



**North Central Regional Transit District and City of Santa Fe  
Request for Proposal  
For  
Transit System Merger/Consolidation Analysis  
RFP 2016- 003  
May 9, 2016**

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North Central Regional Transit NCRTD  
1327 North Riverside Drive  
Española, New Mexico 87532  
[www.ridethebluebus.com](http://www.ridethebluebus.com)

## **SECTION 1 – INTRODUCTION**

### **OVERVIEW OF SCOPE OF SERVICES**

The City of Santa Fe (City) and the North Central Regional Transit District (District) are seeking a qualified Consultant with substantial experience in preparing a comprehensive transit operations analysis, developing transit operating plans and analyzing consolidations or mergers for transit systems. The purpose of the Merger Consolidation Analysis and Plan is to systematically evaluate the potential of the City transit system being acquired and merged into the District. The District in the past has acquired smaller local transit and merged them into the District operations.

This study will be performed under the guidance of the District project manager and a project team consisting of a City and District representative.

#### **1.1 PROCURING AGENCY AND CONTRACTING OFFICER**

All communication concerning any aspect of this solicitation of offers shall be in writing and shall be with the Contracting Officer.

Procuring Agency: North Central Regional Transit District  
1327 North Riverside Drive  
Española, New Mexico 87532  
Phone: 1-866-206-0754

Contracting Officer/Purchasing Agent: Troy Bingham  
Finance Director  
Phone: 505-629-4701  
[troyb@ncrtd.org](mailto:troyb@ncrtd.org)

## 1.2 SOLICITATION SCHEDULE

The following is the solicitation schedule for this procurement.

EVENT	DATE AND TIME
Request for Proposal Issued	May 9, 2016
Questions and Requests for Clarifications due to NCRTD	May 16-18, 2016
NCRTD Responds to Questions and Clarifications	May 19-20, 2016
<b>Proposal Due Date</b>	<b>Proposals are due no later than 4:30 p.m. on June 6, 2016</b>
Evaluation of Proposals Received	June 13-17, 2016
Proposer Presentations/Interviews	June 20-24, 2016
Anticipated Award	July 8, 2016

## 1.3 PROPOSALS

In order to be considered for award, **Proposals must be received by 4:30 p.m. MST, Monday, June 6, 2016.** Any proposal received after the specified date and time will be returned to the Proposer unopened. The receiving time in the NCRTD lobby located at 1327 North Riverside Drive, Espanola, New Mexico 87532 will be the governing time for acceptability of Proposals. This RFP does not commit NCRTD to award a contract. NCRTD will not pay Proposer's for any costs associated with preparing responses to this RFP. NCRTD reserves the right to accept or reject any or all Proposals received as a result of this request, to negotiate with qualified Proposer's, to award a contract without discussions/interviews or to cancel in part or in its entirety this RFP if it is in the best interests of NCRTD to do so.

## 1.4 DISTRIBUTION OF SOLICITATION DOCUMENTS

NCRTD is distributing this RFP and all relevant documents through its website at [www.ridethebluebus.com](http://www.ridethebluebus.com), as well as a direct mail list, New Mexico Department of Transportation (NMDOT) vendor list and national transit organizations classified advertisements.

All addenda and updates to the RFP will be posted at the above referenced website. Prospective Proposers are responsible for checking the website for addenda and updates to the RFP. Beyond initial email to inform prospective Proposer's about the RFP, NCRTD will not send communication directly to Proposers.

## SECTION 2 - SCOPE OF SERVICES

### INTRODUCTION AND BACKGROUND

In 2003, Governor Bill Richardson signed into law the Regional Transit NCRTD 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 NCRTDs first Transit Service Plan in July 2006.

73-25-2. The purpose of the Regional Transit District Act;

- A. Serve the public by providing for the creation of regional networks of safe and efficient public transit services;
- B. Allow multijurisdictional public transit systems to reduce the congestion of single-occupant motor vehicle traffic by providing transportation options for residents;
- C. Decrease automobile accidents by reducing traffic congestion on freeways and streets;
- D. Reduce noise and air pollution produced by motor vehicles;
- E. Prolong and extend the life of New Mexico's existing roadways by easing the traffic burden;
- F. Provide residents with a choice of transportation alternatives so that seniors, youth, low-income and mobility-impaired residents and others unable to drive or afford motor vehicles continue to have full access to the goods, services, jobs and activities of the community;
- G. Improve the New Mexico economy by increasing workforce and citizen access to education and higher paying jobs; and
- H. Prolong and extend petroleum resources.

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). 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 24 fixed and commuter routes regionally, 2 demand response services, and 1 Dial-A-Ride 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) as well as the Chile RIDE paratransit in 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, a fleet maintenance facility and office trailer in Taos. NCRTD has a fleet of 41 buses and paratransit vehicles and additional support fleet. Annual vehicle miles are 998,480. 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 66 employees. Annual ridership for 2015 for NCRTD provided services is 184,320 and NCRTD funded services is 317,616 for a total ridership of 501,936. 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 City of Santa Fe transit system known as the “Santa Fe Trails” has performed fixed route service since 1991 and currently has ten (10) fixed routes within the City of Santa Fe city limits and some limited service in Santa Fe County. Two (2) fixed shuttle routes are directed to service visitors and commuters and are in addition to the 10 fixed routes available.

Paratransit services providing roughly 31,643 trips per year. Santa Fe Trails operates seven (7) days a week 6:00 am to 10:0 pm Monday through Friday, 8:00 am to 8:00 pm Saturday and 8:00 am to 6:30 pm Sundays providing approximately 45 square miles of service area. Santa Fe Trail’s yearly ridership for 2015 was 980,000 trips. Currently the City of Santa Fe population is approximately 82,500 and the City receives more than one million visitors per year.

Santa Fe Trails has a fleet of 30 buses and eighteen paratransit vehicles as well as several additional support vehicles.

Currently there are one hundred twenty three (123) employees budgeted to operate Santa Fe Trails

Assets include Santa Fe Trails Administrative Building, Operations Building, and Maintenance Shop, Wash Bay and CNG slow-fill fueling station and 423 bus stops throughout the City’s service area.

City transit system employees are represented by the American Federation of State, County, and Municipal Employees (AFSCME) 3999, however not all classifications are included in union representation. NCRTD drivers and dispatchers are represented by Teamsters Local No. 492 and all other classifications are non-represented.

## **2.1 PURPOSE AND NEED**

Recently the NCRTD and City entered into a Letter of Intent to explore the possible merger of the City transit system into the District operations. In order for the entities to make an informed decision on whether a merger/consolidation is mutually beneficial the parties have agreed to obtain the services of a consultant to analyze and provide a recommendation regarding a possible merger.

The purpose of this RFP is to utilize the data and information generated from the recently created short term service plan of the NCRTD, the NCRTD Long Range Strategic Plan, the Santa Fe Metropolitan Public Transit Master Plan (which covers only that portion of Santa Fe County within the MPO Boundaries and all service providers therein); and the State of New Mexico’s State Wide Long Range Multimodal Transportation Plan; and to utilize this data to inform upon the possibility of a merger and its potential benefits. By integration of the relevant data and outcomes from those aforementioned studies into this analysis, the intent is to assure consistency with other adopted local, regional, and state plans, and policies and rules, including any local policies regarding how

the City intends that transit services are provided to those segments of its's population that are most in need.

