

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

AGENDA DATE: August 13, 2024

PUBLIC HEARING DATE: Not applicable

CONTACT PERSON(S) NAME AND PHONE NUMBER:

Ben Fyffe, Managing Director, Museums and Cultural Affairs, (915) 212-1766
K. Nicole Cote, Managing Director of Purchasing & Strategic Sourcing,
(915) 212-1092

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: No. 4 – Enhance El Paso's Quality of Life through Recreational, Cultural and Educational Environments.

SUBGOAL: 4.2 – Create innovative recreational, educational and cultural programs

SUBJECT:

Discussion and action on the Request that the Managing Director of Purchasing & Strategic Sourcing be authorized to issue Purchase Order(s) for Solicitation 2024-0518 Digital Wall App to Gibson Group TouchCity Limited, the sole service provider and developer of the Digital Wall App, DIGIE.org Website, for a term of three (3) years for an estimated amount of \$119,028.00. Supplier will be required to provide an updated sole source letter and affidavit each year. This contract will provide continued maintenance services and software support to maintain the functionality of the DIGIE.org website.

BACKGROUND / DISCUSSION:

The Software and firmware systems for the City of El Paso Museum of History's DIGIE.org website was designed and developed by Gibson Group TouchCity Limited. This contract will provide continued maintenance services and software support to maintain the functionality of the DIGIE.org website.

SELECTION SUMMARY:

N/A

CONTRACT VARIANCE:

The difference based in comparison to the previous contract is as follows: A decrease of \$223,378.40, which represents a 65.24% due to the removal of implementation cost related to website development and upgrades to the existing digital wall and its components.

PROTEST

N/A

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

Amount: \$119,028.00

Funding Source: General Fund

Account: 239-1000-15240-522020-P1506

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Museums and Cultural Affairs

SECONDARY DEPARTMENT: Purchasing & Strategic Sourcing

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

DEPARTMENT HEAD:



Ben Fyffe, Managing Director of Museums and Cultural Affairs

Project Form
Non-Competitive

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

Please place the following item on the Regular Agenda for the City Meeting of August 13, 2024.

Strategic Goal 4 - Enhance El Paso's Quality of Life through Recreational, Cultural, and Educational Environments

The linkage to the Strategic Plan is subsection: 4.2 Create innovative recreational, educational and cultural programs

Award Summary:

Discussion and action on the Request that the Managing Director of Purchasing & Strategic Sourcing be authorized to issue Purchase Order(s) for Solicitation 2024-0518 DIGIE APP Website to Gibson Group TouchCity Limited, the sole service provider and developer, for a term of three (3) years for an estimated amount of \$119,028.00. Supplier will be required to provide an updated sole source letter and affidavit each year. This contract will provide continued maintenance services and software support to maintain the functionality of the DIGIE.org website.

Contract Variance:

The difference based in comparison to the previous contract is as follows: A decrease of \$223,378.40, represents a 65.24% cost decrease, due to the removal of implementation cost related to website development and upgrades to the existing digital wall and its components.

Department:	Museum and Cultural Affairs
Award to:	Gibson Group TouchCity Limited
City & State:	Wellington, New Zealand
Item(s):	All
Total Term:	3 Years
Annual Estimated Award:	\$37,790.00 Year 1 \$39,321.00 Year 2 \$41,917.00 Year 3
Total Estimated Award:	\$119,028.00
Account(s):	239-1000-15240-522020-P1506
Funding Source(s):	General Fund
District(s):	All

Non-Competitive Procurement under Local Government General Exemption: Section 252.022 - (7) a procurement of items that are available from only one source – (D) captive replacement parts or components for equipment;

The Purchasing & Strategic Sourcing Department and Museum and Cultural Affairs Department recommend award as indicated to Gibson Group TouchCity Limited 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.

Additionally, it is requested that the City Attorney's Office review and that the City Manager or designee be authorized to execute any related contract documents and agreements necessary to effectuate this award.



PURCHASING & STRATEGIC SOURCING DEPARTMENT

SOLE SOURCE AFFIDAVIT

THIS IS AN OFFICIAL PURCHASING DOCUMENT-RETAIN WITH PURCHASE ORDER FILE

Before me, the undersigned official, on this day, personally appeared a person known to me to be the person whose signature appears below, whom after being duly sworn upon his/her oath deposed and said:

1. My name is Allan Smith. I am over the age of 18, have never been of a convicted crime and am competent to make this affidavit.
2. I am an authorized representative of the following company or firm: Gibson Group TouchCity Ltd
3. The above named company or firm is the sole source for the following item(s), product(s) or service(s): TouchCity Interactive Walls Render Engine, Cityscape Touch Interface, TouchCity Walls Web App for DIGIE.org website
4. Competition in providing the above named item(s) product(s), service(s) is precluded by the existence of a patent, copyright, secret process or monopoly as stated under Section 252.022, Subchapter A of the Local Governmental Code 7A or as provided for under 7B-F of the same section. Also, attached hereto is a sole source letter, which sets forth the reasons why this Vendor is a sole source provider (dated and signed).
5. There is/are no other like item(s) or product(s) available for purchase that would serve the same purpose or function.
6. **Note: This Vendor understands that by providing false information on this Sole Source Affidavit, it may be considered a non-responsible Vendor on this and future purchases and may result in discontinuation of any/all business with the City of El Paso.**

