NORTH CENTRAL REGIONAL TRANSIT DISTRICT

INVITATION FOR BID (IFB) AND BID DOCUMENTS FOR:

CONSTRUCTION OF ADA COMPLIANT BUS SHELTER
PADS – Transportation Alternatives Program (TAP)
PROJECT VI.A

IFB # 2020-003

August 7, 2020

Bids are Due on September 1, 2020 by 2:00 PM MST
I. ADVERTISEMENT FOR BIDS
IFB # 2020-003

The North Central Regional Transit District (NCRTD or The District) is soliciting bids for the construction of up to eight (8) ADA-compliant bus stops at several designated locations in the Village of Questa, Taos County, Town of Taos, City of Española and Village of Chama, New Mexico. The successful Bidder shall construct concrete pads in accordance with the terms and conditions of an awarded written agreement. The project may include, but is not limited to, the construction of bus stop infrastructure such as concrete pad work, sidewalk transition work, asphalt paving, curb and gutter installation; ADA ramps and bus stop area backfill; grading, excavation work, demolition of sidewalks and/or old shelter pads; site preparation; traffic and safety controls; and associated site improvements, landscaping, irrigation repairs, etc. All equipment, materials and installation work shall comply with all local, state, and federal rules and regulations.

Sealed bids will be received until **September 1, 2020 at 2:00 pm** (local prevailing time), and can be submitted in person to:

Name: Tim Mildren, Chief Procurement Officer
Reference Bid Name: Construction of ADA Compliant Bus Shelter Concrete Pads
IFB # 2020 - 003
Address: 1327 N. Riverside Drive
Española, NM 87532

Bids received after this time will not be accepted. Bids will be opened and read aloud at the same location.

A NON-MANDATORY Pre-Bid meeting will be held for this project at North Central Regional Transit District, 1327 N, Riverside Drive, Española, NM at 10:00 AM on Wednesday, August 12, 2020. Plans, specifications, and other contract documents may be obtained over the internet at: [http://ncrtd.org/requests.aspx](http://ncrtd.org/requests.aspx). The documents will also be available upon request at the North Central Regional Transit District 1327 N. Riverside Drive Española NM 87532 or Wilson & Company, Inc., Engineers & Architects 4401 Masthead St NE #150, Albuquerque, NM 87109 Monday through Friday between the hours of 8:00 AM to 5:00 PM.

To qualify, all bids shall be submitted using the Bid Form furnished, a copy of which is bound in the Contract Book; incomplete or segregated bids will not be accepted.

All Bidders submitting Bids valued over sixty thousand dollars ($60,000.00) shall be on the NMDOT prequalified contractor list and registered with the Department of Workforce Solutions (DWS), Labor Relations before Bidding. The Bidder’s registration number shall be included on the Bid Form. The Bidder’s DWS registration number can be obtained through the website [http://www.dws.state.nm.us/](http://www.dws.state.nm.us/). If a Bidder appears on the DWS list of willful violators of the Public Works Minimum Wage Act (NMSA 13-4-14), the District will reject the Bid and shall continue to reject Bids from that Bidder for three years after the date of publication of the list. Decisions of the State Labor Commissioner setting wage rates will be a part of the Contract.
For federally funded Projects, the Bidder is not required to have a license from the Construction Industries Division for the Project’s Work in order to submit a Bid. However, upon becoming the apparent successful Bidder, the Bidder must obtain a valid license with the proper classification for the Project’s Work within 30 Days of the date on the notice of preliminary Award letter.

Federal and State Wage Rates are indicated for each Project. For federally funded Projects, the Bidder shall obtain the federal wage rate (Construction Type: Highway) through the US Department of Labor (DOL) website at https://www.wdol.gov/dba.aspx. In addition, the Bidder shall obtain the State wage rate (Street, Highway, Utility or Light Engineering Construction) through the DWS website at https://www.dws.state.nm.us/Labor-Relations/Labor-Information/Public-Works. The higher wage rate shall govern in the event of a discrepancy between the minimum wage rates in the DOL/DWS Wage Decision applicable to the Contract.

All questions about the meaning or intent of the Bidding Documents are to be submitted in writing to Tim Mildren, timm@ncrtd.org via email by August 14, 2020. Response to such questions will be issued by Addenda posted on ncrtd.org or delivered to all parties recorded by Engineer as having received the Bidding Documents. Only questions answered by Addenda as posted on ncrtd.org will be binding. Oral and other interpretations or clarifications will be without legal effect.

NCRTD reserves the right to reject any or all bids and to waive any informality or technicality in any bid.

Tim Mildren,  
Chief Procurement Officer
II. DEFINITIONS OF TERMINOLOGY AND ABBREVIATIONS

This section contains definitions of terms used throughout this procurement document, including appropriate abbreviations:

**Award**- The final execution of the contract document.

**Bid**- Competitive Procurement method to set a price by an individual or business for a product or service or a demand that something be done. Bidding is used to determine the cost or value of the project.

**Bidder**- Any person, corporation, or partnership who chooses to submit a bid.

**Bidding Documents**– Included the Advertisement or Invitation to Bid, Instructions to Bidders, the Bid Form, the Bid Bond or other Bid Security, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids)

**Business Hours**- Means 8:00 AM thru 5:00 PM MT

**Close of Business**- Means 5:00 PM MT

**Confidential**- Confidential financial information concerning Bidder’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act NMSA 1978 57-3-A-1 to 57-3A-7. See NMAC 1.4.1.45 e.g. no information that could be obtained from a source outside this request for bids can be considered confidential information.

**Contract**- Any agreement for the procurement of items of tangible personal property, services or construction.

**Contractor**- Any business having a contract with a state agency or local public body.

**CPO (Chief Procurement Officer)**- Also referred to as purchasing agent or any person or designee authorized by a state agency or local public body to enter into or administer contracts and make written determinations with respect thereto.

**Determination**- The written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

**District**- [The] District is the purchasing agency also referred to as the North Central Regional Transit District or NCRTD.

**Desirable**- The terms "may", "can", "should", "preferably" or "prefers" to identify a desirable or discretionary item or factor.

**Electronic Version/Copy**- A digital form consisting of text, images or both readable on computers or other electronic devices that includes all content that the Original and Hard Copy bids contain. The digital form may be submitted using a compact disc (cd) or USB flash drive. The electronic version/copy can NOT be emailed.
Hourly Rate- The proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.

Issuing Office – Wilson & Company, Inc., Engineers & Architects

Invitation for bids (IFB)- Means all documents, whether attached or incorporated by reference, utilized for soliciting competitive sealed bids.

Mandatory– the terms "must", "shall", "will", "is required", or "are required", identify a mandatory item or factor. Failure to meet a mandatory item or factor will result in the rejection of the Bidder’s bid.

Minor Technical Irregularities- Anything in the bid that does not affect the price quality and quantity or any other mandatory requirement.

NCRTD- The North Central Regional Transit District also referred throughout the document as “the District.”