**This study is not intended to analyze governance of the proposed consolidation, since the City transit system would be merged into the existing NCRTD system. However, if a consolidation is not mutually beneficial, the study may consider the long term contractual operation of the City transit system by the NCRTD.**

## **2.2 SCOPE OF WORK**

### **Task 1: Study Consensus-Building and Presentations**

In order to ensure that stakeholders, employees and the general public have had an opportunity for public input it is critical that a viable, transparent and open input process be developed at the beginning of the study. Furthermore, choosing and implementing a particular option will require that a level of consensus at the decision-making level is achieved. To do this, the Consultant will need to provide information and assistance as needed. Specific efforts are anticipated to include:

1. Conducting pre-study exploration meetings with Santa Fe City Staff, Santa Fe City Council, Santa Fe Transit Board, NCRTD Staff and Board of Directors to surface out potential issues and obstacles to consolidation/merger; and
2. Develop and maintain a project page with updates, documents, frequently asked questions and comment tab on the City of Santa Fe and NCRTD web site; and
3. Prepare and coordinate presentations to local policymakers, including but not limited to, Santa Fe City Council, Santa Fe County Board of County Commissioners, Santa Fe Metropolitan Planning Organization and the NCRTD Board of Directors; and
4. Prepare and coordinate discussions with key federal, state and regional agencies and potentially state legislative contacts; and
5. Prepare and coordinate discussions with Santa Fe Transit Advisory Board, Unions and other community groups as identified; and
6. Present study findings in draft form to obtain feedback and revisions as deemed appropriate to Santa Fe City Council, NCRTD Board of Directors and various stakeholders; and
7. Research and answer questions about consolidation option(s) details and assumptions if needed.

### **Task 2: Evaluation of Current Operations**

A. Financial Analysis: The Consultant will evaluate the operational and financial condition of each transit system operations in several areas. The Consultant will:

1. Review past year and current budgets for assessing overall financial condition using National Transit Database (NTD) data where possible. This includes examining measures to describe the relative efficiency of the current system (i.e., cost per revenue hour, cost per revenue mile, cost per passenger); and
2. Review all revenue sources for both capital and operating expenses. Specifically, a review of transit dedicated fund sources (5304, 5309, 5307, 5339, 5311, 5310, City ¼% GRT, NCRTD Transit GRT (sunsets in 2023), LAC annual contribution) will be made; and
3. Review Annual Comprehensive Financial Reports/Audits for use in confirming financial capacity; and

4. Review Santa Fe Metropolitan Public Transit Master Plan and ascertain cost implications to address recommendations contained therein on the merger; and
  5. Request and evaluate ten-year financial projections from each transit provider based on current levels of service (if service changes are anticipated, incorporate those in projections) and assess implications of any sun-setting or non-binding financial resources; and
  6. Request and evaluate twenty-year capital investment projections from each transit provider based on current levels of service (if service changes are anticipated, incorporate those in projections) and assess implications of any sun-setting or non-binding financial resources; and
  7. Request and evaluate ten-year reserve projections from each transit provider and implications of any sun-setting or non-binding financial resources; and
  8. Gather and assess available information on City of Santa Fe transit and District financial assets (including fixed assets) and debts and any future debt borrowing needs; and
  9. Summarize costs, terms and conditions of each operational service contract of the current transit providers; and
  10. Summarize the financial condition and sustainability of each transit provider based on the current level of service and the implications of any sun-setting or non-binding financial resources; and
  11. Summarize the financial condition and sustainability of a merged entity based upon the current and future financial conditions of the merged entities and the implications of any sun-setting or non-binding financial resources.
- B. **Physical Asset Analysis:** The Consultant will review the current and future physical asset requirements of each transit provider (i.e. facilities, equipment, bus shelters, signage, and communication systems). This will be done as follows:
1. Perform on-site visits with each transit provider to review all current physical assets in order to assess how these assets can be used for transit support and/or operations, including identifying which assets would not be available for transit consolidation and the reason(s) why;
    - a. Review status of all current transit capital projects and proposals for each transit provider; and
    - b. Review each transit provider's projected capital needs for the next 20 years based on current and projected levels of service, including but not limited to, maintenance and administrative facilities, rolling stock replacement (buses and support vehicles), parking facilities, fare collection technology, communications systems, intelligent transportation systems (ITS), etc.; and
    - c. Identify current capital opportunities, resources and plans that could be used in support of potential transit consolidation options.
- C. **Labor Force Analysis:** The Consultant will examine the organizational systems (Staffing) assessment of each transit provider. This will entail the following tasks:
1. Request current organization charts and job descriptions from each operation; and
  2. Review the current staffing levels of each operation by cost, full time equivalent (FTE), fund source and function; and
  3. Identify the functional roles, responsibilities and associated staffing levels of each service provider; and

4. Identify possible issues or deficiencies with the current personnel structures with each transit provider; and
5. Identify potential challenges related to Collective Bargaining units and agreements.

D. **Service Evaluation:** The Consultant will evaluate current transit service by examining the following elements:

1. Review current levels of service, productivity and accessibility offered with those services; and
2. Identify through research and analysis, the potential benefits, disadvantages and obstacles – including significant impacts on service quality and costs – that merger/consolidation would have on each entity; and
3. Review and evaluate Short Range Transit Plans (SRTP), Long Range Strategic Plans, etc.... in order to identify possible service plan changes projected by each transit provider.

E. **Paratransit, Dial-A-Ride, and Demand Response Systems Evaluation:** The Consultant will summarize and evaluate the Paratransit, Dial-A-Ride and Demand Response System operations for a merged system according to:

1. Rider and trip eligibility including services offered beyond the required ADA mandated levels of service; and
2. Geographic service areas; and
3. Reservations systems; and
4. Fares and trip policies; and
5. Cost and efficiencies per vehicle trip and vehicle revenue mile; and
6. Taxi scrip programs if any; and
7. Consultant will review the service plans for each transit provider to determine trends, deficiencies, and opportunities and other issues related to providing this service, including current levels of passenger satisfaction.

### **Task 3: Development and Evaluation of Proposed Consolidation Options**

Each option that is being recommended will be evaluated in terms of these key areas of study and will fully assess the strengths, weaknesses, opportunities and threats of each option as well as any obstacles, including a detailed analysis of financial and legal and labor implications, sharing and/or use of existing and future physical assets and labor force, as well as service performance and integration.

**A. Financial Comparison:** The Consultant will evaluate operational financial condition of each option. The Consultant will:

1. Develop conceptual budgets for each option using Task 1 criteria and all pertinent transit cost centers; and
2. How each option would affect all revenue sources used for both capital and operating expenses anticipated for each option; specifically, the use of transit dedicated fund sources (5307,5339,5311,5310, City 1/4% GRT, NCRTD Transit GRT (sunset) and LAC contribution) will be fully assessed; and
3. Project five-year, ten-year and 20-year fiscal impacts and benefits for each option based on current levels of service (if service changes are anticipated, incorporate these in projections); and
4. Summarize implementation issues associated with the consolidation and/or transfer of each operational service contract or implementation of new contracts for each option, as needed. Summary to include potential labor/union issues; including but not limited to, Federal Transit Administration (FTA) 13C implications; and
5. Summarize financial implications and forecasts for each option based on current and proposed levels of service; and
6. Compare each option to the status quo.

**B. Physical asset Comparison:** The Consultant will further elaborate on the physical asset analysis and how it would apply to each option(s). This will be done as follows:

1. Determine the required physical assets needed to support each option(s); and
2. Identify potential of sharing physical assets currently in use that may be used in the proposed option(s); and
3. Determine how to create a shared-use facility for City owned, FTA funded assets that would no longer be used for transit purposes; and
4. Determine if current transit capital projects and proposals for each transit provider should be modified based on the each option; and
5. Project capital needs of a consolidated operation for the next 5, 10 and 20 years based on current and projected levels of service including, but not limited to, maintenance and administrative facilities, rolling stock replacements, parking facilities, service vehicles and replacement, fare collection and communication improvements, intelligent transportation systems (ITS), etc.; and
6. Compare each option to the status quo.