Allan Smith
Signature

SUBSCRIBED AND SWORN to before me on this 28th day of MARCH 2024

Julie Anne Ballance
Notary Public
Level 14, 109 Willis Street
Wellington, New Zealand
Ph + 64 2146 4511

Jayal
NOTARY PUBLIC
...LIE ANNE BALLANCE
PRINTED NAME
NO EXPIRY; LIFE WARRANT
MY COMMISSION EXPIRES

COMPANY NAME: Gibson Group TouchCity Ltd
ADDRESS, CITY, STATE & ZIP CODE: Level 2, 78 Victoria Street, Wellington, 6011
PHONE: +64 9109796 FAX NUMBER: +64 4998286
CONTACT NAME AND TITLE: Allan Smith, Company Director
WEB ADDRESS: www.gibson.co.nz EMAIL: allan@gibson.co.nz
FEDERAL TAX ID NUMBER: _____ TEXAS SALES TAX NUMBER: _____



March 28, 2024

Sole Source Supplier letter for the provision of services in fulfilment of:

- Support Agreement for **digie.org Interactive Exhibition on-line platform**)

The systems to be maintained were originally created by Gibson Group TouchCity™ Ltd as part of the bespoke software and firmware systems created for the City of El Paso Museum of History's Digital Wall installation (DIGIE), which were designed and delivered under Sole Source Supplier contract 13-1044- 272/PL#253826/SMC between Gibson Group and City of El Paso Engineering, approved by Council February 11th, 2014, and authorized by City of El Paso Engineering Purchase Order CEP35-1400000290 issued February 27th, 2014.

Sole Source Contracts were subsequently issued to Gibson Group TouchCity™ Ltd for the maintenance of the systems, and in 2021 the systems were extensively updated by the same software engineers from Gibson Group TouchCity™ Ltd under **Sole Source Contract No. 2021-1112 DIGIE.org Interactive Exhibition Upgrade.**

Those updates created a fully interactive on-line version of the Digital Touchwall for a new release of the website, **digie.org**

The systems continue to consist of specialized, confidential and exclusive software and artistic content not available from any other supplier, and Gibson Group alone has the originating programmers, technicians and artists who have the knowledge and the authorization to access and maintain the source code and GUI art of the touch interface to meet the on-going operational requirements of the City of El Paso's **digie.org** on-line platform.



Allan Smith
Company Director
Gibson Group & Gibson Group TouchCity Ltd

signed in my presence by Allan Smith on 28 March 2024.



Julie Anne Ballance
Notary Public
Level 14, 109 Willis Street
Wellington, New Zealand
Ph + 64 2146 4511



DIGIE.ORG SERVICE LEVEL AGREEMENT

This Interactive Exhibition Service Level Agreement, (“Agreement”) is made as of the effective date set forth below by and between Gibson Group TouchCity Limited (a limited liability company registered in New Zealand with its registered office at level 2, 78 Victoria Street, Wellington, New Zealand (“Gibson Group”) and the City of El Paso a Texas municipal corporation (“Client”) located at 300 N. Campbell, El Paso, TX, United States.

BACKGROUND

- A. Bespoke software and firmware systems for the City of El Paso Museum of History’s DIGIE installation were designed and delivered under Sole Source Supplier contract 13-1044-272/PL#253826/SMC between Gibson Group and City of El Paso Engineering, approved by Council February 11th, 2014, and authorized by City of El Paso Engineering Purchase Order CEP35-1400000290 issued February 27th, 2014.
- B. The contracted services included an initial 12 months’ support (February 2015 to February 2016), and 2 subsequent years of support services (Year 2 of operations – February 2016 to February 2017, and Year 3 of operations – February 2017 to February 2018). A further support agreement to August 31 2021 was authorized by Council Motion on August 21, 2018 under Sole Source no. 2018-1691,
- C. In 2021 the digie.org website was upgraded to enable full cityscape interactivity like that available at the touchwall at the museum, and a corresponding SLA for services to support that upgraded site from January 1st 2022 through August 31st 2024 under award No. 2021-1112 DIGIE.org Interactive Exhibition Upgrade.

AGREEMENT

1. CONTRACT TERM

The term of this contract is for three years, from September 1st 2024 through August 31 2027.

2. GIBSON GROUP OBLIGATIONS

- (i) Gibson Group will provide services to the Client according to the City of El Paso Standard Terms and Conditions fully incorporated herein as EXHIBIT B of this Agreement.
- (ii) The agreed services will be as described in the Scope of Services fully incorporated herein as EXHIBIT A of this Agreement.
- (iii) Gibson Group only shall be responsible for the services described in (i) (ii) (iii) above, which may be modified in writing from time to time in accordance with the procedures set out in clause 2 below.

2. PRICE AND PROCEDURES

2.1. The prices for Gibson Group supply of these services are set out in EXHIBIT A of this Agreement, and the current total cost for the performance of these services over the three years of the agreement is \$119,028. All prices are given in United States Dollars (USD).