Owner– North Central Regional Transit District

Responsible Bidder- An Bidder who has submitted a responsive bid and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, or items of tangible personal property described in the bid.

Responsive Bid- An offer which conforms in all material respects to the requirements set forth in the request for bids. Material respects of a request for bids include, but are not limited to price, quality, quantity or delivery requirements.

Sealed- In terms of a non-electronic submission, that the bid is enclosed in a package which is completely fastened in such a way that nothing can be added or removed. Open packages submitted will not be accepted except for packages that may have been damaged by the delivery service itself. The District reserves the right, however, to accept or reject packages where there may have been damaged by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and should or should not be accepted is a determination to be made by the Chief Procurement Officer. By submitting a bid, the Bidder agrees to and concurs with this process and accepts the determination of the CPO in such cases.

Staff- Individual who is a full-time, part-time, or an independently contracted employee with the Bidders’ company.

State (the State)- The State of New Mexico.

Substantial Completion- The day following the last charged day and when all the following items are met:

1. All Critical Path activities on the Project have been completed and deemed acceptable;

2. The Project is complete such that it can be safely and effectively used by the public;
3. The Contractor has requested a determination of Substantial Completion from the NCRTD; and

4. The NCRTD has made a determination that the Project is Substantially Complete.

**Written**- Means typewritten on standard 8 ½ x 11-inch paper. Larger paper is permissible for charts, spreadsheets, etc.
III. OVERVIEW OF PROJECT

A. DISTRICTS BACKGROUND INFORMATION

In 2003, Governor Bill Richardson signed into law the Regional Transit Act. This legislation authorized the creation of regional transit districts in the State of New Mexico.

In 2004, Governor Bill Richardson signed legislation that allowed City and County Governments that were members of a Regional Transit Districts, to go to the voters for approval of an increase of up to ½ of one percent in Gross Receipt Tax to fund their participation in an RTD.

In September 2004, the NCRTD was the first RTD to be certified by the New Mexico Transportation Commission. Upon issuance of certification from the New Mexico Transportation Commission the NCRTD constitutes a separate political entity. A requirement from the New Mexico Department of Transportation was to submit a Transit Service Plan within one year of the formation of the NCRTD. The NCRTD Board approved the NCRTD's first Transit Service Plan in July 2006.

In February 2007, the NCRTD adopted its branding, and in April began its first bus service project.

In July 2007, the NCRTD signed Memorandums of Agreement between the City of Española and Rio Arriba County to transfer service, employees and equipment to the NCRTD.

In October 2007, the NCRTD began operating transit service in four counties.

In January 2008, NCRTD hired a Contractor to expand and update the Transit Service Plan for the proposed usage of the Gross Receipts Tax (GRT).

In April 2008, the NCRTD Board approved the GRT resolution adopting a 1/8 of one percent tax, and in November 2008 the public voted for approval of the GRT in all four counties of its service area.

In July 2015, the NCRTD acquired the Town of Taos transit system known as the Chile Line and all assets, employees and facilities.

Presently, the NCRTD has 26 fixed and commuter routes regionally; 1 Dial-A-Ride service in the Pojoaque-Nambe area; 1 paratransit service in the Town of Taos (Chile RIDE); 1 demand response service in Rio Arriba County within a 15-mile radius of the Española Park and Ride lot; complementary flex paratransit services on all routes (outside of the Town of Taos). All routes are fare free except for the Mountain Trail and Taos Express.

The NCRTD assets consist of an administrative facility and light maintenance bay in Española, and a fleet maintenance facility and office trailer in Taos. NCRTD has a fleet of 55 buses and paratransit vehicles and additional support vehicles. Annual vehicle miles are in excess of 1,540,000. The NCRTD provides service Monday through Friday (excluding certain recognized holidays). The premium RTD Mountain Trail and TSV Green route operate seven days per week (including holidays) during the winter ski season and Taos Express provides Saturday and Sunday express service. The NCRTD employs 83 employees. Annual ridership for FY 2019 for NCRTD provided services is 294,313 and NCRTD funded services is 234,375 for a total ridership of 528,688. The NCRTD members are four counties, four cities, and six tribal entities, with over 10,000 square
miles of service area with an approximate population of 235,000. The NCRTD utilizes over 449 bus stops with approximately 75 shelters.

The District is currently in the final design and construction of a bus/vehicle repair facility in Española and the beginning phases of a bus/vehicle admin support building in Taos. It is expected the Española facility will be operational in 2021; the operational date for the new Taos facility has not been determined.

The District is currently in the middle of a service plan update for 2020. This plan will evaluate existing routes and areas unserved within the District’s service area as well as unserved communities outside of the service area and is utilized with its long-range planning strategies to develop safe, viable, and effective services.

B. PURPOSE OF THIS INVITATION TO BID

The NCRTD is soliciting bids for the construction of up to eight (8) ADA-compliant bus stops at several designated locations in the Village of Questa, Taos County, Town of Taos, City of Española, and Village of Chama, New Mexico. The successful Bidder shall construct concrete pads in accordance with the terms and conditions of an awarded written agreement. The project may include, but it’s not limited to, grading, excavation work, demolition of sidewalks and/or old shelter pads, site preparation, installation of new sidewalks, installation of concrete shelter pads, small retaining walls, landscaping, irrigation repairs and/or installation.

C. GOALS OF THE PROJECT

The scope of procurement shall consist of Construction Projects, detailed in Section II.F, Request for Bid Scope. The initial contract is scheduled to begin on September 28, 2020, or upon receiving all required state approvals. The IFB is for this project only.

D. PROCUREMENT METHOD

The process for award of the contract will be a “Competitive Seal Bid” process pursuant to Rule 11 of the District's Procurement Rules and Regulations. Contracts of the District shall generally be awarded by competitive sealed bids except when the CPO determines that the use of competitive sealed bidding is neither practical nor advantageous in seeking the best value and/or the best interest to the District.

E. SCOPE

During the terms of the contract, the work is performed as a series of individual work or task orders. Each work or task order is initiated by District with a mutual agreement between the District, and the contractor once a scope, schedule and price are agreed upon, and the contractor is directed to proceed with the work. The Project may consist but is not limited to providing the following services:

1. The Contractor shall construct bus shelter pads in accordance with the terms and conditions of the awarded written agreement whereby the NCRTD authorizes the contractor to construct/ bus shelters pads at up to eight (8) NCRTD designated sites.
2. The written agreement shall not become effective until approved by the Board of Directors of and signed by the Executive Director of the NCRTD.

3. The Contractor must have all the required contracting licenses, permits, certifications, training, experience and capability of constructing on behalf of the NCRTD said Bus Shelters/Pads to realize the highest quality workmanship.

4. It will be Contractor's responsibilities to procure all necessary permits or licenses to comply with all Federal, State, County or Municipal, Tribal laws, ordinance or regulations.

5. All traffic control personal, equipment or permits required by the Town of Taos, City of Española, and New Mexico Department of Transportation to disrupt traffic during the construction work.