C. **Labor Force Comparison:** The Consultant will develop and assess the required organizational personnel needs and staffing levels of each option. This will entail the following tasks:

1. Forecast staffing levels of each option by cost, FTE, fund source and function; and
2. Identify the functional responsibilities of each staff person; and
3. Develop proposed organization structures, job descriptions and financial summary of each of the proposed options; and
4. Evaluate the costs and coverage of each of the consolidation options to the status quo. (Where feasible, use comparably structured transit agencies as benchmarks); and
5. Address impact of the two existing collective bargaining agreements and potential issues.

D. **Service Comparison:** The Consultant will compare each option and its ability to provide service as follows:

1. Review service and productivity levels for each option(s), and what common service policies and efficiency and effectiveness metrics should be assumed for each option; and
2. Identify potential service enhancements and cost savings gained through possible route optimization (such as route interlining, reduced deadhead hours, vehicle assignments and improved service contracts) for each of the consolidation options; and
3. Compare each option to the status quo.

E. **Summary Report of Comparisons:** Summarize an evaluation for each consolidation option based on the findings of Task 2, including:

1. A comprehensive analysis of merger/consolidation issues, financial status, service quality and operational efficiencies; and
2. Evaluate public comments to the strengths and weaknesses identified by local agencies and other community stakeholders and determine how or when to address as part of this study.

#### **Task 4: Guidance and Implementation Documentation**

A. **Project Management Team Support:** The Consultant will support the City and District joint project management team activities by assisting with the following elements:

1. Identify non-technical and technical "fatal flaws" of a consolidation option and determining if alternatives can be developed; and
2. Participate in timely briefings related to study's progress and findings; and
3. Participate in project management team meetings; and

4. Present study findings in draft form in order to obtain feedback and revisions as deemed appropriate; and
5. Develop and distribute public information; including but not limited to, meeting notices, press releases and other forms of public information in consultation with City and District staff.

**B. Final Consolidation Assessment Plan:** A final document describing the preferred option(s) will be prepared, regardless of the outcome. Even if no consolidation is ultimately recommended, this study will include short, mid, and long term strategies that can be used to achieve a more coordinated system for the users of the fixed (and flex) route, paratransit, Dial-A-Ride, and demand services in Santa Fe County. Specific tasks include:

1. Prepare a detailed explanation of the proposed organizational structure from the preferred option(s); and
2. Prepare informational materials about the preferred recommendation(s); and
3. Prepare a strategic plan of action to achieve the preferred option(s) with a reasonable timeframe; and
4. Prepare recommendations to address Collective Bargaining Agreement issues to facilitate a merger/consolidation; and
5. Incorporate a verbatim record of the public comments; and
6. Prepare a complete business plan. The business plan should be designed to facilitate the implementation of consolidation. At a minimum, a business plan will include a management and organization structure as well as financial, operating, capital investment, service planning, and marketing plans.

## **2.5 DELIVERABLES**

The following deliverables (in the context of each agency) are logical outcomes of the required services described above. However, the Proposer is welcome to suggest additional or alternative deliverables that reflects the nature of their proposed planning process.

- Executive Summary
- Needs Assessment Report
- Financial Assessment Report
- Service Assessment Report
- Preliminary Options Report
- Recommendations
- Implementation Strategy
- Short and Long Range Financial Plan
- Funding Strategies
- Final Consolidation Plan
- Stakeholder Involvement Record
- Proposed labor force report and recommendations
- Distribution of capital funds
- 5,10 and 20 year plans for both entities
- Strategic plan for 2023 if the GRT 1/8 tax sunset is not removed by the voters

(only if consolidation/merger is recommended)

- Recommendation as to whether the voting strengths would need to be adjusted and how (only if a consolidation/merger is recommended)

Each deliverable shall be transmitted electronically to NCRTD in draft form, and will be subject to a two-stage review process. Project Management Team and NCRTD staff will review the draft and advise the Proposer of needed changes. When the changes have been made, the Proposer will be advised to produce a draft for Board of Directors and Santa Fe City Council presentation and review. Additional changes to the document may be required after the Board of Directors and Santa Fe City Council process.

Media and file formats: Reports shall be delivered to NCRTD in a current and/or compatible version of Microsoft Word. Presentations shall be produced and delivered in Microsoft Power Point, and public versions will be delivered in .pdf format.

Reports shall be dated and identified as either draft or final, as appropriate. Submittal of final reports shall be accompanied by the files, in their native format, that were used to generate graphics displayed in the reports.

### **Meetings and Presentations**

In addition to meetings required to perform previously mentioned task activities, the Consultant will facilitate and participate in the following meetings and presentations as outlined below:

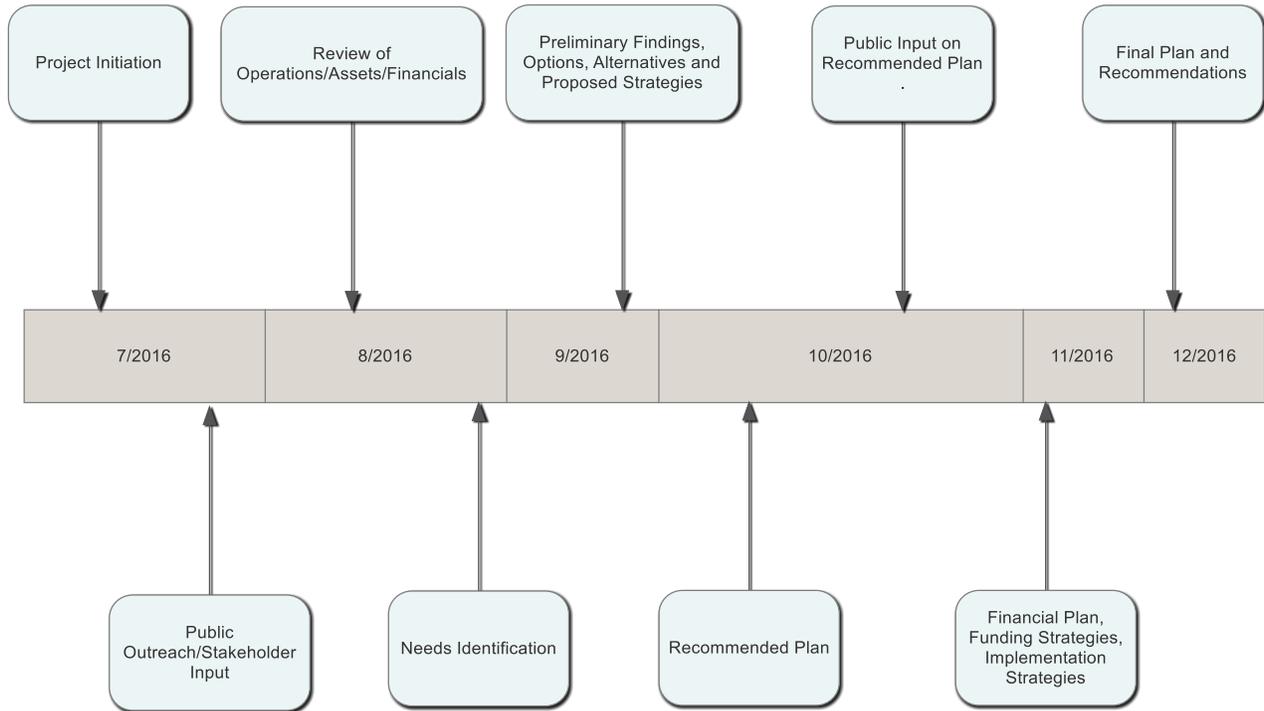
1. Meetings with the project manager (as needed)
2. Meetings with the project management team (as needed)
3. Pre study meetings to ascertain initial concerns by stakeholders
4. Presentations to the District Board and Santa Fe City Council
5. Presentations to the Santa Fe City Transit Advisory Board
6. Meetings with the AFSCME and Teamsters Representatives
7. Monthly progress reports
8. Ensure that District and City residents and customers, Santa Fe Transit Advisory Board views and concerns are addressed by developing and implementing a tailored public engagement process, and presenting at public forums and official information meetings

### **2.6 TIMETABLE AND BUDGET**

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

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

The desired timetable for project completion is 6 months from the date of contract execution. Proposers may, however, propose a longer timeline if they feel the proposed work cannot be completed within the 6 month period. Following is a draft milestone timetable.