2.2. Gibson Group agrees to vary the resourcing of the different categories of the services set out in EXHIBIT A in order to respond to specific needs requested by the Museum (such as unexpected water damage to facilities or new museum event programs), providing that the Museum agrees with such variations and that the total cost of resourcing under the SLA does not exceed the sum of \$119,028.

2.3. Subsequent material changes to the specifications in Exhibit A will be handled by a Letter of Variation to Agreement being signed by both parties.

2.4. The prices are inclusive of customs and import duties where applicable but exclude any applicable sales tax or other applicable US federal, state and local taxes on the goods and services supplied by Gibson Group under this Agreement. In the event that applicable taxes are altered, the prices shall be regulated by the economic net consequence thereof so that the Gibson Group's position remains unchanged.

2.5. The services will be delivered continuously as required by EXHIBIT A between September 1, 2024 through August 31, 2027.

3. CLIENT'S OBLIGATIONS

3.1. The Client will pay the Gibson Group fees for provision of the services described in Section 1 above in payments as agreed between the parties.

3.2. Payment will be made by ACH (electronic payment), in accordance with the Texas Government Code Chapter 2251, 30 days after supply of an invoice and will be in clear funds immediately accessible by the Gibson Group. Bank fees will be borne by the Client.

4. TERMS AND CONDITIONS

The terms and conditions of the provision of services under this Agreement are set out in the City of El Paso Standard Terms and Conditions duly incorporated herein as EXHIBIT B.

5. PROJECT MANAGEMENT

5.1. Each of the parties will appoint a project manager who has authority to make decisions about TouchCity on behalf of the relevant party.

5.2. For the Gibson Group, that is Allan Smith allan@gibson.co.nz.

5.3. For Client, that is the Director of the El Paso Museum of History or such person designated by the City Engineer.

SIGNATURES

For and on behalf of the City of El Paso

For and on behalf of the Gibson Group:



By:

By:

Allan Smith

Position: _____

Position: Senior Producer Visitor
Experiences, company owner

Date: _____

Date: March 27, 2024

LIST OF EXHIBITS INCORPORATED INTO THIS AGREEMENT

EXHIBIT “A”: Scope of Services

EXHIBIT “B”: Signed compliance with City of El Paso Standard Terms and Conditions and Indemnification

EXHIBIT A: SCOPE OF SERVICES

Annual Service Level Agreement for software maintenance and support for the City of El Paso Museum of History's DIGIE.ORG web platform

SOFTWARE AND SYSTEMS SUPPORTED

All software required to run the site and its admin backend, including custom software provided by Gibson Group to run their Web GL version of their TouchCity™ app which offers users an interactive cityscape experience like that at the Museum's touchwall, and all related 3rd party software.

Year 1 scope of services (September 1st 2024 to August 31st 2025)		USD
A Routine maintenance		
	Daily systems logging, monitoring, periodic audit and corrective action	3,380
	Regular web technologies and security software updates with TouchCity app adjustments as required	4,095
	Patching as required fortnightly checks and Implementations for OS, Laravel, ffmpeg, authorize.net, 3rd party plugins etc	1,625
SUB-TOTAL Routine maintenance/coms		9,100
B Client changes		
	Allowance Cityscape refresh and additions up to 50 new assets	12,803
	Allowance for user interface widget changes - web	2,366
	Allowance for functionality changes - web	2,559
SUB-TOTAL B client changes		17,728
C Support - help desk,remedial		
	Urgent response (issues significantly impacting on visitor experience or endangering equipment or security),including disabling of authorize.net transactions via ssh under DDOS attacks, Emergency Level 3 response patching as required	2,594
	Routine support	8,368
SUB-TOTAL Support		10,961
TOTAL		37,790

Year 2 scope of services (September 1st 2025 to August 31st 2026)	USD
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A	Routine maintenance
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	Daily systems logging, monitoring, periodic audit and corrective action	3,617
	Regular web technologies and security software updates with TouchCity app adjustments as required	4,186
	Patching as required fortnightly checks and Implementations for OS, Laravel, ffmpeg, authorize.net, 3rd party plugins etc	1,625
SUB-TOTAL Routine maintenance/coms		9,428

B	Client changes
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	Allowance Cityscape refresh and additions up to 50 new assets	13,366
	Allowance for user interface widget changes - web	2,438
	Allowance for functionality changes - web	2,660
SUB-TOTAL B client changes		18,464

C	Support - help desk,remedial
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	Urgent response (issues significantly impacting on visitor experience or endangering equipment or security),including disabling of authorize.net transactions via ssh under DDOS attacks, Emergency Level 3 response patching as required	2,699
	Routine support	8,730
SUB-TOTAL Support		11,429

TOTAL	39,321
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Year 3 scope of services (September 1st 2026 to August 31st 2027)	USD
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A	Routine maintenance
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	Daily systems logging, monitoring, periodic audit and corrective action	3,853
	Regular web technologies and security software updates with TouchCity app adjustments as required	4,459
	Patching as required fortnightly checks and Implementations for OS, Laravel, ffmpeg, authorize.net, 3rd party plugins etc	1,729
SUB-TOTAL Routine maintenance/coms		10,041

B	Client changes
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	Allowance Cityscape refresh and additions up to 50 new assets	14,256
	Allowance for user interface widget changes - web	2,599
	Allowance for functionality changes - web	2,837
SUB-TOTAL B client changes		19,692

C	Support - help desk,remedial
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	Urgent response (issues significantly impacting on visitor experience or endangering equipment or security),including disabling of authorize.net transactions via ssh under DDOS attacks, Emergency Level 3 response patching as required	2,875
	Routine support	9,309
SUB-TOTAL Support		12,184

TOTAL	41,917
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EXHIBIT B:

Indemnification clause

And

The City of El Paso Standard Terms and Conditions

As per following pages.