6. Contractor is responsible for all the required site preparation at each designated site to include excavation, leveling, drainage and forming to the existing curb and gutter or sidewalk.

7. Bus Shelter Concrete Pads shall be constructed with 3,000 psi. concrete.

8. Concrete Pad Thickness: Shall not be less than four inches (4”) and up to six inches (6”) thick.

9. Concrete Pad Dimensions will vary based on the proposed shelter.

10. Bus Shelters: The contractor is not required to erect or assemble any bus shelters. NCRTD will install the shelters, bus stop signs and trash receptacles after the bus shelter pads are complete.

11. All bus shelters and surrounding areas must be left clean and no trash, debris and or machinery left unattended after the completion of each bus shelter.

12. The Contractor shall take all reasonable precautions in the performance of the construction under the written Agreement to protect the health and safety of its employees, the employees of the District and members of the public and to prevent damage to the same and keep damage from property of employees, the public and the NCRTD at a minimum. The Contractor shall comply with all health, safety and fuel protection requirements and regulations at the expense of the Contractor.

F. TIMETABLE AND BUDGET

At the start of the project, the Contractor will be expected to produce a project timetable that lists major tasks with their starting and ending dates. Meetings and deliverables should be included as milestones on the timetable. The Contractor shall update and resubmit the timetable as conditions warrant.

At the start of the project, the Contractor will provide a task-by-task budget. The budget will be constructed in a way that allows the Contractor and the NCRTD Project Manager to monitor project financial performance and take corrective actions in a timely manner.

The timetable for project substantial completion is 63 calendar days from the date of contract execution.
H. Chief Procurement Officer

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

   Name:        Tim Mildren, Chief Procurement Officer
   Address:     1327 N. Riverside Drive
                Española, NM 87532
   Telephone:   (505)629-4701
   Fax:         (505)747-6647
   Email:       timm@ncrtd.org

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

   Name:        Tim Mildren, Chief Procurement Officer
   Reference Bib Name: Construction of ADA Compliant Bus Shelter Concrete Pads
                   Bid # 2020 - 003
   Address:     1327 N. Riverside Drive
                Española, NM 87532

3. All correspondence, communication and contact regarding any aspect of this solicitation, offers or this project shall be only with the CPO identified above. Unless otherwise instructed by the, CPO, the Bidder and their representatives shall not make any contact with or try to communicate with any member of District, its employees and/or consultants, regarding any aspect of this solicitation or offers.

4. At any time during this procurement up to the time specified in the procurement schedule, Bidders may request, in writing, a clarification or interpretation of any aspect, a change to any requirement of the Bid, or any addenda to the Bid.

5. Any revisions to the Bid will be issued and distributed as addenda. Bidders are encouraged to attend a Pre-bid meeting that will be held at the District (1327 N. Riverside Dr. Española, NM) on Wednesday, August 12, 2020 at 10:00 a.m. or submit any questions or items for clarification in writing to the abovementioned person by 5:00 p.m., Friday, August 14, 2020.
IV. CONDITIONS GOVERNING THE BID

This section of the BID contains the schedule, description and conditions governing the procurement. The Bid will make every effort to adhere to the Bid Schedule shown in this Bid Document. However, the timeframes shown may be subject to change at the discretion of the NCRTD. A significant change of the schedule will be published in the District’s website as an addendum.

A. SEQUENCE OF EVENTS

The CPO will make every effort to adhere to the following schedule:

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<th>Action</th>
<th>Responsible Party</th>
<th>Due Dates Sample Time Frames</th>
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<td>August 7, 2020</td>
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<tr>
<td>Virtual Pre-Bid Meeting</td>
<td>NCRTD</td>
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<td>NCRTD Responds to Questions and Clarifications</td>
<td>NCRTD</td>
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<td>Evaluation of IFBs Received</td>
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<td>Notification of Selected Firm to Bidders</td>
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<tr>
<td>Intent to Award Presented to Board of Directors</td>
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<td>Notice of Intent to Award and Protest Due Date</td>
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<td>Contract Execution</td>
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<td>Final Completion of Work</td>
<td>Construction Company</td>
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B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown in Section III. A., above.

1. Issuance of Bid

   This Bid is being issued on behalf of NCRTD on Friday, August 7, 2020.

2. Pre-bid Meeting

   A Pre-bid meeting for this Bid will be at the District’s Main office, located at 1327 N. Riverside Dr, Espanola, NM. 87532 on Wednesday, August 12, 2020 at 10:00 AM. Attendance for the pre- Bid is not mandatory to submit a Bid, however, it is recommended to address any questions that the bidders might have. Responses to those questions will be
published on the District’s website on Tuesday, August 18, 2020 so as long as they were not addressed on the Bid.

Oral responses made during the conference will not be considered a part of the bid or binding unless they are published via an addendum. Thus, statements made at the pre-bid meeting may not be relied upon in any way by any person and may not be the basis of any protest. Bidders are cautioned to independently verify any matters stated at the Pre-bid meeting with the CPO by Wednesday, August 12, 2020 at 5:00 PM.

3. Question Submittals

Potential Bidder(s) are encouraged to attend the pre-bid meeting on Wednesday, August 12, 2020 however they can also submit written questions prior and up to Wednesday, August 12, 2020 at 5:00 PM. All written questions will be addressed in writing on the District’s website by Tuesday, August 18, 2020 at 5:00 PM. The submission of questions and/or the attendance of the pre-bid meeting is not a requisite for the submission of a bid.

All written questions must be addressed and will be responded by the CPO. Questions emailed shall be clearly labeled “IMPORTANT- [NAME OF BIDDER] BID# 2020 - 003 QUESTION”

4. Response to Written Questions

Written responses to questions received will be answered by the CPO and posted on the District’s website at www.ncrtd.org/requests.aspx by Tuesday, August 18, 2020.

5. Preparation of the Bid

The Bid Form is included with the Bidding Documents.

All blanks on the Bid Form shall be completed in ink or typed and the Bid Form signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each section, Bid item, alternate, adjustment unit price item, and unit price item listed therein.

If the Bid Form expressly indicates that submitting pricing on a specific alternate item is optional, and Bidder elects to not furnish pricing for such optional alternate item, then Bidder may enter the words “No Bid” or “Not Applicable.”

A Bid by a corporation shall be executed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address and state of incorporation shall be shown.

A Bid by a limited liability company shall be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.

A Bid by an individual shall show the Bidder’s name and official address.
A Bid by a joint venture shall be executed by an authorized representative of each joint venture in the manner indicated on the Bid Form. The official address of the joint venture shall be shown.

All names shall be printed in ink below the signatures.

The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.

Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.

The Bid shall contain evidence of Bidder’s authority and qualification to do business in the state where the Project is located, or Bidder shall covenant in writing to obtain such authority and qualification prior to award of the Contract and attach such covenant to the Bid. Bidder’s state contractor license number, if any, shall also be shown on the Bid Form.

