVERNING CONTRACT/VENUE.** This Agreement is governed by the laws of the State of Texas. Venue for any dispute is exclusively in El Paso County, Texas.
19. **REPRESENTATIONS.** Each person signing this document on behalf of WORKQUEST and Goodwill, represents and warrants that he or she has the authority to legally bind that entity to the provisions hereof.
20. **OTHER PROVISIONS.** This Agreement is subject to the Federal Clauses & Forms in **EXHIBIT C**, which is attached hereto and incorporated herein for all purposes.
21. **DEFINITIONS.** For purposes of this Agreement, all defined terms are first defined when they first appear in **bold print**.
22. **EXHIBITS.** All Exhibits referenced in this Agreement are attached to this Agreement and incorporated in full to this Agreement.
23. **COMPLIANCE WITH LAWS.** Contractor shall comply with all applicable federal and state statutes, ordinances, administrative orders, rules or regulations, in addition to any local laws or ordinances relating to its activities and performance under this Agreement and shall procure all licenses and pay all fees or other charges as required, if applicable.
24. **CAPTIONS.** The captions of various sections of the Agreement are for convenience of reference only, and shall not alter the terms and conditions of this Agreement.
25. **SEVERABILITY.** All agreements, covenants or provisions contained herein are severable, and in the even any of them shall be held to be invalid by any competent court, this Agreement shall be interpreted as though such invalid agreement, covenant or provision was not contained herein.
26. **GOVERNMENTAL FUNCTION.** The parties agree that the City is entering into this Agreement for all intents and purposes as a governmental body performing a governmental function.
27. **ENTIRE AGREEMENT.** This Agreement constitutes and expresses the entire agreement between the parties regarding the scope of services specified. It shall not be amended or modified except by a written instrument signed by all parties. Each individual(s) signing this Agreement on behalf of Contractor acknowledges that each is authorized to do so, and warrants that each is authorized to commit and bind Contractor to the terms and conditions of this Agreement.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

CITY
CITY OF EL PASO

Cary Westin
City Manager

Date: ____ / ____ / ____

APPROVED AS TO CONTENT:

Nicole Cote
Managing Director, Purchasing

APPROVED AS TO CONTENT:

Deputy Transit Officer

Jerry DeMuro/for

Anthony Dekeyzer, Director
Mass Transit Department (Sun Metro)

APPROVED AS TO FORM:

Juan S. Gonzalez

Juan S. Gonzalez
Senior Assistant City Attorney

ACKNOWLEDGMENT

THE STATE OF TEXAS

§

§

COUNTY OF EL PASO

§

This instrument was acknowledged before me on this ____ day of _____, 2024, by
Cary Westin, as City Manager for the City of El Paso.

Notary Public, State of Texas

CONTRACTOR:

WORKQUEST:

By: _____

Printed Name: _____

Title: _____

ACKNOWLEDGMENT

THE STATE OF TEXAS

§

§

COUNTY OF _____

§

This instrument was acknowledged before me on this _____ day of _____, 2024
by _____ as _____ (title) for WorkQuest.

Notary Public, State of Texas

[Contractor signatures continue on the following page]

CONTRACTOR:

GOODWILL:

By: _____

Printed Name: _____

Title: _____

ACKNOWLEDGMENT

THE STATE OF TEXAS

§

§

COUNTY OF _____

§

This instrument was acknowledged before me on this _____ day of _____, 2024,
by _____ as _____ (title) for **GOODWILL SERVICES**.

Notary Public, State of Texas

(Exhibits begin on following page)

EXHIBIT A SCOPE OF WORK

Scope of Services:

The conditions listed below are to be interpreted as meaning the minimum required by Sun Metro. Any additions or changes to scope will be done following a written request by City.

DESCRIPTION OF SERVICES

Sun Metro requires INTERIOR BUS CLEANING for its current 169 fixed route buses and vans. The units should be cleaned monthly for a total of twelve (12) annual cleanings per unit. WORKQUEST-Goodwill agree to incorporate the following elements in the cleaning of each and every scheduled unit and bill accordingly subject to this agreement:

In order to accomplish this goal; the Contractor must be able to provide Custodial Workers daily. Monday through Friday, from 6:00 p.m. to 12:00 a.m. Custodial Workers shall report to the Sun Metro offices located at 10151 Montana and 700-B San Francisco, El Paso, Texas during the above stated hours.