Purchasing & Strategic Sourcing Department

ELECTRONIC TRANSMITTAL

MAYOR
Oscar Leeser

Please sign and acknowledge our indemnification clause.

CITY COUNCIL

District 1
Brian Kennedy

District 2
Alexandra Anello

District 3
Cassandra Hernandez

District 4
Joe Molinar

District 5
Isabel Salcido

District 6
Art Fierro

District 7
Henry Rivera

District 8
Chris Canales

INDEMNIFICATION [Rev. 04-15-99] [Rev. 01-04-04] [Rev. 10-19-18]

Contractor or its insurer will INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT, even where such damage, injury, loss, illness, physical or mental impairment, loss of service, or death results from or involves NEGLIGENCE, or allegations of negligence on the part OF THE CITY, its officers, agents, or employees. 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 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.

**INTERIM
CITY MANAGER**
Cary Westin

AG Smith

19th March 2024

Accepted by

Date

Allan Smith

Printed or Typed Name

K. Nicole Cote – Managing Director

Purchasing & Strategic Sourcing | 300 N. Campbell | El Paso, TX 79901
(915) 212-0043 | CoteKN@elpasotexas.gov



DELIVERING EXCEPTIONAL SERVICES

Following are the standard terms and conditions that apply to contracts entered into with the City of El Paso, unless otherwise noted on a Purchase Order or within the Terms and Conditions section of a Contract.

1. INVOICES & PAYMENTS

- A. The Contractor will submit invoices, in single copy, on each contract after each delivery. Invoices covering more than one purchase order will not be accepted.
- B. Invoices will be itemized, including serial number of unit; transportation charges, if any, will be listed separately.
- C. Invoices will reflect the Contract Number and the Purchase Order Number.
- D. Do not include Federal Tax, State Tax, or City Tax. The City will furnish a tax exemption certificate upon request.
- E. Discounts will be taken from the date of receipt of goods or date of invoice, whichever is later.
- F. A copy of the bill of lading and the freight waybill when applicable will be attached to the invoice.
- G. Payment will not be due until the above instruments are submitted after delivery and acceptance.
- H. Mail invoices to the City Department indicated in the Invoice Instructions set forth on the Purchase Order.
- I. Contractor shall advise the Comptroller of any changes in its remittance addresses.

2. CONTRACTUAL RELATIONSHIP

Nothing herein will be construed as creating the relationship of employer and employee between the City and the Contractor or between the City and the Contractor's employees. The City will not be subject to any obligations or liabilities of the Contractor or his employees incurred in the performance of the contract unless otherwise herein authorized. The Contractor is an independent Contractor and nothing contained herein will constitute or designate the Contractor or any of his employees as employees of the City. Neither the Contractor nor his employees will be entitled to any of the benefits established for City employees, nor be covered by the City's Workers' Compensation Program.

3. INDEMNIFICATION [Rev. 04-15-99] [Rev. 01-04-04] [Rev. 10-19-18]

Contractor or its insurer will INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THIS AGREEMENT, even where such damage, injury, loss, illness, physical or mental impairment, loss of service, or death results from or involves NEGLIGENCE, or allegations of negligence on the part OF THE CITY, its officers, agents, or employees. 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.

4. **GRATUITIES**

The City may, by written notice to the Contractor, cancel this contract 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 the Contractor, or any agent or representative of the Contractor, to any officer or employee of the City of El Paso with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making or any determinations with respect to the performing of such a contract. In the event this contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

5. **WARRANTY-PRICE**

- A. The price to be paid by the City will be that contained in the Contractor's bid which the Contractor warrants to be no higher than Seller's current prices on orders by others for products of the kind and specification covered by this contract for similar quantities under similar or like conditions and methods of purchase. In the event Contractor breaches this warranty the prices of the items will be reduced to the Contractor's current prices on orders by others, or in the alternative, the City may cancel this contract without liability to Contractor for breach or Contractor's actual expense.
- B. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract 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 the Contractor for the purpose of securing business. For breach or violation of this warranty the City will have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

6. **RIGHT TO ASSURANCE**

Whenever one party to this contract in good faith has reason to question the other party's intent to perform, he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) calendar days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

7. **TERMINATION [Rev. 06/07/97][1/10/2020]**

- A. **Termination for Convenience:** The City of El Paso may terminate this contract, in whole or in part, at any time by written notice to the Contractor. The Contractor will be paid its costs, including the contract close out costs, and profit on work performed up to the time of termination. The Contractor will promptly submit its termination claim to the City of El Paso to be paid the Contractor. If the Contractor has any property in its possession belonging to the City of El Paso, the Contractor will account for the same, and dispose of it in the manner the City of El Paso directs.
- B. **Termination for Default:** If the Contractor fails to comply with any provision of the contract the City of El Paso may terminate this contract for default. Termination shall be effected by serving a notice of intent to terminate the contract setting forth the manner in which the Contractor is in default. The Contractor will be given an opportunity to correct the problem within a reasonable time before termination notice is rendered. 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. The City shall have the right to immediately terminate the Contract for default if the Contractor violates any local, state, or federal laws, rule or regulations that relate to the performance of this Agreement.