Listing of subcontractors; Any agency taking bids for any public works construction project, shall provide in the bidding documents for that project a listing threshold which shall be three thousand dollars ($3,000) or one-half of one percent of the architect’s or engineer’s estimate of the total project cost, not including alternates, whichever is greater. If the bidding documents do not include a listing threshold, then the using agency shall supply the listing threshold.

The Bid packages will be available at the NCRTD and Wilson & Co. Their addresses are 1327 N. Riverside Drive Española NM 87532 and 4401 Masthead St NE #150, Albuquerque, NM 87109 respectively. Monday through Friday between the hours of 8:00 AM to 5:00 PM.

6. Submission of the Bid

ALL BIDS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE CPO NO LATER THAN 2:00 PM MOUNTAIN DAYLIGHT TIME ON SEPTEMBER 1, 2020. Bids received after these deadlines will not be accepted. The date and time of receipt will be recorded on each Bid.

Statements and Bid must be sealed and labeled on the outside of the package to clearly indicate that they are in response IFB#2020 - 003 CONSTRUCTION OF ADA COMPLIANT BUS SHELTER PADS – TAP Project VI.A. Bids submitted by fax or other electronic means will not be accepted. A public log will be kept of the names of all Bidder organizations that submitted Bids.

The contents of Bids shall not be disclosed to competing potential Bidders during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Bids. Awarded in this context means the final required signature on the contracts resulting from the procurement has been obtained.
7. **Modification and Withdrawal of Bid**

Bid may be withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids. Upon receipt of such notice, the unopened Bid will be returned to the Bidder.

If a Bidder wishes to modify its Bid prior to Bid opening, Bidder must withdraw its initial Bid in the manner specified in Paragraph 16.01 and submit a new Bid prior to the date and time for the opening of Bids.

If within 24 hours after Bids are opened any Bidder files a duly signed written notice with NCRTD and promptly thereafter demonstrates to the reasonable satisfaction of NCRTD that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

8. **Opening of the Bid**

Bids will be opened at the time and place indicated in the advertisement or invitation to bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

9. **Bids to Remain Subject to Acceptance**

All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but NCRTD may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

NCRTD reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. NCRTD will reject the Bid of any Bidder that NCRTD finds, after reasonable inquiry and evaluation, to not be responsible. If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, then the NCRTD will reject the Bid as nonresponsive; provided that NCRTD also reserves the right to waive all minor informalities not involving price, time, or changes in the Work.

If NCRTD awards the contract for the Work, such award shall be to the responsible Bidder submitting the lowest responsive Bid.

10. **Evaluations of Bid**

In evaluating Bids, NCRTD will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Bid Form or prior to the Notice of Award.

In the comparison of Bids, alternates will be applied in the same order of priority as listed in the Bid Form. To determine the Bid prices for purposes of comparison, NCRTD shall
announce to all bidders a “Base Bid plus alternates” budget after receiving all Bids, but prior to opening them. For comparison purposes alternates will be accepted, following the order of priority established in the Bid Form, until doing so would cause the budget to be exceeded. After determination of the Successful Bidder based on this comparative process and on the responsiveness, responsibility, and other factors set forth in these Instructions, the award may be made to said Successful Bidder on its base Bid and any combination of its additive alternate Bids for which NCRTD determines funds will be available at the time of award.

In evaluating whether a Bidder is responsible, NCRTD will consider the qualifications of the Bidder and may consider the qualifications and experience of Subcontractors and Suppliers proposed for those portions of the Work for which the identity of Subcontractors and Suppliers must be submitted as provided in the Bidding Documents.

NCRTD may conduct such investigations as NCRTD deems necessary to establish the responsibility, qualifications, and financial ability of Bidders and any proposed Subcontractors or Suppliers.

11. Finalize Contractual Agreements

Any Contractual agreement(s) resulting from this IFB will be finalized with the lowest responsible bidder. This date is subject to change at the discretion of the CPO.

12. Contract Awards

If, and when, the District and the selected firm arrive at a mutually acceptable scope and commensurate fee, the District will present the selected firm and proposed contract to the Board of Directors for approval.

After review of the signed contractual agreement, the CPO and/or a member of the evaluation team will recommend for award to the Board of Directors as per the Sequence of Events or as soon as possible thereafter. This date is subject to change at the discretion of the CPO.

The contract shall be awarded to the lowest responsible Bidder (or Bidders), contracts presented to the Board of Directors are subject to the Board's approval and the Board has plenary discretion in determining whether to award a contract and whether a bid is advantageous to the NCRTD taking into consideration the evaluation factors set forth in this IFB.

13. Protest Deadline

Any protest by a Bidder must be timely and in conformance with NMSA 1978, § 13-1-172 and applicable procurement regulations. ONLY protests delivered directly to the CPO in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Bids. The 15-calendar day protest period shall begin on the day the approval to award of contracts is received by the Board and will end at 5:00 pm Mountain Standard Time/on September 26, 2020. Protests must be written and shall include the name and address of the protestor, the request for bid number, a statement of the grounds for protest including appropriate supporting exhibits and specify...
the ruling requested from the party listed below. The protest must be delivered to CPO before the deadline. If the protest due date falls on a weekend, the noticed must be delivered via email to timm@ncrd.org. Protests received after the deadline will not be accepted.

14. Conflict of Interest

Pursuant to the Governmental Conduct Act, NMSA 1978, 10-16-1 et. seq., a Bidder shall have no direct or indirect interest that conflicts with the performance of services covered under this IFB and potential contract.

A conflict of interest or the appearance of a conflict of interest may occur if the Bidder is directly or indirectly involved whether through direct association with contract representatives, members of the evaluation team, indirect associations, the consultant, through recreational activities or otherwise with a member of the District.

The Bidder warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Bidder certifies requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.
AGREEMENT FOR CONSTRUCTION WORK

This agreement ("Agreement") is entered into as of the ___ day of _____, 2020 by and between ____________. ("Contractor") and the North Central Regional Transit District ("Purchaser”).

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

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

WHEREAS, the Purchaser has adopted its own procurement policy pursuant to the powers and authority granted to it under the Regional Transit District Act; and

NOW THEREFORE: in consideration of the mutual agreements of the parties herein and for other good and valuable consideration the receipt of which is hereby acknowledged the parties to this Agreement agree. The Contract Documents consist of the following:

- Cover Sheet
- Index
- Affidavit of Bidder
- Bid Form
- Bid Guaranty Bid Schedule Contract
- Bidder’s List of Quotes for the Disadvantaged Business Enterprise (DBE) Program
- Disadvantaged Business Enterprise (“DBE”) Goal Form A588 (Goal = 0%)
- Non-Debarment Certification
- Pay Equity Acknowledgment (Executive Order 2009-049)
- Project Specific Notice to Contractors (NTCs)
- Standard NTCs
- Construction Plans

Certificates and Documents Incorporated. All certificates and documentation required by the provisions of the Agreement shall be attached to this Agreement at the time of execution and are hereby incorporated by reference as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms. All Addenda Issued prior to, and all modifications
issued after execution of this agreement. These documents form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein. Any variations between this Agreement and the form agreement provided in the above listed documents are intended and this Agreement reflects the reconciliation and compilation of the foregoing documents.