Contractor will ensure that, at a minimum, that the following areas will be cleaned in the interior of each bus.

- I. step well and steps
- II. interior of front and rear doors
- III. seats
- IV. floors
- V. window moldings
- VI. interior windows
- VII. ceiling
- VIII. interior walls
- IX. grab rails
- X. driver's enclosure

- XI.** instrument panel
- XII.** fire extinguisher compartment
- XIII.** HYAC vent grill[s]
- XIV.** remove chewing gum from above-mentioned surfaces
- XV.** remove graffiti from above-mentioned surfaces
- XVI.** deodorize/sanitize interior of unit

IMPORTANT: ONLY CLEANING SOLUTIONS AND SOLVENTS THAT ARE APPROVED BY SUN METRO'S MAINTENANCE MANAGER OR THE VEHICLE'S MANUFACTURER SHALL BE USED IN CLEANING THE UNITS.

Contractor shall provide the Custodial Workers and provide the Custodial Workers with the proper amount and quality cleaning supplies, equipment, and any other miscellaneous items required to accomplish the cleaning tasks as per specifications. All equipment to be used in the performance of this contract will be in good working condition, and must be approved by the Sun Metro Supervisor on duty prior to commencing work shift. City equipment shall not be used by the Contractor or his employees. Sun Metro equipment will not be used for this service.

The Sun Metro supervisor on duty will provide a "Cleaning Record", designate units available for cleaning. Scheduling of bus cleaning will be done in conjunction with assigned by the Sun Metro Supervisor so that there will always be buses available for cleaning. Accessibility to a greater number of buses occurs in the weekday evenings after 6:00 p.m. Supervisor personnel are present twenty-four [24] hours a day, seven [7] days a week.

After interior cleaning is complete, the supervisor will sign off on the Cleaning Record. One copy of the Cleaning Record is to be maintained by Sun Metro, a duplicate copy will be retained by the Contractor. The Sun Metro Supervisor's signature will be documented evidence that work was performed to the satisfaction of Sun Metro. The Cleaning Record must be signed as it becomes the support documentation for billing and payment. At the time of billing, a copy of the Cleaning Record being billed must accompany the invoice being submitted for payment.

Contractor will have access to water for the cleaning of units. It will not be necessary to use any type of enhancers such as Armor All etc., however, detailed cleaning and polishing are required in areas as addressed in list of "areas to be cleaned".

Employee Experience:

Contractor will provide "**Custodial Workers**" who have general custodial experience or training and are able to work the hours specified. Custodial Workers must be able to understand and follow simple instructions; Custodial Workers must be able to understand directions and "warning" on containers. A list of cleaning chemicals shall be given to the Sun Metro Maintenance Superintendent, along with Safety Data Sheets [SDS's]. These sheets will be kept at the work location.

Contractor must employ at least two (2) persons with disabilities, as defined by ADA regulations, for the performance and term of this agreement.

Security Concerns:

Due to security and safety concerns, Contractor's employees are not allowed to bring other persons, on site, while performing their duties. Custodial Workers must be able to establish and maintain effective working relations with fellow employees as well as with Sun Metro personnel. All Contractor employees are to wear identification badges showing their photo, name and employer while on Sun Metro premises. Guards will verify ID's daily. Contractor shall provide and update as needed a list of current employees working under this agreement.

All Contractor employees must wear a yellow reflective vest, provided by Contractor, on the outside of their clothing when on Sun Metro premises.

Supervisory Requirements:

Contractor will employ a supervisor trained in managing the Custodial Workers, as well as the chemicals, who can communicate in English. This Supervisor is required to be present at all times during working hours or other specified or arranged times. Contractor shall assume the responsibility of inspecting the work performed by his Custodial Workers and ensuring that his employees are complying with all rules and specifications of this contract.