C. Termination for Failure to Comply with Subchapter J, Chapter 552, Government Code.

The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor or vendor agrees that the Contract can be terminated if the Contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

8. ADDITIONAL REMEDIES [New 12/96]

If the City terminates the contract because the Contractor fails to deliver goods as required by the contract, the City shall have all of the remedies available to a buyer pursuant to the UNIFORM COMMERCIAL CODE including the right to purchase the goods from another vendor in substitution for those due from the Contractor. The cost to cover shall be the cost of substitute goods determined by informal or formal procurement procedures as required by the Local Government Code. The City may recover the difference between the cost of cover and the contract cost by deducting the same from amounts owed to Contractor for goods delivered prior to termination or any other lawful means.

9. TERMINATION FOR DEFAULT BY CITY [Rev. 06/09/97]

If the City fails to perform any of its duties under this contract, Contractor may deliver a written notice to the Purchasing Director describing the default, specifying the provisions of the contract under which the Contractor considers the City to be in default and setting forth a date of termination not sooner than 90 days following receipt of the Notice. The Contractor at its sole option may extend the proposed date of termination to a later date. If the City fails to cure such default prior to the proposed date of termination, Contractor may terminate its performance under this Contract as of such date.

10. FORCE MAJEURE [Rev. 06/07/97]

If, by reason of Force Majeure, either party hereto will be rendered unable wholly or in part to carry out its obligations under this Contract then such party will give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, will be suspended for only thirty (30) days during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party will try to remove or overcome such inability with all reasonable dispatch.

The term Force Majeure as employed herein, will mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemies, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals. It is understood and agreed that the settlement of strikes and lockouts will be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure will be remedied with all reasonable dispatch will not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty. If a party is unable to comply with the provisions of this contract by reason of Force Majeure for a period beyond thirty days after the event or cause relied upon, then upon written notice after the thirty (30) days, the affected party shall be excused from further performance under this contract.

11. ASSIGNMENT-DELEGATION

No right or interest in this contract will be assigned or delegation of any obligation made by the Contractor without the written permission of the City. Any attempted assignment or delegation by the Contractor will be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

12. WAIVER

No claim or right arising out of a breach of this contract 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 the aggrieved party.

13. INTERPRETATION-PAROL EVIDENCE

This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their contract. No course of prior dealings between

the parties and no usage of the trade will be relevant to supplement or explain any term used in this contract. Acceptance or acquiescence in a course of performance rendered under this contract will not be relevant to determine the meaning of this contract even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this contract, the definition contained in the Code is to control.

14. APPLICABLE LAW

The law of the State of Texas will control this contract along with any applicable provisions of Federal law or the City Charter or any ordinance of the City of El Paso.

15. ADVERTISING

Contractor will not advertise or publish, without the City's prior consent, the fact that the City has entered into this contract, 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 contract is dependent upon the availability of funding. In the event that funds do not become available the contract may be terminated or the scope may be amended. A 30-day written notice will be given to the vendor and there will be no penalty nor removal charges incurred by the City.

17. VENUE

Both parties agree that venue for any litigation arising from this contract will lie in El Paso, El Paso County, Texas.

18. ADDITIONAL REMEDY FOR HEALTH OR SAFETY VIOLATION

If the Director of Purchasing determines that Contractor's default constitutes an immediate threat to the health or safety of City employees or members of the public he may give written notice to Contractor of such determination giving Contractor a reasonable opportunity to cure the default which shall be a period of time not less than 24 hours. If the Contractor has not cured the violation within the time stated in the notice, the City shall have the right to terminate the contract immediately and obtain like services as necessary to preserve or protect the public health or safety from another vendor in substitution for those due from the Contractor at a cost determined by reasonable informal procurement procedures. The City may recover the difference between the cost of substitute services and the contract price from Contractor as damages. The City may deduct the damages from Contractor's account for services rendered prior to the Notice of Violation or for services rendered by Contractor pursuant to a different contract or pursue any other lawful means of recovery. The failure of the City to obtain substitute services and charge the Contractor under this clause is not a bar to any other remedy available for default.

19. INSURANCE REQUIREMENTS [6/29/2019]

Commercial General Liability:

Written on an occurrence form. (There may be situations where a "claims-made" form may be our only option but it is best we require an occurrence form including all the usual coverage known as:

- Premises/operations liability
- Products/completed operations
- Personal/advertising injury
- Contractual liability
- Broad-form property damage
- Independent contractor liability
- Explosion, Collapse and Underground (XCU)
- Cyber Liability/Data/Breach/Ransom

Minimum Limits of Liability

\$1,000,000 Bodily Injury/\$1,000,000 Property Damage per occurrence
Commercial General Liability Exclusion Removed/Railroad Protective Liability/Contractual

Liability-Railroads

\$1,000,000 Bodily Injury/\$1,000,000 Property Damage Liability per occurrence
Required when a contractor is going to work on or within 50 feet of any "railroad property"

Commercial Automobile Liability;

\$1,000,000 Bodily Injury/\$500,000 Property Damage Liability per occurrence

Workers' Compensation

Statutory Coverage
500,000 Employers Liability

\$

Professional (Errors & Omissions) Liability (if required)

\$1,000,000 per occurrence

Umbrella or Excess Liability Insurance (if required)

\$5,000,000 per occurrence

The City, its officials, employees, agents and contractors shall be named as additional insureds and contain a "blanket waiver of subrogation" clause in favor of the City.