1. **SCOPE OF WORK**

The Contractor shall provide the following goods and services to the Purchaser. The Contractor shall perform all the work required by the Contract Documents for the North Central Regional Transit project submitted as the “**NCRTD BUS STOP ADA TRANSITION PLAN PHASE VI A**.”

A. The work designated as the , “**NCRTD BUS STOP ADA TRANSITION PLAN PHASE VI A**” consists of but is not limited to construction of an ADA compliant bus stops transit facilities and affiliated work, as described in the Contract Documents. Contractor shall be responsible for verifications of all conditions, measurements and dimensions for bidding.

B. Contractor shall be responsible for all permits, fees, and State inspections associated with the construction.

C. Contractor shall be responsible for bringing the project to substantial completion in a timely, efficient and cost-effective manner. The Contractor shall take all such steps as it deems necessary to ensure that its work and the work of its subcontractors comply with this agreement, the requirements of any regulatory agency having jurisdiction over elements of the work including certification of materials and systems required to be constructed, utilized or installed under this agreement. The Contractor shall be responsible for all costs it accrues in the performance of this agreement and the Purchaser shall not be liable to the Contractor for any additional costs or damages beyond the contract amount due to delay, mobilization, lost opportunity or on any other account.

D. The work to be performed under this Contract shall be commenced not later than ten (10) consecutive calendar days after the date of written Notice to Proceed. Substantial Completion shall be achieved no later than **63 CALENDAR DAYS** after the date of written Notice to Proceed, except as hereafter extended by valid written Change Order by the Purchaser.
E. The Contractor shall, within seven (7) days after the effective date of Notice to Proceed, prepare and submit five (5) copies of a schedule of values and progress schedule covering project operations for the Contract period. This progress schedule shall be of the type generally referred to as a Critical Path Method (CPM), Critical Path Schedule (CPS), and Critical Path Analysis (CPA), and other similar designations. The CPM shall be used to control the timing and sequences of the project. All work shall be done in accordance with the CPM Planning and Scheduling. A written statement of explanation shall be submitted with the progress schedule. All costs incurred by the contractor to implement the CPM shall be borne by the Contractor and are part of its Contract (See Article 24.1, Construction Schedules and Periodic Estimates of Section 00700, General Conditions of the Contract).

2. STANDARD OF PERFORMANCE; LICENSES
A. The Contractor represents that it possesses the personnel, experience and knowledge necessary to perform the services described under this Agreement. The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

3. COMPENSATION
A. The Purchaser shall pay the Contractor in current funds for the performance of the work, subject to additions and deductions by Change Order as provided in the Contract Documents, the Contract Sum of $____________. The Purchaser shall pay any additional Gross Receipts Taxes due to a change in the NMGRT rate during the term of this agreement. The Contract Sum is determined as follows: Bid Amount + Gross Receipts Tax (GRT)

  Base Bid Only $ 
  Additive Alternate 1 $ 
  Additive Alternate 2 $ 
  Additive Alternate 3 $ 
  Additive Alternate 4 $ 
  Contract Total + NMGRT $ 

B. Payment shall be made upon receipt from the Contractor of statements. All statements shall contain a detailed report of work performed, products delivered, and expenses incurred.
Prepayment by public entities is generally not permitted under New Mexico law. Therefore, the delivery of goods and service and timely billing thereafter is a condition precedent to any payment by Purchaser to Contractor. Based upon Application for Payment submitted to the Purchaser by the Contractor and Certificates for Payment issued by the Purchaser, the Purchaser shall make progress payments on account of the Contract sum to the Contractor as provided in the Contract documents for the period ending the last day of the month as follows: Not later than twenty-one (21) days following the end of the period covered by the Application for Payment, one hundred percent (100%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the work and one hundred percent (100%) of the portion of the Contract sum properly allocable to materials and equipment suitably stored at the site or some other location agreed upon in writing for the period covered by the Application for Payment, less the aggregate of previous payments made by the Purchaser; and upon substantial completion of the entire work, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract sum, less such amounts as the Purchaser shall determine for all incomplete work contested amounts and unsettled claims as provided in the Contract documents.

Contractor shall provide Purchaser with a notice of any claims it intends to make against Purchaser or its agents for the period covered by and Application for Payment within fourteen days following the end of the period covered by the Application for Payment. Failure to give timely notice of said claims shall be deemed a waiver of any and all claims and remedies by Contractor against Purchaser for damages during the period covered by the Application for Payment.

C. Payment of taxes for any money received under this Agreement shall be the Contractor’s sole responsibility. The New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the Purchaser to the Contractor.

D. Contractor agrees to Refund to the Purchaser, in the same proportion as it was paid to the Contractor, expenditures under this agreement when determined by independent audit to be ineligible for payment.
E. Final payment, constituting the entire unpaid balance of the Contract sum, shall be paid by the Purchaser to the Contractor within twenty-one (21) calendar days after all deficiencies to the Contract document that were noted during the Substantial Completion Inspection and listed on the attachment to the Certificate of Substantial Completion have been corrected, and provided the Contract has been fully performed and a final Certificate for Payment has been issued by the Purchaser. In addition, the Contractor shall provide to the Purchaser a certified statement of Release of Lien (AIA Document G706A or approved form), Consent of Surety, Warranty from Prime Contractor, Warranties from Suppliers and Manufacturers, training sessions, equipment/operating manuals, and as-built drawings. Contractor shall provide Purchaser with a notice of any claims it intends to make against Purchaser or its agents at least seven days prior to the final payment date and a failure to give timely notice of said claims shall be deemed a waiver of any and all claims and remedies by Contractor against Purchaser.

4. APPROPRIATIONS
The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Purchaser for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Purchaser, this Agreement shall terminate upon written notice being given by the Purchaser to the Contractor. The Purchaser's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. By executing this Agreement, the Purchaser represents that it will make good faith efforts to ensure that sufficient money is budgeted and appropriated to make the payments that may become due for the work performed under this Agreement. However, by signing this Agreement Contractor hereby acknowledges and agrees that Purchaser is not responsible for ensuring that budgeted amounts will be appropriated sufficient to pay any amendment, extension, or other charges beyond those set forth in Section 3 above.

5. TERM AND EFFECTIVE DATE
This agreement shall not become effective until approved by the North Central Regional Transit Purchaser. This Agreement shall terminate June 30, 2021 unless terminated before (pursuant to paragraph 6 below) or extended by mutual written agreement of the parties

6. TERMINATION
A. **Termination.** This Agreement may be terminated by the Purchaser for cause or convenience upon written notice delivered to the Contractor at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the Purchaser’s sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor’s receipt of the notice of termination, if the Purchaser is the terminating party, or the Contractor’s sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party’s liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the Purchaser or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. **THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE DISTRICT’S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR’S DEFAULT/BREACH OF THIS AGREEMENT.**

B. **Termination Management.** Immediately upon receipt by either the Purchaser or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency as soon as practicable.