The funding for this project is Federal FTA funds and matching funds from the District and City.

**SECTION 3 - INSTRUCTIONS TO PROPOSERS**

**ACCEPTANCE PERIOD**

Proposals and subsequent offers shall be valid for a period of ninety (90) days after submittal to NCRTD.

**3.1 PROPOSER COMMUNICATIONS AND REQUEST**

- a. All correspondence and/or contact concerning any aspect of this solicitation or offers shall be with the Purchasing Agent. Proposers and their representatives shall not make any contact with or communicate with any Board members and/or employees of NCRTD, (or any other Proposers), other than the Purchasing Agent concerning any aspect of this solicitation or offer. Proposers may be disqualified if any unsolicited contact related to this RFP is made with an employee or representative of NCRTD other than the Purchasing Agent.
- b. At any time during this procurement up to the time specified, Proposers may request in writing, a clarification or interpretation of any aspect, or a change

to any requirement of the RFP or any addenda to the RFP. Requests may include suggested substitutes for specified tasks. Such written requests shall be made to the Contracting Officer. The Proposer making the request shall be responsible for its proper delivery to NCRTD. NCRTD will not respond to oral requests. Any request for a change to any requirement of the contract documents must be fully supported with technical data, test results, or other pertinent information evidencing that the exception will result in a condition equal to or better than that required by the RFP, without substantial increase in cost or time requirements. Any responses to such written requests shall be provided by the NCRTD in the form of addenda only. Only written responses provided as addenda shall be official and no other forms of communication with any officer, employee, or agent of the NCRTD shall be binding on NCRTD.

- c. The Proposer's Request for Clarifications must be received by the date indicated in the Solicitation Schedule located in this RFP.
- d. If it should appear to a prospective Proposer that the Scope of Services is not sufficiently described or explained in the RFP or Contract documents, or that any conflict or discrepancy exists between different parts thereof or with any federal, state, local law, ordinance, rule, regulation, or other standard or requirement, the Proposer shall submit a written request for clarification to the NCRTD within the time period specified.

### **3.2 CONDITIONS, EXCEPTIONS, RESERVATIONS OR UNDERSTANDING**

- a. Proposals stating conditions, exceptions, reservations or understandings (hereinafter deviations) relating to the RFP may be rejected.
- b. Any and all deviations must be explicitly, fully and separately stated in the proposal by setting forth at a minimum the specific reasons for each deviation so that it can be fully considered and evaluated by NCRTD. All deviations found to be unacceptable shall be evaluated in accordance with the appropriate evaluation criteria and procedures, but may result in the Proposer receiving a less favorable evaluation than without the deviation.

### **3.3 REQUIREMENTS FOR RFP RESPONSE**

Proposers shall submit one (1) original-unbound and five (5) bound paper copies of their proposal and one (1) electronic copy via thumb drive or similar format. The submittals must include the following:

- 1. Letter of Transmittal

The Letter of Transmittal shall be addressed to Anthony J. Mortillaro, Executive Director and must, at a minimum, contain the following:

- 1. Identification of the offering firm(s) and proposal contact, including name, address, telephone and facsimile numbers, email, and firm web site.
- 2. Acknowledgment of RFP addenda, if any. An "Addenda" form is included in the Required Forms and Certifications section of this RFP.

3. Name, title and contact information for vendor representative who will be the point of contact on all issues regarding this RFP.
  4. A statement to the effect the proposal shall remain valid for a period of not less than 90 days from the date of submittal or Proposal due date, whichever is later.
  5. Signature of person authorized to bind the offering firm to the terms of the proposal.
2. Qualifications and References
    1. Describe the company, including history, mission and nature of work, number of employees and office location(s).
    2. Qualifications and capabilities of the staff to be assigned to NCRTD's contract including licenses, certifications, and years of experience.
3. Experience and Capacity
    1. Provide a minimum of three clients, preferably public transit or governmental agencies, that the firm has provided services similar to NCRTD's requirements. Provide the address, phone number, email (if available) and contact name for the clients. Provide name(s) of staff from proposing firm that worked on the project.
    2. Discussion and evidence of successful Transit Service Plans that Proposer has developed. Proposer must state what measurements it used to determine that the Transit Service Plans have been successful.
4. Understanding of Major Work Elements and Project
    1. This section shall clearly convey that the Proposer understands the nature of the work, and issues related to providing the updated service plan for the NCRTD.
5. Approach and Management Plan
    1. This section shall provide the Proposer's proposed approach and management plan for providing the services. Include an organization chart showing the proposed relationships among Proposer staff, NCRTD staff and any other parties that may have a significant role in the delivery of this project.
6. Staffing Plan
    1. The proposal shall provide a staffing plan and an estimate of the total hours (detailed by position) required for each task included in the scope of services. Discuss the workload, both current and anticipated, for all Key Team Members, and their capacity to perform the requested services for the NCRTD/Santa Fe Consolidation project according to your proposed schedule.

## 7. Work Plan and Schedule

1. This section shall include a description and schedule of how each task deliverable of the project will be completed. The Work Plan shall be in sufficient detail to demonstrate a clear understanding of the project. The schedule shall show the expected sequence of tasks and include durations for the performance of each task, milestones, submittal dates and review periods for each submittal. Discuss the firm/team's approach for completing the requested services for this project on schedule.

## 8. Cost Control

1. Provide information on how the firm/team will control project costs to ensure all work is completed within the negotiated budget for the project. Include the name and title of the individual responsible for cost control.

## 9. Cost

1. Provide a detailed cost proposal for the project including costs by task for Proposer labor and other direct costs.

### **3.4.1 MODIFICATION OR WITHDRAWAL OF PROPOSALS**

A modification of any part of a proposal already received will be accepted by NCRTD only if the modification is received prior to the Proposal Due Date and Time.

A Proposer may withdraw an already submitted entire proposal prior to the Proposal Due Date and Time by submitting a written request for withdrawal executed by the Proposer's authorized representative. After the proposed Due Date and Time, a proposal may be withdrawn only if NCRTD fails to award the Contract within the proposal validity period or any agreed upon extension thereof. The withdrawal of a proposal does not prejudice the right of a Proposer to submit another proposal within the time set for receipt of proposals.

This provision for modification and withdrawal of proposals may not be utilized by a Proposer as a means to submit a late proposal and, as such, will not alter NCRTD's right to reject a late proposal.

### **3.5 PROPOSAL EVALUATION, NEGOTIATION AND SELECTION**

#### a. General Information

1. Proposals will be evaluated, negotiated, selected and any award made in accordance with the criteria and procedures described in this section. Subject to the NCRTD's right to reject any or all proposals, the Proposer will be selected based on which proposal is found to be most advantageous to NCRTD, based upon consideration of the criteria. During the initial review of proposals, NCRTD reserves the right to request clarification of minor issues from any Proposer to assure a complete understanding of their offer and to adjust any evaluations made with incorrect or unclear information.