The contractor/vendor and their subcontractors' insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the City, its officials, employees, agents and contractors shall be in excess of the contractor/vendor's or contractor/vendor's subcontractor's insurance and shall not contribute to the contractor/vendor's or contractor/vendor's subcontractor's insurance.

Prior to undertaking any work under this Agreement, the contractor/vendor, at no expense to the City, shall furnish to the City copy of a certificate of insurance with an actual copy of policy and original endorsements affecting coverage for each of the insurance policies provided in this exhibit. Any deductibles or self-insured retentions must be declared to, and approved by the City.

Notices and Certificates required by this clause shall be provided to:

City of El Paso
Purchasing & Strategic Sourcing Department
300 N. Campbell, 1th Floor
El Paso, Texas 79901-1153

Please refer to Bid Number/Contract Number and Title in all correspondence.

Failure to submit insurance certification may result in contract cancellation.

20. **COMPLIANCE WITH NON-DISCRIMINATION LAWS**

The Contractor agrees that it, its employees, officers, agents, and subcontractors, will comply with all applicable federal and state laws and regulations and local ordinances of the City of El Paso in the performance of this Contract, including, but not limited to, the American with Disabilities Act, the Occupational Safety and Health Act, or any environmental laws.

The Contractor further agrees that it, its employees, officers, agents, and subcontractors will not engage in any employment practices that have the effect of discriminating against employees or prospective employees because of sex, race, religion, age, disability, ethnic background or national origin, or political belief or affiliation of such person, or refuse, deny, or withhold from any person, for any reason directly or indirectly, relating to the race, gender, gender identity, sexual orientation, color, religion, ethnic background or national origin of such person, any of the accommodations, advantages, facilities, or services offered to the general public by place of public accommodation.

21. CONTRACTING INFORMATION [1/10/2020]

The Contractor must preserve all contracting information related to this Contract as provided by the records retention schedule requirements applicable to the City for the duration of this Contract. Contractor will promptly provide the City any contracting information related to this Contract that is in the custody or possession of the Contractor on request of the City. On completion of this Contract, Contractor will either provide at no cost to the City all contracting information related to this Contract that is in the custody or possession of the Contractor or preserve the contracting information related to this Contract as provided by the records retention requirements applicable to the City.

22. RIGHT TO AUDIT

The Contractor agrees that the City shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine and copy any directly pertinent books, computer and digital files, documents, papers, and records of the Contractor involving transactions relating to this Contract. Contractor agrees that the City shall have access during normal working hours to all necessary Contractor facilities, and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. The City shall give Contractor reasonable advance notice of intended audits. The City will pay Contractor for reasonable costs of any copying the City performs on the Contractor's equipment or requests the Contractor to provide. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

The Contractor agrees that it will include this requirement into any subcontract entered into in connection with this Contract.

23. CONTRACTOR TO PACKAGE GOODS

The Contractor will package goods according to good commercial practice. Each shipping container will be clearly and permanently marked as follows: (a) Contractor's name and address; (b) Consignee's name, address and purchase order; (c) Container number and total number of containers, e.g., "box 1 of 4 boxes"; and (d) the number of the container bearing the packing slip. The Contractor will bear cost of packaging unless otherwise provided. Goods will be suitably packed to secure lowest transportation costs and to conform to requirements of common carriers and any applicable specifications. The City's count or weight will be final and conclusive on shipments not accompanied by packing lists.

24. SHIPMENT UNDER RESERVATION PROHIBITED

The Contractor is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.

25. DELIVERY TERMS AND TRANSPORTATION CHARGES

F.O.B. Destination Freight Prepaid unless delivery terms are specified otherwise in bid; the City agrees to reimburse the Contractor for transportation costs in the amount specified in the Contractor's bid, or actual costs, whichever is lower, if the quoted delivery terms do not include transportation costs, provided the City will have the right to designate what method of transportation will be used to ship the goods.

26. TITLE & RISK OF LOSS

The title and risk of loss of the goods will not pass to the City until the City actually receives and takes possession of the goods at the point or points of delivery.

27. RIGHT OF INSPECTION

The City will have the right to inspect the goods at delivery before accepting them.

28. NO REPLACEMENT OF DEFECTIVE TENDER

Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this will constitute a breach and the Contractor will not have the right to substitute a conforming tender, provided, where the time for performance has not yet expired, the Contractor may reasonably notify the City of his intention to cure and may then make a conforming tender within the contract time but not afterward.

29. **PLACE OF DELIVERY**

The place of delivery will be that set forth in the solicitation. The terms of this contract are "no arrival, no sale."