7. **STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUB-CONTRACTORS**

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A. The Contractor and its agents and employees are independent contractors performing professional services for the Purchaser and are not employees of the Purchaser. The Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of Purchaser vehicles, or any other benefits afforded to employees of the Purchaser as a result of this Agreement.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or contractors retained by Contractor in the performance of the services under this Agreement.

C. Contractor is not an agent or employee of Purchaser and will not be considered an employee of Purchaser for any purpose. Contractor, its agents or employees shall make no representation that they are Purchaser employees, nor shall they create the appearance of being employees by using a job or position title on a name plate, business cards, or in any other manner, bearing the Purchaser’s name or logo.

D. Contractor shall have no authority to bind Purchaser to any agreement, contract, duty or obligation. Contractor shall make no representations that are intended to, or create the appearance of, binding the Purchaser to any agreement, contract, duty, or obligation. Contractor shall have full power to continue any outside employment or business, to employ and discharge its employees or associates as it deems appropriate without interference from the Purchaser provided, however, that Contractor shall at all times during the term of this Agreement maintain the ability to perform the obligations in a professional, timely and reliable manner.

8. CONFIDENTIALITY

A. Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Purchaser, except as otherwise provided by law. Notwithstanding the preceding agreement to keep materials confidential the Contractor hereby acknowledges and agrees that the Purchaser may provide copies of any and all documents required to be made available for inspection and copying pursuant to the New Mexico Inspection of Public Records Act. Contractor is not required to
provide Purchaser with any documents that are not work product or are not otherwise required in order to perform the scope of work or to comply with state and federal laws. Nothing herein shall be deemed to waive any claim of confidentiality by Purchaser or Contractor nor to compel production of documents or information other than as required by this Agreement or by law.

B. Some documents may be subject to the requirements of the Privacy Act of 1974, 5 U.S.C. §552a. The Contractor agrees that it will at all times comply and assist the Purchaser in compliance with that law.

9. CONFLICT OF INTEREST; GOVERNMENTAL CONDUCT ACT

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, NMSA 1978, Section 10-16-1 et seq. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with NMSA 1978, Section 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Purchaser employee while such employee was or is employed by the Agency and participating directly or indirectly in the Agency’s contracting process;

2) this Agreement complies with NMSA 1978, Section 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, Section 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;
3) in accordance with NMSA 1978, Section 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Agency’s making this Agreement;

4) this Agreement complies with NMSA 1978, Section 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator’s family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, Section 10-16-9(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with Section NMSA 1978, 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, Section 10-16-3 and Section 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Purchaser.

C. Contractor’s representations and warranties in Paragraphs A and B of this Article 9 are material representations of fact upon which the Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Purchaser if, at any time during the term of this Agreement, Contractor learns that Contractor’s representations and warranties in Paragraphs A and B of this Article 9 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor’s representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Purchaser and notwithstanding anything in the Agreement to the contrary, the Purchaser may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article

10. ASSIGNMENT; SUB-CONTRACTING
The Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the Purchaser. Contractor acknowledges that the Purchaser is a SUBGRANTEE under Exhibit B and
is expressly bound to seek DEPARTMENT approval of any subcontracts under that agreement. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Purchaser. Contractor agrees that its principle officers and employees are to perform the scope of work under this agreement and that it will not unreasonably delegate work to subordinates.

11. RELEASE
The Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the Purchaser, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the Purchaser to any obligation not assumed herein by the Purchaser unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. INSURANCE
Contractor shall obtain and maintain at its own expense adequate insurance at all times during its performance of this Agreement. An enumeration of the Contractor’s General Comprehensive Liability Insurance requirements appears in the General Conditions of the [Contract for Construction]. Insurance requirements are also described in the [Project Manual]. Contractor shall maintain adequate insurance in at least the maximum amounts which the Purchaser could be liable under the New Mexico Tort Claims Act and shall provide proof of such insurance coverage to the Purchaser. It is the sole responsibility of the Contractor to be in compliance with the law.

A. Contractor shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage of one million dollars ($1,000,000) per occurrence.

B. General Liability Insurance shall be in the amount of **ONE MILLION DOLLARS AND ZERO CENTS ($1,000,000.00)** combined single limit and per occurrence shall name the Purchaser as an additional insured, and shall provide that the Purchaser will be notified no less than thirty (30) days in advance of cancellation;

C. The Purchaser retains the right to require that Contractor obtain or provide proof of insurance, certificates of insurance, riders or addenda including documents listing Purchaser as an
additional named insured if, in the Purchaser’s opinion, the Contractor’s work creates a risk or liability for the Purchaser that can be covered and insured without excessive cost or expense to the Contractor.

D. Waiver of insurance requirements may only be performed in writing by the Purchaser’s Executive Director and only if s/he is satisfied that the waiver will not result in substantial or unreasonable liability for the Purchaser.

13. INDEMNIFICATION
Contractor agrees to indemnify Purchaser to the extent permitted by law for the Contractors acts and omissions under this Agreement and for such other liabilities as may be incurred by the Purchaser due to the Contractor’s performance or failure to perform the services set forth in this Agreement.

14. NEW MEXICO TORT CLAIMS ACT
Any liability incurred by the North Central Regional Transit Purchaser in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The Purchaser and its “employees” as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

15. THIRD PARTY BENEFICIARIES
A. By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the Purchaser and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third-party beneficiary of this Agreement.

B. The Contractor acknowledges and agrees to the following regarding the Department of Transportation (DEPARTMENT) and the Purchaser (SUBGRANTEE):

“The DEPARTMENT and SUBGRANTEE acknowledge and agree that, notwithstanding any concurrence by the Federal government in or approval of the solicitation or award of the AGREEMENT, absent the express written consent by the Federal government, the Federal government is not a party to this AGREEMENT and shall not be subject to any obligations or
liabilities to the DEPARTMENT, SUBGRANTEE, or any other party (whether or not a party to the AGREEMENT) pertaining to any matter resulting from the AGREEMENT."

16. RECORDS AND AUDIT
A. The Contractor shall maintain, throughout the term of this Agreement and for a Contractor shall maintain throughout the term of this Agreement and for a period of six (6) years thereafter records that indicate the date, time, and nature of the services rendered. Contractor shall make available for inspection by Purchaser all records, books of account, memoranda, and other documents pertaining to Purchaser at any reasonable time upon request. These records shall be subject to inspection by the Purchaser, the Department of Finance and Administration, the State Auditor, the Federal Transit Administration and the United States Department of Transportation. The Purchaser shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the Purchaser to recover excessive illegal payments.

B. Contractor acknowledges and agrees to maintain all records for a period in excess for five (5) years from the date of the last expenditure report submitted to the Federal government under Exhibit B in order to ensure the Purchaser can comply with the requirements under that agreement.