2. NCRTD will consider all the material submitted by the Proposer and related evidence NCRTD may obtain to determine whether the Proposer is capable of and has a history of successfully completing contracts of the type solicited. A clear and complete response to the solicitation is critical so that the evaluation team may adequately understand all aspects of the proposal.
3. Proposers shall furnish acceptable evidence of their ability to perform, such as financial stability and the ability to obtain the necessary personnel when requested by NCRTD. Refusal to provide requested information may cause the proposal to be rejected.
4. The evaluation team will make such investigations as are considered necessary for complete evaluation. The evaluation team will employ those evaluation criteria set forth in this RFP or in addenda that may be issued. The evaluation criteria shall be deemed to include any unstated sub criterion that logically might be included within the scope of the stated criterion.
5. NCRTD reserves the right to select proposals that are in a competitive range, conduct discussions, and request Best and Final Offers. NCRTD also reserves the right to make an award without discussions or requesting Best and Final Offers.
6. After reviewing proposals, NCRTD has the right to invite none, one, or more Proposers to make a presentation and be interviewed at NCRTD offices. The decision to invite none, one, or more Proposers to make a presentation and be interviewed will be at NCRTD's sole discretion and not open to negotiation with Proposers who are, or are not, invited to present their proposals and be interviewed. Not all Proposers may be invited. Proposers who are invited to make a presentation and be interviewed do so at their own expense and are not guaranteed award of a Contract. NCRTD will not reimburse any expenses incurred by a Proposer.
7. Proposers are solely responsible for communicating their ideas, solutions, strengths, etc. within the time limit provided for their presentation and interview. NCRTD is not responsible for communication the Proposer fails to provide within the time limit allowed. Proposers will be made aware of the time limit when a presentation and interview are scheduled.
8. While NCRTD may make available the audio-visual equipment it has available on site for Proposers to use during their presentation and interviews, NCRTD is not responsible for equipment failures or power outages, and will not be obligated to schedule another presentation or interview for the Proposer should equipment failures or power outages affect the Proposers' presentations and interviews. Proposers are welcome to bring their own equipment as appropriate.
9. It is the responsibility of the Proposer to submit a clear and complete proposal. Proposers must not assume that they will have another opportunity

(presentation, interview or otherwise) to clarify or further discuss their capabilities/qualifications beyond the proposal they submit.

#### b. Opening of Proposals

Proposals will not be publicly opened. All Proposals and evaluations will be kept strictly confidential, as allowed by law, throughout the evaluation, negotiation and selection process. Only the members of the evaluation team and other NCRTD officials, employees and agents that have a legitimate interest will be provided access to the submitted proposals and evaluation results during this period.

#### c. Evaluation Criteria

The selection of a successful Proposer will be based on the following criteria:

1. 35% of Overall Score - Organizational, personnel and resources:
  - a. Organization and management
  - b. Experience and qualifications of proposed staff
2. 30% of Overall Score - Quality and approach of proposal:
  - a. Proven experience of firm
  - b. Proven experience of staff proposed to work on this project
  - c. Understanding of objectives
  - d. Methodology and procedures
  - e. Work plan/schedules/time lines
3. 20% of Overall Score - Conformance to Requirements and Specification:  
The degree to which the Proposer and content of the proposal meet the requirements of the RFP.
4. 15% of Overall Score - Cost and/or fees;

#### d. Evaluation Procedures

1. NCRTD may conduct at its sole discretion discussions with all Proposers. The extent of discussions/demonstrations will vary with the nature and the quality of the proposals. The basic purposes of the discussions are to review any shortcomings or deficiencies in the proposal, to discuss any listed deviations or exceptions, to clarify any information or questions the evaluation team may have concerning the proposal.
2. Evaluations will be made in accordance with all of the evaluation criteria and procedures listed above. NCRTD will select for any award the highest ranked proposal from a responsible, qualified Proposer, which does not render this procurement financially infeasible, and is judged to be most advantageous to NCRTD based on consideration of the evaluation criteria.

#### e. Confidentiality of Proposals

1. Access to government records is governed by State of New Mexico law. Except as otherwise required by State Statutes, the NCRTD will exempt from disclosure proprietary information, trade secrets and confidential commercial and financial information submitted in the proposal. Any such proprietary information, trade secrets or confidential commercial information, which a Proposer believes should be exempted from disclosure, shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections as containing proprietary information, trade secrets or confidential commercial and financial information will not assure confidentiality. The specific proprietary information, trade secrets or confidential commercial and financial information must be clearly identified as such.
2. The Proposer shall submit proprietary information, trade secrets or confidential commercial and financial information, which a Proposer believes should be exempted from disclosure, in a separate volume specifically identified and marked as such as an appendix to the proposal.
3. Upon a request for records from a third party regarding this proposal, NCRTD will notify in writing the party involved. The involved Proposer shall indemnify NCRTD's defense costs associated with its refusal to produce such identified information; otherwise, the requested information may be released.
4. NCRTD shall employ sound business practices no less diligent than those used for NCRTD's own confidential information to protect the confidence of all licensed technology, software, documentation, drawings, schematics, manuals, data and other information and material provided by Proposers and pursuant to the Contract which contain confidential commercial or financial information, trade secrets or proprietary information as defined in or pursuant to the State of New Mexico laws against disclosure of such information and material to third parties except as permitted by the Contract. The Proposer shall be responsible for ensuring that confidential commercial or financial information, trade secrets or proprietary information, with such determinations to be made by NCRTD in its sole discretion, bears appropriate notice relating to its confidential character.

### **3.6 RESPONSE TO PROPOSALS**

- a. Notice of Award: The contract shall be deemed to include all provisions of this RFP, and all provisions required in public contracts by local, state and federal law.
- b. Notice to Unsuccessful Proposers: NCRTD will inform unsuccessful Proposers who were within the competitive range at the time negotiations closed of the following information:
  1. The number of prospective Proposers solicited by the NCRTD;
  2. The number of proposals NCRTD received; and
  3. The name of the successful Proposer.

NCRTD will try to give the notice under this paragraph promptly after contract award. NCRTD's failure to give that notice shall not be deemed to affect the validity of the contract.

c. Acceptance/Rejection of Proposals

1. NCRTD reserves the right to reject any or all proposals for any reason it deems valid at its sole discretion, to undertake discussions with one or more Proposers, and to accept that proposal or modified proposal which, in its judgment will be most advantageous to NCRTD, price and other evaluation criteria considered. NCRTD reserves the right to consider any specific proposal that is conditional or not prepared in accordance with the instructions and requirements of this RFP to be noncompetitive. NCRTD reserves the right to waive any defects, or minor informalities or irregularities in any proposal that do not materially affect the proposal or prejudice other Proposers.
2. If there is any evidence indicating that two or more Proposers are in collusion to restrict competition or otherwise engaged in anti-competitive practices, the proposals of all such Proposers shall be rejected and such evidence may be a cause for disqualification of the participants in any future solicitations undertaken by NCRTD.
3. NCRTD may reject a proposal that includes unacceptable deviations.

d. Single Proposal Response

If only one proposal is received and it is found by NCRTD to be acceptable, a detailed price/cost proposal may be requested of the single Proposer. A price or cost analysis, or both, possibly including an audit, may be performed by or for NCRTD of the detailed price/cost proposal in order to determine if the price is fair and reasonable. The Proposer has agreed to such analysis by submitting a proposal in response to this RFP. A price analysis through comparison to other similar procurements must be based on an established or competitive price of the elements used in the comparison. The comparison must be made to a purchase of similar quantity, involving similar specifications and in a similar period. Where a difference exists, a detailed analysis must be made of this difference and costs attached thereto. Where it is impossible to obtain a valid price analysis, it may be necessary to conduct a cost analysis of the proposed price. A cost analysis is a more detailed evaluation of the cost elements in the Proposer's Offer conducted to form an opinion as to the degree to which the proposed costs represent what the Proposer's performance will cost. A cost analysis is generally conducted to determine whether the Proposer is applying sound management in proposing the application of resources to the contracted effort and whether costs are allowable, allocable, and reasonable. Any such analyses and the results there from shall not obligate NCRTD to accept such a single proposal; and NCRTD may reject such proposal at its sole discretion.

e. Cancellation of Procurement

NCRTD reserves the right to cancel the procurement, for any reason, at its sole discretion, at any time before the Contract is fully approved and executed on behalf of NCRTD. NCRTD will not pay Proposers any costs incurred in the preparation of a proposal responding to this RFP.