30. **WARRANTY-PRODUCT**

The Contractor will not limit or exclude any implied warranties and any attempt to do so will render this contract voidable at the option of the City. Contractor warrants that the goods furnished will conform to the specifications, drawings and descriptions listed in the bid invitation, and to the sample(s) furnished by Contractor, if any. In case of a conflict between the specifications, drawings and descriptions, the drawings and descriptions will govern.

31. **SAFETY WARRANTY**

Contractor warrants that the product sold to the City will conform to the standards promulgated by the US Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, the City may return the product for correction or replacement at the Contractor's expense. In the event the Contractor fails to make the appropriate correction within reasonable time, correction made by the City will be at the Contractor's expense.

32. **NO WARRANTY BY THE CITY AGAINST INFRINGEMENTS**

As part of this contract for sale Contractor agrees to ascertain whether goods manufactured according to the specifications attached to this contract will cause the rightful claim of any third person by way of infringement or the like. The City makes no warranty that the production of goods according to the specification will not give rise to such a claim and in no event will the City be liable to the Contractor for indemnification if Contractor is sued on the grounds of infringement or the like. If Contractor is of the opinion that an infringement or the like will result, he will notify the City to this effect in writing within two weeks after the signing of this contract. If the City does not receive notice and is subsequently held liable for the infringement or the like, the Contractor will save the City harmless (if the Contractor in good faith ascertains that production of goods according to the specifications will result in infringement or the like, this contract will be null and void except that the City will pay the Contractor the reasonable cost of his search as to infringements).

33. **FTA Clause (Applies to any Purchase Order using Federal funds)**

A. **Anti-Kickback Rules** Salaries of contractors, architects, draftsmen, technical engineers, and technicians performing work under this Agreement shall be paid unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C., Sec. 874; and Title 40 U.S.C., Sec. 276c). The Contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this Agreement to ensure compliance by subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

B. **Disadvantaged Business Enterprise** The goal for Disadvantaged Business Enterprise (**DBE**) participation for this project is **ten percent (10%)**.

1. Policy: It is the policy of the Department of Transportation (DOT) that disadvantaged business enterprises as defined in 49 CFR Part 23, 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 23 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 23 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 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 23 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 23 and Section 1061(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 apply to this Agreement.

- C. **Title VI Compliance** During the performance of this Agreement, the Contractor, for itself, its assignees and successors in interest, hereinafter referred to as the "**Contractor**", agrees as follows:
 1. **Compliance with Regulations:** The Contractor shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter

referred to as the "**Regulations**") which are herein incorporated by reference and made a part of this Agreement.

2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the Agreement, and in accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000d, Section 303 of the Age Discrimination Act, as amended, 42 U.S.C. §6102 Section of the Americans with Disabilities Act, 42 U.S.C. §12132, and Federal Transit Law at 49 U.S.C. §5332, shall not discriminate on the grounds of race, religion, color, creed, sex, age, disability, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
 3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, or supplier, shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, disability, or national origin.
 4. **Information and Reports:** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Owner or the Federal Transit Administration (**FTA**) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information is required, or the Contractor has knowledge of an employee who fails or refuses to furnish this information, the Contractor shall so certify to the Owner or the FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.
 5. **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the Owner shall impose such agreement sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
 - a) Withholding of payments to the Contractor under the Agreement until the Contractor complies; and/or,
 - b) Cancellation, termination, or suspension of the Agreement, in whole or in part.
 6. **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs I through 6 of this section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the Owner or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the Owner to enter into such litigation to protect the interests of the Owner, and, in addition, the Contractor may request the services of the Attorney General in such litigation to protect the interest of the United States.
- D. **Interest of Members of, or Delegates to, Congress** In accordance with 18 U.S. C., Sec. 431, no member of, or delegates to, the Congress of the United States shall be admitted to a share of part of this Agreement or any benefit arising therefrom.
- E. **Lobbying** The Contractor certifies, to the best of his or her knowledge and belief, that:
1. **Federal Appropriated Funds:** 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. **Other Funds:** 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 (b) 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. **Required Language [Sub awards]:** The Contractor shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients 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.

- F. **Davis-Bacon Wages** In preparation of his cost estimates and the Project budget, described in Sec. VI, Part C., and Sec. VI, Part D., hereof, the Contractor shall base such estimates and the project budget on the premise that the regulations and requirements enumerated in 29 CFR Part 5, Subpart A (Davis-Bacon and Related Act) apply to the project and must be followed and obeyed by the selected contractor.

- G. **Conservation** The Contractor shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C., Sec.6321, *et seq.* The Energy Conservation requirements are applicable to all contracts.

H. **Reporting, Record Retention and Access**

1. **Access to Records:** The Contractor agrees to provide the Owner, 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. 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.
2. **Maintenance of Records:** 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 Owner, 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.

I. **Clean Water Requirements**

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.* and further agrees to report each violation of these requirements resulting from any Project implementation activity of the Contractor to the FTA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in all of its subcontracts.

J. **Clean Air**

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. and further agrees to report each violation of these requirements resulting from any Project implementation activity of the Contractor to the FTA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in subcontract.