C. Contractor agrees to affirmatively disclose threatened or pending litigation with its current and former customers.

D. Where the purchaser is not a State but a local government and is an FTA District or a subgrantee of FTA District in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.

E. Where the purchaser is a State and is an FTA District or a subgrantee of FTA District in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction
sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at $250,000.

F. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA District or a subgrantee of FTA District in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

G. Where a purchaser which is an FTA District or a subgrantee of FTA District in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

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

I. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the District, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

17. APPLICABLE LAW; CHOICE OF LAW; VENUE
Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern. The
parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District.

18. AMENDMENT
This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

19. SCOPE OF AGREEMENT
This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. NON-DISCRIMINATION
The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

21. SEVERABILITY
In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein, and any other application thereof shall not in any way be affected or impaired thereby.
22. **NOTICES**

A. Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses. Notices may also be provided by electronic transmissions such as facsimiles or e-mails. However, the burden of proof to establish that notice was received shall be on the party electing to utilize electronic transmissions of notifications. Notice under this Agreement shall be deemed given on the day personally delivered or three (3) days after deposit in the United States Mail, first class postage prepaid, or on the date received if sent by electronic mail. Notices by regular mail shall be sent to a party at the address set forth below:

Purchaser:  
**North Central Regional Transit**  
**Executive Director**  
**1327 N. Riverside Drive**  
**Española, NM 87532**

Contractor:

An address may be changed by notification to the other party in writing delivered as specified for notices hereunder. Unless such notice is made, a party is entitled to rely on the address as stated above.

B. Timely notice requirement. The Purchaser shall not be liable to Contractor for any amount in excess of the Contract Sum listed in Article 4 above. In the event that the Contractor makes a claim for any damages against the Purchaser said claim shall be in writing, shall conform to the Notice requirements of this agreement and shall set forth a detailed and itemized statement of each item of damages, the date on which the damages allegedly occurred, the specific act or omission of the Purchaser or its agents which allegedly caused the damages, and the specific dollar amount of the damages claim. The parties hereby agree that Contractor's failure to provide the Purchaser with this detailed statement of damages within 14 days of the date the damages allegedly occurred shall be deemed a waiver of any and all subsequent claims and remedies. In the event Contractor wishes to claim damages for delays allegedly caused by Purchaser or its agents, the Contractor shall provide said detailed statement of the claimed damages within 14 days of each and every incident, act or omission by the Purchaser or its agents which the Contractor claims is the basis of delay damages.
23. **REPORTING REQUIREMENTS**

Contractor agrees to provide all information required pursuant to this agreement including but not limited to:

A. Disadvantaged Business Enterprise (DBE) Certification information. Contractor shall provide all the information required to assist the Purchaser or the State of New Mexico regarding DBE compliance including the certification form or a declaration by the Contractor that it is not a DBE.

B. Any time the Agreement calls for the provision of information that is electronic in nature and usable by the Purchaser as part of its Graphic Information Systems (GIS), Contractor shall provide the data in a form and format that will facilitate the Purchaser's use of the data in its GIS maps and systems.

C. In addition to any bound and unbound copies of reports the Contractor shall be required to deliver at least one electronic copy of all deliverables in an editable format and one copy in a pdf format.

24. **DISPUTE RESOLUTION**

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the District’s authorized representative. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the District’s Executive Director. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the District’s Executive Director shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729.

*Performance During Dispute* - Unless otherwise directed by the District, 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 therefore shall be made in writing to such other party within ten days 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 District and 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 residing State.

**Rights and Remedies** - 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 District 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.

In addition, notwithstanding any other provision to the contrary of this agreement, or any law (whether local, state or federal), prior to seeking any remedies, the parties agree to meet at least one time to set forth their claims and proposed remedies through mutual agreement of the parties. The meeting shall at a minimum include the Contractor, the Contractor's bonding company, the Purchaser and any subcontractor or agent of the parties which may be of assistance in resolution of the matter or claim. Notice of the meeting including the location, date and time, shall be provided in writing by the Purchaser to the Contractor and its bonding company. The Purchaser shall give Notice of its claims promptly upon discovery of any issues that may give rise to a claim by Purchaser against Contractor. In the event of claims by the Contractor against the Purchaser or its agents, the Purchaser shall provide notice of the meeting within seven days of Purchaser's receipt of the written notice detailing the nature and extent of the claims. The meeting shall be attended by the Purchaser, Contractor and the Contractor's bonding company. Failure by the Contractor or its bonding company to attend such meeting and to make a good faith effort at resolution of the claims raised shall be deemed a waiver of the Contractor's claims and any further remedies.

**25. LIQUIDATED DAMAGES**

Should the Contractor neglect, refuse, or otherwise fail to complete the work within the Contract Time or any extension in the Contract thereof, the Contractor agrees to pay to the Purchaser the amount of one thousand and five hundred dollars ($1,500.00) per consecutive calendar days of delay until the work is completed and accepted or until voided pursuant to the provisions of the
General Conditions of the Contract, not as a penalty, but as liquidated damages for such breach of the Contract.

26. CONTRACTOR'S RELEASE

The Contractor, upon final payment of the amounts due under this Agreement, releases the Purchaser, the Purchaser’s officers and employees, and the Purchaser from all liabilities and obligations arising from or under this Agreement, including, without limitation, all damages, losses, costs, liability, and expenses, including, without limitation, attorney’s fees and costs of litigation that the Contractor may have. Contractor shall provide Purchaser with a notice of any claims it intends to make against Purchaser or its agents at least seven days prior to the final payment date and a failure to give timely notice of said claims shall be deemed a waiver of any and all claims and remedies by Contractor against Purchaser.

27. NON-WAIVER

No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by the party making the waiver and addressed to the other party; nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of either party to insist upon the performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party of breach by the other party of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

28. NEW MEXICO PROCUREMENT LAWS

Notwithstanding any provision of the Purchaser's Procurement Rules the Purchaser discloses the following provisions of State procurement law.

A. Pursuant to NMSA 1978, Section 13-1-191, reference is hereby made to the Criminal Laws of New Mexico (including Sections 30-14-1, 30-24-2, and 30-41-1 through 30-41-3, NMSA 1978) which prohibit bribes, kickbacks, and gratuities, violation of which constitutes a felony.

B. Pursuant to Section 13-4-11. NMSA 1978, Reference is hereby made to the Minimum Wage on Public Works; weekly payments; posting wage scale; withholding funds.
29. **BEST PRACTICES**

In addition to meeting federal requirements the Offeror should meet best practices requirements in performing the work required. Best practices guidance can be found at:


30. **COMPLIANCE WITH FEDERAL RESTRICTIONS**

The Contractor acknowledges and agrees that contracts such as this Agreement which are funded with, or implicate federal laws, grant requirements and restrictions are subject to state and federal requirements and compliance above and beyond the express terms set forth in this Agreement and that Contractor has made independent inquiry and satisfied itself that it may perform the work required under this Agreement while, at all times, maintaining compliance with said restrictions. Express requirements and restrictions include but are not limited to:

A. All requirements of 49 U.S.C. §5304 whether express or implied;

B. Federal Funds received by the Purchaser shall be used solely for activities described in the Scope of Work.

C. Federal Funds shall only be allocated for payment of eligible costs and as detailed in the Office of Management and Budget Circulars: A-87, A-102, A-133 and Executive Order 12372.