2024-0401: Exhibit B - Pricing

YEAR ONE

<u>Item</u>	<u>Units</u>	<u>Description</u>	<u>Unit Price</u>	<u>Estimated Annual \$'s</u>
1)	78	Fixed Route Buses	\$98.00	\$ 91,728.00
2)	40	Brio – Buses 60'	\$130.00	\$62,400.00
3)	6	28' and under Buses/Vans	\$45.00	\$ 3, 240.00
Bonding				\$ 5,000.00
Year 1 – Total				\$162,368.00

YEAR TWO

<u>Item</u>	<u>Units</u>	<u>Description</u>	<u>Unit Price</u>	<u>Estimated Annual \$'s</u>
1)	78	Fixed Route Buses	\$98.00	\$91,728.00
2)	40	Brio – Buses 60'	\$130.00	\$ 62,400.00
3)	6	28' and under Buses/Vans	\$45.00	\$ 3,240.00
Bonding				\$ 5,000.00
Year 2 – Total				\$162,368.00

YEAR THREE

<u>Item</u>	<u>Units</u>	<u>Description</u>	<u>Unit Price</u>	<u>Estimated Annual \$'s</u>
1)	78	Fixed Route Buses	\$98.00	\$ 91,728.00
2)	40	Brio – Buses 60'	\$130.00	\$ 62,400.00
3)	6	28' and under Buses/Vans	\$45.00	\$ 3, 240.00
Bonding				\$ 5,000.00
Year 3 – Total				\$162,368.00

OPTION: YEAR FOUR

<u>Item</u>	<u>Units</u>	<u>Description</u>	<u>Unit Price</u>	<u>Estimated Annual \$'s</u>
1)	145	Fixed Route Buses	\$112.70	\$196,098.00
2)	55	Brio – Buses 60'	\$149.50	\$ 98,670.00
3)	10	28' and under Buses/Vans	\$51.75	\$ 6,210.00
Bonding				\$ 7,500.00
Year 4 – Total				\$308,478.00

OPTION: YEAR FIVE

<u>Item</u>	<u>Units</u>	<u>Description</u>	<u>Unit Price</u>	<u>Estimated Annual \$'s</u>
1)	145	Fixed Route Buses	\$118.33	\$205,894.20
2)	55	Brio – Buses 60'	\$156.97	\$103,600.20
3)	10	28' and under Buses/Vans	\$54.35	\$ 6,522.00
Bonding				\$ 7,500.00
Year 5 – Total				\$323,516.40

EXHIBIT C

FEDERAL CLAUSES & FORMS

THE CITY OF EL PASO FEDERAL CLAUSES AND FORMS (Operations/Management Contracts) FEDERAL FUNDING REQUIREMENTS

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

**31 U.S.C. 3801 et seq.
49 CFR Part 31 18 U.S.C. 1001
49 U.S.C. 5307**

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5323, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

ACCESS TO RECORDS AND REPORTS

**49 U.S.C. 5325
18 CFR 18.36 (i)
49 CFR 633.17**

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of

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the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

3. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

4. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.42(i)(11).

FEDERAL CHANGES **49 CFR Part 18**

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement MA18, dated October, 2011 between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

NO OBLIGATIONS BY THE FEDERAL GOVERNMENT

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

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

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TERMINATION
49 U.S.C. Part 18
FTA Circular 4220.1F

a. Termination for Convenience The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.

b. Termination for Default [Breach or Cause] If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

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

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

c. Opportunity to Cure The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (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 (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 (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

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BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18

FTA Circular 4220.1F

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

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

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000

42 U.S.C. § 6102, 42 U.S.C. § 12112

42 U.S.C. § 12132, 49 U.S.C. § 5332

29 CFR Part 1630, 41 CFR Parts 60 et seq.

Civil Rights - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the

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

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Americans with Disabilities:

The recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the project, with the applicable laws and regulations, discussed below, for nondiscrimination on the basis of disability.