**SECTION 4 - SPECIAL PROVISIONS**

**CONTRACT DOCUMENTS**

All parts of the Contract Documents are intended to be correlated so that any work called for in one part and not mentioned in the other, or vice versa, is to be executed the same as if mentioned in all said documents. Wherever conflicting, contradictory, or redundant statements exist between the Scope of Services and the other sections of the RFP document, the other sections of the RFP take precedent.

**4.1 MODIFICATION TO CONTRACT**

a. Written Change Orders

Oral change orders are not permitted. No change in the contract shall be made unless NCRTD gives prior written approval. The Proposer shall be liable for all costs resulting from, and/or for satisfactorily correcting, any specification change not properly ordered by written modification to the contract signed by NCRTD. A properly executed change order takes precedence over previous executed contract provisions.

b. Change Order Procedure

Within fifteen (15) calendar days after receipt of the written change order to modify the contract, the Proposer shall submit to NCRTD a detailed price and schedule proposal for the work to be performed. This proposal shall be accepted or modified by negotiations between the Proposer and NCRTD. At this time, a detailed modification shall be executed in writing by both parties.

**4.2 TERM OF CONTRACT AND RENEWAL**

a. Upon pre-award approval by the NCRTD Board of Directors, NCRTD will issue a One (1) year Contract. Upon Award, the Proposer will begin work and maintain a schedule set forth in the timeline presented in their proposal and agreed upon by NCRTD.

b. Change Orders to extend the term of the Contract may be made by NCRTD.

**4.3 RESERVED RIGHTS OF NCRTD IN SOLICITATION PROCESS**

In addition to all other rights of NCRTD under New Mexico and Federal law, NCRTD reserves the following:

a. NCRTD reserves the right to rank firms and negotiate with the highest ranking firm. Negotiation with an individual Proposer does not require negotiation with others.

- b. NCRTD reserves the right to select the proposal that it believes will serve the best interest of NCRTD.
- c. NCRTD reserves the right to reject any and all proposals.
- d. NCRTD reserves the right to remedy or waive technical or immaterial errors in the RFP.
- e. NCRTD reserves the right to request any necessary clarifications or proposal data without changing the terms.
- f. NCRTD reserves the right to make selection of the Proposer to perform the services required based on the original proposals without negotiations.
- g. NCRTD reserves the right to make all final determination as to whether the services and scope of service have been satisfactorily completed.

#### **4.4 PROTEST PROCEDURES**

- a. General Procedures
  - 1. Any Proposer or Proposer whose direct economic interest would be affected by the award of the Contract or the failure to award the Contract may file a protest, claim or dispute with NCRTD pursuant to the protest procedures attached hereto as Exhibit B prior to filing any protest, claim or dispute with the NCRTD.
  - 2. Protests, claims or disputes, where applicable, shall be in writing and filed with NCRTD directed to the Executive Director 1327 North Riverside Drive, Española, New Mexico 87532. *Failure To Comply With Any Of The Requirements May Result In Rejection Of The Protest.*

**REQUIRED FORMS AND CERTIFICATIONS**

**ADDENDA**

The undersigned acknowledges receipt of the following addenda to the document:

Addendum No. \_\_\_\_\_, Dated \_\_\_\_\_

Addendum No. \_\_\_\_\_, Dated \_\_\_\_\_

Addendum No. \_\_\_\_\_, Dated \_\_\_\_\_

Failure to acknowledge receipt of all addenda may cause the bid to be considered non-responsive to the solicitation. Acknowledged receipt of each addendum must be clearly established and included with the offer.

The undersigned understands that any conditions stated above, clarifications made to above or information submitted on or with this form other than that requested, will render bid unresponsive.

(Name of Individual, Partnership or Corporation)

\_\_\_\_\_

(Address)

\_\_\_\_\_

(Authorized Signature)

\_\_\_\_\_

(Title)

\_\_\_\_\_

(Date)

\_\_\_\_\_

(Telephone)

**AGREEMENT OF GOODS and SERVICES**

To: North Central Regional Transit NCRTD  
1327 North Riverside Drive  
Española, NM 87532

The undersigned hereby agrees to furnish the goods and services as listed below in accordance with the specifications which have been carefully examined and are attached.

Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_ Telephone: \_\_\_\_\_

For (Company): \_\_\_\_\_

Address: \_\_\_\_\_

**CERTIFICATE OF NON COLLUSION**

I hereby swear (or affirm) under penalty of perjury:

1. That I am the Bidder or an officer or employee of the bidding corporation having authority to sign on its behalf (if the Bidder is a corporation);
2. That the attached bid has been arrived at by the Bidder independently and has been submitted without collusion and without any agreement, understanding, or planned course of action with any other vendor of materials, supplies, equipment, or service described in the Invitation for Bid, designed to limit independent bids or competition;
3. That the contents of the bid has not been communicated by the Bidder or its employees or agents to any person not an employee or agent of the Bidder or its surety on any bond furnished with the Bidder, and will not be communicated to any such person prior to the official opening of the Proposals; and,
4. That I have fully informed myself regarding the accuracy of the statement made in this affidavit.

Signed \_\_\_\_\_

Firm Name \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ ,  
2016

Notary Public

My commission expires \_\_\_\_\_ ,

Proposer's E.I. Number \_\_\_\_\_  
(Number used on employer's Quarterly Federal Tax Return)

## AFFIRMATIVE ACTION PLAN CERTIFICATION

The undersigned hereby certifies that the business is in compliance with all federal affirmative action requirements applicable to the business.

Signature: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Company: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Bidder's firm is: (check or complete all applicable boxes)

an individual

a partnership

a non-profit organization

a corporation, incorporated under the laws of the State of \_\_\_\_\_ a limited liability corporation (LLC)

other, \_\_\_\_\_

## Attachment "A"

### **PROTESTS, APPEALS AND REMEDIES**

#### **1. Authority to resolve protested solicitations and awards.**

The Purchasing Agent is responsible to address, process, and exercise the following:

- (a) *Protests of bid or RFP specifications or scope of work.* Any vendor who is aggrieved in connection with the specifications or scope of work in a solicitation may protest to the Purchasing Agent. The protest shall be submitted in writing no later than 7 calendar days prior to the deadline for receipt of the bid or proposal. No protest bond will apply to such protest. The Purchasing Agent shall issue a determination in writing within 2 work days of receipt of such protest, and either proceed with the solicitation, modify it, or cancel it
- (b) *Right to protest; protest bond.* Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Purchasing Agent. The protest shall contain all the grounds for such protest, and must be submitted in writing within 15 calendar days after such aggrieved person knows or should have known of the facts giving rise thereto, along with a bond provided by a surety company authorized to do business in the state, or the equivalent in cash, or otherwise supplied in a form satisfactory to the NCRTD. The amount of the bond shall not exceed the estimated cost to the NCRTD of processing and defending a protest. Only one protest per person per solicitation is permitted.
- (c) *Authority to resolve protests.* The Purchasing Agent shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest of an aggrieved bidder, offeror or contractor, actual or prospective, concerning the solicitation or award of a contract.
- (d) *Decision.* If the protest is not resolved by mutual agreement, the Purchasing Agent shall promptly issue a decision in writing stating the reason for the action taken and informing the protestant of its right to appeal the decision to the NCRTD Board. A copy of the decision of the Purchasing Agent shall be mailed, return receipt requested, or hand-delivered to the protestant or to the address provided in the protest.
- (e) *Appeal.* Any appeal to the NCRTD Board of an adverse decision shall be made by filing with the Executive Director's office within 15 calendar days after the decision has been delivered to the aggrieved person. The proceeding before the Board shall be de novo. The Board shall decide whether the solicitation or award was in accordance with this Policy, procedures, and the terms and conditions of the solicitation.
- (f) *Decisions final.* A decision of the NCRTD Board under this Section shall be final and conclusive. The aggrieved person may seek judicial review in the state First Judicial NCRTD Court within 30 days of the receipt of notice of the decision of the NCRTD Board.