**Government-wide Debarment and Suspension (Nonprocurement)**

2 CFR Part 180

This contract is a covered transaction for purposes of 2 CFR Part 180 “OMB Guidelines to Agencies on Government-wide Debarment and Suspension” and “Nonprocurement Suspension and Debarment”. As such, the bidder or offeror 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 bidder or offeror 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 offeror certifies as follows:

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

Disadvantaged Business Enterprise (DBE)
49 CFR Part 26

This contract is covered under New Mexico Department of Transportation's Disadvantaged Business Enterprise Plan and the Contractor agrees to provide any information and data required by the NCRTD in order for the NCRTD to include the work performed under this Agreement in the State's DBE reporting.

1. Disadvantaged Business Enterprise (DBE) Policy.

   A. This Agreement is subject to the requirements of 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The Department’s proposed overall goal for FTA participation for the 2020 fiscal year is 15.10%, through race-neutral means.

   B. The Subrecipient shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Agreement. The Subrecipient shall carry out applicable requirements of 49 CFR Part 26 in the administration of the Project. Failure by the Subrecipient to carry out these requirements is a material breach of the Agreement, which may result in the termination or other such remedy as the Department deems appropriate. Each contract the Subrecipient signs with a contractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

   C. The Subrecipient agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of Contracts and subcontracts financed in whole or in part with Federal funds. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U.S. DOT assisted contracts. The Subrecipient will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

   D. The Subrecipient is required to pay its contractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the awarded contractor’s receipt of payment for that work from the Department.

   E. The Subrecipient must promptly notify the Department, whenever a DBE contractor is terminated or fails to complete its work and must make good faith efforts to engage another DBE contractor to perform at least the same amount of work. The Subrecipient 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 Department.
Subcontractors and Assignors of FTA funds must meet applicable Disadvantaged Business Enterprise (DBE) Program requirements when funds are used in whole or in part to finance procurements for applicable products and services. To that end, Subcontractors with contracting opportunities must sign and submit a Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Federal Transit Administration Subrecipients, which is attached in Appendix E.

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

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify NCRTD so that it can notify the Federal Government. The Contractor must include a similar notification requirement in its Third-Party Agreements and must require each Third-Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason. Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.

Davis-Bacon and Copeland Anti-Kickback Acts

(1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-
(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and the classification is utilized in the area by the construction industry; and

(2) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(3) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably
anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding – The NCRTD shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by
the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the NCRTD may, after written notice to the contractor, sponsor, applicant, or NCRTD, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the NCRTD for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete.

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either
directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3.

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or NCRTD, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeymen's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship
program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).


**Contract Work Hours and Safety Standards Act**

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

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 NCRTD 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 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.

**Bid Security Bond**

A 5 percent Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check must be issued by a fully qualified surety company acceptable to the NCRTD and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by the NCRTD to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [45] days subsequent to the opening of bids, without the written consent of the NCRTD.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [45] days after the bid opening without the written consent of the NCRTD, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of the NCRTD’s damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by the NCRTD as provided in the "Bid Security" section of the Instructions to Bidders) shall prove inadequate to fully recompense the NCRTD for the damages occasioned by default, then the undersigned bidder agrees to indemnify the NCRTD and pay over to the NCRTD the difference between the bid security and the NCRTD total damages, so as to make the NCRTD whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

**Performance and Labor and Material Payment Bonds**
The Contractor shall be required to obtain performance and labor and material payment bonds as follows:

(a) Performance bonds

Recipient and agency as shown is the NCRTD.

1. The penal amount of performance bonds shall be 100 percent of the original contract price.

2. The NCRTD may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The NCRTD may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond. Labor and Material Payment bond

(b) The penal amount of the payment bonds shall equal 100 percent of the contract price if the contract price.

ADA Access

Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37; and Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38. Notably, DOT incorporated by reference the ATBCB’s “Americans with Disabilities Act Accessibility Guidelines” (ADAAG), revised July 2004, which include accessibility guidelines for buildings and facilities, and are incorporated into Appendix A to 49 CFR Part 37. DOT also added specific provisions to Appendix A modifying the ADAAG, with the result that buildings and facilities must comply with both the ADAAG and amendments thereto in Appendix A to 49 CFR Part 37.

Prompt Payment and Return of Retainage  NCRTD will follow the NMDOT’s DBE Prompt Payment provisions for funds distributed by the Department.

A. NMDOT requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than seven (7) Days from receipt of each payment NMDOT makes to the prime contractor (New Mexico State Department of Transportation Standard Specifications for Highway and Bridge Construction, Section 108.1 ). Monitoring of prompt payment is done through the B2Gnow payment reporting and confirmation function. The following describes the Prompt Payment monitoring process:

1. Each month, NMDOT Project Office staff reviews payment dates in B2Gnow, entered by the prime contractors.

2. If a subcontractor indicates in B2Gnow they were not paid within seven (7) Days, NMDOT Project Office staff shall review and verify the payment dates in B2Gnow both from NMDOT to the Prime Contractor and the Prime Contractor to the subcontractor are compliant with Prompt Payment provisions.
3. If the Prime Contractor's payment to the subcontractor is more than seven (7) Days, the NMDOT Project Office staff requests the Prime Contractor to provide evidence the Prime Contractor paid the subcontractor within seven (7) Days or provide justification as to why the Prime Contractor did not pay the Subcontractor within the required time period.

4. If the Prime Contractor does not submit to NMDOT verification of Prompt Payment or justification for late or nonpayment to the Subcontractor, or if the Prime Contractor's submission does not demonstrate compliance or justification for noncompliance; the NMDOT shall notify the Prime Contractor they are in nonconformance with their NMDOT contract. This nonconformance may affect the Prime Contractor's Prequalification Performance Factor.

B. NMDOT ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30 Days after the subcontractor's work is satisfactorily completed and accepted by the NMDOT. To comply with this requirement, NMDOT may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after NMDOT makes payment to the prime contractor.

C. For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, accepted and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

D. Any delay or postponement of payment among the parties may take place only for good cause, with the prior written approval of NMDOT. Noncompliance with this section shall be handled in accordance with the compliance procedures found in Chapter III, Section 10 of this Manual.
IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

OWNER/PURCHASER:

_____________________
Anthony Mortillaro, Executive Director

DATE:____________

CONTRACTOR:

BY:_____________________
NAME:_____________________
TITLE:_____________________
DATE:_____________________
NM TAXATION & REVENUE
CSR NO:_____________________
LOCAL BUSINESS REG. No. ______

APPROVED AS TO FORM:

________________________
Peter Dwyer, Purchaser Legal Counsel