K. **Conflict of Interest** No employee, officer, or agent of the Owner shall participate in selection, or in the award or administration of an agreement if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

1. The employee, officer or agent.
2. Any member of his immediate family,
3. His or her partner, or
4. An organization which employs, or is about to employ, has a financial or other interest in the firm selected for award.
The Owner's officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from the Contractor, potential contractors, or parties of subcontracts.

L. **Debarred** The Contractor, including any of its officers or holders of a controlling interest, is obligated to inform the Owner whether or not it, or any of its subcontractors or agents, is or has been on any debarred bidders' list maintained by the United States government. Should the Contractor be included on such a list during the performance of this Project, it shall so inform the Owner. The Contractor hereby certifies that it and its subcontractors are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from any of the covered transactions by any Federal Department or agency.

M. **Termination of Grant** Should this Agreement be terminated as a result of cancellation of federal funding covering this Project, the Owner will promptly notify the Contractor of the cancellation by certified mail-return receipt requested, whereupon the Contractor shall immediately, on receipt of the letter, cease and desist from performing any other work or services hereunder. In such an event, the Contractor will be paid for professional services performed to said date upon furnishing the Owner a progress report and an invoice to such date, and upon acceptance of the work by the Owner.

N. **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 Agreement (Form FTA MA (2) dated October, 1995) between Owner 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.

O. **No Obligation by the Federal Government.**

1. The Contractor acknowledges and agrees 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 Owner, 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.

P. **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. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 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.

Q. **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 4220.1E, dated June 19, 2003, 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 requests from Owner which would cause Owner to be in violation of the FTA terms and conditions.

R. **Protest Procedures** In the event that a bidder or Proposer desires to protest the procurement (bid or proposal) or an award, the following procedures must be followed:

1. **General** Any protest must be submitted in writing. A fax is allowable as long as a formal written document with original signatures is also submitted. The outside of the transmittal envelope must be clearly marked "PROTEST". All protests shall clearly state the name of the protester, the solicitation, bid or contract title and number. The protest must be fully supported by technical data or other pertinent information that will delineate why the protest is being lodged. Protests filed after the deadline shall be dismissed.

The City of El Paso's objective is to resolve all formal protests as soon as practical. Nothing in this procedure should be construed as requiring a formal protest if a vendor wishes to clarify or discuss standards or procedures relating to the procurement process.

- 1.1 **Submission for Protest of Procurement** Any protest of the procurement must be submitted in writing to the City Procurement Representative and received no later than five (5) working days before the scheduled closing date for receipt of proposals or bids. This includes protests based upon:
 - Restrictive or exclusionary specifications,
 - Challenges to the bid or proposal specifications,
 - Evaluation procedures,
 - Terms and conditions of the solicitation package.
- 1.2 **Submission for Protest of Award** Any protest of the award must be submitted in writing to the City Procurement Representative received by no later than five (5) working days (exclusive of Saturday, Sunday, and federal and other holidays observed by the City of El Paso) after receipt of notice of the award.

1.3 **Response** The City Procurement Representative shall respond to the protest within five (5) working days (exclusive of Saturday, Sunday, and federal and other holidays observed by the City of El Paso) from the receipt date of the written protest.

1.4 **FTA Notification** – Upon receipt of a protest, the City Procurement Representative shall notify FTA of the protest. All protest activities will be logged in the Procurement Narrative.

Options – The City Procurement Representative has the option to:

- Extend the time provided for each step of the protest procedure,
- Postpone the bid or proposal opening,
- Extend the date of notice of award, or
- Postpone the award of contract if deemed appropriate for protest resolution.

All active parties will be notified in writing if an option is elected.

2. Appeal of Determination If the City Procurement Representative's response is not satisfactory, the protester may appeal in writing to the City Manager of El Paso within five (5) working days (exclusive of Saturday, Sunday, and federal and other holidays observed by the City of El Paso) from the date of receipt of the Procurement Representative's response. The City Manager will respond in writing within ten (10) working days (exclusive of Saturday, Sunday, and federal and other holidays observed by the City of El Paso) from the date of receipt of appeal. The decision rendered by the City Manager shall be the final decision of the City of El Paso.

3. FTA Review of Protest Federal Transit Administration's (FTA) protest procedures are found in FTA Circular 4220.1E. If federal funding is involved, FTA will review protests from a third party only when:

- The City failed to have or follow its protest procedures, or
- The City failed to review a complaint or protest.
- Violations of federal law or regulations and the standards of 49 CFR Part 18.36(b)(12).

The FTA regional office must receive an appeal within five (5) working days of the receipt of the decision of the City by the protester.

A protester must exhaust all administrative remedies with the City before pursuing a protest with FTA.

Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local authorities.

S. Buy America Requirements 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 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 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.

T. **Terrorist Organizations & Boycotting of Israel** [Rev. 4-30-18] [Rev. 10-14-18]

Vendor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State. Vendor further certifies and verifies that neither Vendor, nor any affiliate, subsidiary or parent company of Vendor, if any (the "Vendor Companies"), boycotts Israel, and Vendor agrees that Vendor and Vendor Companies will not boycott Israel during the term of this Purchase Order. For purposes of this Purchase Order, the term "boycott" shall mean and include terminating business activities or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory.