Page IV-14 FTA C 4220.1F (11/01/2008); Rev.1 – 04/14/2009; Rev.2 – 07/01/2010; Rev.3 – 02/15/2011; Rev.4 – 03/18/2013

Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), 29 U.S.C. Section 794, prohibits discrimination on the basis of disability by recipients of Federal financial assistance.

The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 et seq.,

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prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, as well as imposes specific requirements on public and private providers of transportation.

DOT Public Transportation Regulations implementing Section 504 and the ADA. These regulations include DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR Part 27, DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37, and Architectural and Transportation Barriers Compliance Board (ATBCB)/DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38.

Examples of requirements include, but are not limited to, the following:

1. Design and Construction. Accessibility requirements for the design and construction of new transportation facilities.
2. Accessibility and Usability. Requirements that vehicles acquired (with limited exceptions) be accessible to and usable by individuals with disabilities, including individuals using wheelchairs;
3. Complementary Paratransit Service. Requirements that public entities providing fixed-route service, (including a private non-profit entity providing public transportation service on behalf of the State or designated recipient as a subrecipient providing fixed-route service), provide complementary paratransit service to individuals with disabilities who cannot use the fixed-route service;
4. Equal Opportunity. Requirements for compliance with service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation system and services.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)
49 CFR Part 26

Disadvantaged Business Enterprises

1. **Policy:** It is the policy of the Department of Transportation (DOT) that disadvantaged business enterprises as defined in 49 CFR Part 26, and as amended in Section 1061(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26 and Section 1061(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 apply to this Agreement.
2. **DBE Obligation:** The Contractor or its representative agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 and Section 1061(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with

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federal funds provided under this Agreement. In this regard, the Contractor or its representative shall take all the necessary and reasonable steps in accordance with 49 CFR Part 26 and Section 1061(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 to ensure that DBEs have the maximum opportunity to compete for and perform contracts. The Contractor shall not discriminate on the basis of race, religion, color, national origin, age, disability, or sex in the award and performance of DOT-assisted contracts. Part 26 and Section 1061(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 apply to this Agreement.

a. This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 9.1 %.

b. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as The City of El Paso deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

c. 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 City of El Paso. In addition, Contractor is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by The City of El Paso and contractor's receipt of the partial retainage payment related to the subcontractor's work.

d. The Contractor must promptly notify The City of El Paso, 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 City of El Paso.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS **FTA Circular 4220.1F**

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, 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 (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

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GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

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

The certification in this clause is a material representation of fact relied upon by The City of El Paso. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City of El Paso, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 18

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

RECYCLED PRODUCTS

42 U.S.C. 6962

40 CFR Part 247

Executive Order 12873

Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

CLEAN AIR

42 U.S.C. 7401 et seq

40 CFR 15.61

49 CFR Part 18

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations

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issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

40 USC 3701, *et seq*

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

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - The (*write in the name of the grantee*) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in

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paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

CONFORMANCE WITH NATIONAL ITS ARCHITECTURE

ITS projects shall conform to the National ITS Architecture and standards in accordance with the requirements contained in this part. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 614).

TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

49 U.S.C. § 5310, § 5311, and § 5333

29 CFR Part 215

Transit Employee Protective Provisions. (1) The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit

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operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

CHARTER BUS REQUIREMENTS

49 U.S.C. 5323(d)

49 CFR Part 604

Charter Service Operations - The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

SCHOOL BUS REQUIREMENTS

49 U.S.C. 5323(F)

49 CFR Part 605

School Bus Operations - Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

DRUG AND ALCOHOL TESTING

49 U.S.C. §5331

49 CFR Parts 653 and 654

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published

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annually in the Federal Register.

BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)

49 CFR Part 661

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

If the Contractor has any questions or becomes aware of any issue that may potentially cause non-compliance with Buy America requirements as set forth within 23 CFR 635.410 and 49 CFR 661, respectively, the Contractor shall be required to comply with the Federal Buy America requirements of 49 CFR 661.

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BUY AMERICA CERTIFICATION

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j) and the applicable regulations in 49 C.F.R. Part 661.5.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

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The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

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LOBBYING
31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

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APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

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

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

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

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

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

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

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

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

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