- (g) *Stay of procurements during protests.* In the event of a timely protest under subsection (a) of this section, the Purchasing Agent shall not proceed further with the solicitation or with the award of the contract unless the Purchasing Agent, after consultation with the Executive Director, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the NCRTD.
- (h) *Entitlement to costs.*
  - (1) When a protest is sustained and the protesting bidder or offeror should have been awarded the contract under the solicitation but was not, then the protesting bidder or offeror shall be entitled, in addition to any other relief, to the reasonable costs incurred in connection with the protest or appeal costs other than attorney's fees.
  - (2) Should the protest be denied, the NCRTD shall be entitled to recover reasonable costs for processing and adjudicating the protest, and for costs associated with an unreasonable delay of the contract. Recovery of these costs shall not be limited to the proceeds from the protest bond. Excess bond proceeds shall be returned to the person.

## **2. Contract Claims.**

Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation or other cause for contract modification or rescission. Within 15 calendar days of the time the contractor knows or should have known of the facts and circumstances giving rise to a claim the following procedure shall apply:

- (a) *Notice of claim to the Purchasing Agent.* All claims by a contractor against the NCRTD relating to a contract except bid protests shall be submitted in writing to the Purchasing Agent for decision. The contractor may request a conference with the Purchasing Agent on the claim.
- (b) *Notice to the contractor of the Purchasing Agent's decision.* The decision of the Purchasing Agent shall be issued in writing within 15 calendar days of claim notice and immediately mailed, or otherwise furnished, to the contractor. The decision shall state reasons for the decision reached, and shall inform the contractor of its appeal rights under subsection (d) of this section.
- (c) *Failure to render timely decision.* If the Purchasing Agent does not issue a written decision regarding any contract controversy within 15 days after written request for a final decision, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed as if an adverse decision had been received.
- (d) *Appeal.* Any appeal to the NCRTD Board of an adverse decision shall be made by filing with the Executive Directors office within 15 calendar days after the decision has been received by the aggrieved person. The proceeding before the NCRTD Board shall be de novo.

- (e) *Decisions by Board final; exception.* A decision of the NCRTD Board under this section shall be final and conclusive unless a protestant seeks judicial review in the state First Judicial NCRTD Court within 30 days of the receipt of notice of the decision of the NCRTD Board.

### **3. Remedies for solicitations or awards in violation of law.**

- (a) *Prior to bid opening or closing date for receipt of Proposals.* If, prior to the bid opening or the closing date for receipt of Proposals, the Purchasing Agent, after consultation with the NCRTD Attorney, determines that a solicitation is in violation of applicable law or regulation then the solicitation shall be canceled by the Purchasing Agent or revised to comply with applicable law.
- (b) *Prior to award.* If, after bid opening or the closing date for receipt of Proposals, the Purchasing Agent, after consultation with the NCRTD Legal Counsel, determines that a solicitation or a proposed award of a contract is in violation of applicable law then the solicitation or proposed award shall be canceled by the Purchasing Agent.
- (c) *After award.* If, after an award, the Purchasing Agent, after consultation with the NCRTD Legal Counsel, determines that a solicitation or award of a contract was in violation of applicable law, then:

If neither the purchaser nor the person awarded the contract has acted fraudulently or in bad faith:

- a. The contract or invoice may be ratified and affirmed or approved for payment by the Board for any amount or the Executive Director, as applicable, for amounts under \$100,000.00, provided that it is determined that doing so is in the best interests of the NCRTD ; or
- b. The contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to the termination; or

If either the purchaser or the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void by the Purchasing Agent, if such action is in the best interests of the NCRTD.

**Attachment “B”**

**EXAMPLE PROFESSIONAL SERVICES AGREEMENT**

**BETWEEN**

**CONTRACTOR, AND**

**NORTH CENTRAL REGIONAL TRANSIT DISTRICT**

This agreement (“Agreement”) is entered into as of the \_\_\_ day of \_\_\_\_\_, 2016, by and between \_\_\_\_\_ (“Contractor”) and the North Central Regional Transit District (“NCRTD”).

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

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

**WHEREAS**, the NCRTD has adopted its own procurement code pursuant to the powers and authority granted to it under the Regional Transit NCRTD Act; and

**WHEREAS**, pursuant to the NCRTDs Procurement Regulations the Contractor has held itself out as possessing the personnel, experience and knowledge necessary to perform the services described in implementing the Scope of Work as attached (Exhibit “A”) and contained within the RFP; and

**WHEREAS**, the NCRTD has selected the Contractor as the offeror most advantageous to the NCRTD; and

**WHEREAS**, the procurement regulations are available to all vendors and contractors by and through the NCRTD and the most current version of the regulations are adopted by Resolution No. 2012-21, and are entitled “North Central Regional Transit NCRTD Procurement Regulations.”

**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 as follows:

## 1. SCOPE OF WORK

The Contractor shall provide the following services to the NCRTD. All services listed below shall be inclusive of work, work product and shall be interpreted consistent with any solicitation or procurement documents promulgated by the NCRTD:

- A. Provide all services contained in their response to the RFP and the Scope of Work Attached hereto as Exhibit “A” and any and all addenda as described in the NCRTDs RFP and as outlined in the project proposal
- B. Deliver completed project in a timely manner with all work to be done in cooperation with the NCRTD’s project coordinator and in accordance with the Transit Service Plan Update Timeline.
- C. Submit invoices as outlined in Contractor’s proposal, containing a detailed report of work performed. Invoices shall be substantially in the form outlined in Contractor’s proposal, and shall contain a detailed report of work performed sufficient to meet the New Mexico Department of Transportation’s requirements contained in the Memorandum of Agreement with the NCRTD which is attached hereto as Exhibit “B”. Contractor recognizes and acknowledges that the NCRTD must make quarterly reports of progress including actual costs and expenses incurred as of the reporting date. Contractor’s failure to timely submit information sufficient for this purpose may compromise the NCRTD’s ability to obtain federal funds and may in turn compromise payments by the NCRTD to the Contractor for amounts otherwise compensable under this Agreement.
- D. Contractor may be required to attend NCRTD Board meetings and provide advice to the full NCRTD Board if requested to do so by the Executive Director.
- E. Contractor may be required to perform such acts and render such services as are reasonably necessary to complete the work contemplated under this Agreement.
- F. Contractor understands and agrees that the professional services covered by this scope of work are to be performed and delivered by the principle professionals within the Contractor’s firm and that substitution of subcontractors or delegation of critical work to subordinates does not meet the demands and expectations of NCRTD.
- G. All deliverables required under this Agreement, including material, products, reports, policies, procedures, software improvements, databases, and any other products and processes, whether in written or electronic form, shall remain the exclusive property of and shall inure to the benefit of NCRTD as works for hire. Contractor shall not use, sell,

disclose, or obtain any other compensation for such works for hire. In addition, Contractor may not, with regard to all work, work product, deliverables or works for hire required by this Agreement, apply for, in its name or otherwise, any copyright, patent or other property right and acknowledges that any such property right created or developed remains the exclusive right of NCRTD. Contractor shall not use deliverables in any manner for any other purpose without the express written consent of the NCRTD.

## 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.
- B. 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 NCRTD shall pay to the Contractor \$\_\_\_\_\_ for services referred to above, excluding gross receipts tax. The aforementioned amount is inclusive of Contractor expenses anticipated to be incurred in the performance of services in the Agreement such as copying, mileage, printing, travel, and per diem, telephone and computer research charges at the normal rate for such expenses charged by the Contractor to its other clients. Per diem and mileage expenses shall not exceed the amounts provided in the Per Diem and Mileage Act or as set forth below.
- B. Payment shall be made upon receipt from the Contractor of statements in accordance with the deliverable tasks outlined in the Contractor's proposal "Table I-1" attached hereto as Exhibit "C". All statements shall contain a detailed report of work performed and expenses incurred. Prepayment by public entities is generally not permitted under New Mexico law. Therefore, the delivery of service and timely billing thereafter is a condition precedent to any payment by NCRTD to Contractor.
- 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 NCRTD to the Contractor.

D. Contractor agrees to Refund to the NCRTD, 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.

#### 4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the NCRTD for the performance of this Agreement. If sufficient appropriations and authorization are not made by the NCRTD, this Agreement shall terminate upon written notice being given by the NCRTD to the Contractor. The NCRTD's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. By executing this Agreement the NCRTD 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 NCRTD 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 NCRTD. This Agreement shall terminate on \_\_\_\_\_2015 unless terminated pursuant to paragraph 6 below, or extended by mutual agreement in writing for up to six (6) additional months.

#### 6. TERMINATION

A. This Agreement may be terminated by the NCRTD upon ten (10) days' written notice. Upon such termination, Contractor shall be paid for Services actually completed to the satisfaction of NCRTD. Contractor shall render a final report of the Services performed to the date of termination and shall turn over to NCRTD originals of all materials prepared pursuant to this Agreement.

(1) The Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the NCRTD original copies of all work product, research or papers prepared under this Agreement.

(2) If compensation is not based upon hourly rates for services rendered, the

NCRTD shall pay the Contractor for the reasonable value of services satisfactorily performed through the date Contractor receives notice of such termination, and for which compensation has not already been paid.

- (3) If compensation is based upon hourly rates and expenses, then Contractor shall be paid for services rendered and expenses incurred through the date of termination.

## 7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

- A. The Contractor and its agents and employees are independent contractors performing professional services for the NCRTD and are not employees of the NCRTD. The Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of NCRTD vehicles, or any other benefits afforded to employees of the NCRTD 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 NCRTD and will not be considered an employee of NCRTD for any purpose. Contractor, its agents or employees shall make no representation that they are NCRTD 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 NCRTD's name or logo.
- D. Contractor shall have no authority to bind NCRTD to any agreement, contract, duty or obligation. Contractor shall make no representations that are intended to, or create the appearance of, binding the NCRTD 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 NCRTD 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 NCRTD, except as otherwise provided by law. Notwithstanding the preceding agreement to keep materials confidential the Contractor hereby acknowledges and agrees that the NCRTD 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 NCRTD 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 NCRTD 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 NCRTD in compliance with that law.

#### 9. CONFLICT OF INTEREST

Contractor 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 this Agreement. Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18 NMSA 1978, regarding contracting with a public officer, NCRTD employee or former NCRTD employee have been followed.

#### 10. ASSIGNMENT; SUBCONTRACTING

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 NCRTD. Contractor acknowledges that the NCRTD 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 NCRTD. 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 NCRTD, 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 NCRTD to any obligation not assumed herein by the NCRTD 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.

- A. Contractor shall obtain and maintain Workers' Compensation insurance required by law to provide coverage for Contractor's employees throughout the term of this Agreement. Upon request, Contractor shall provide the NCRTD with evidence of its compliance with such requirement.
- B. 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.
- C. Automobile Liability Insurance shall be in amount at least equal to the minimum required by state law on any owned, and/or non-owned motor vehicles used in performing Services under this Agreement, shall name the NCRTD as an additional insured, and shall provide that the NCRTD will be notified no less than thirty (30) days in advance of cancellation.
- D. General Liability Insurance shall be in the amount of \$1,000,000 combined single limit and per occurrence shall name the NCRTD as an additional insured, and shall provide that the NCRTD will be notified no less than thirty (30) days in advance of cancellation;
- E. The NCRTD retains the right to require that Contractor obtain or provide proof of insurance, certificates of insurance, riders or addenda including documents listing NCRTD as an additional named insured if, in the NCRTD's opinion, the Contractor's work creates a risk or liability for the NCRTD that can be covered and insured without excessive cost or expense to the Contractor.
- F. Waiver of insurance requirements may only be performed in writing by the NCRTD's Executive Director and only if s/he is satisfied that the waiver will not result in substantial or unreasonable liability for the NCRTD.

## 13. INDEMNIFICATION

Contractor agrees to indemnify NCRTD to the extent permitted by law for the Contractor's acts and omissions under this Agreement and for such other liabilities as may be incurred by the NCRTD

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 NCRTD 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 NCRTD 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 NCRTD 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. In compliance with the requirements set forth in Exhibit B the Contractor acknowledges and agrees to the following:

"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 NCRTD all records, books of account, memoranda, and other documents pertaining to NCRTD at any reasonable time upon request. These records shall be subject to inspection by the NCRTD, the Department of Finance and Administration, and the State Auditor. The NCRTD shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the NCRTD 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 NCRTD can comply with the requirements under that agreement.

#### 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 NCRTD.

#### 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

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

#### 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

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 pre-paid, or on the date sent and received if sent by electronic mail. Notices by regular mail shall be sent to a party at the address set forth below:

**North Central Regional Transit NCRTD**

**Contractor**

**Executive Director**

**1327 N. Riverside Dr.**

**Española, NM 87532**

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 stated above.

## 23. 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 NCRTD shall be used solely for activities described in the Scope of Work as set forth in Exhibit B.

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

Energy Conservation Requirements

**42 U.S.C. 6321 et seq.**

**49 CFR Part 18**

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

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Clean Water Requirements

**33 U.S.C. 1251**

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

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

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Lobbying

**31 U.S.C. 1352**

**49 CFR Part 19**

**49 CFR Part 20**

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

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

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

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

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date

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Access to Records and Reports

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

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

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

Sources of Authority

1. 49 USC 5325 (a)
2. 49 CFR 633.17
3. 18 CFR 18.36 (i)

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Federal Changes

**49 CFR Part 18**

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time

during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

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CLEAN AIR  
**42 U.S.C. 7401 et seq**  
**40 CFR 15.61**  
**49 CFR Part 18**

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

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No Government Obligation to Third Parties

**No Obligation by the Federal Government.**

1. The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
  2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.
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Program Fraud and False or Fraudulent Statements and Related Acts

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

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

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves

the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

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Termination

**49 U.S.C. Part 18**

FTA Circular 4220.1E

- a. **Termination for Convenience (Professional or Transit Service Contracts)** The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- b. **Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

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

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

- d. **Waiver of Remedies for any Breach** In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

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Government-Wide Debarment and Suspension (Non-procurement)

**49 CFR Part 29**

**Executive Order 12549**

**Suspension and Debarment**

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

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

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

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

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Civil Rights Requirements

**29 U.S.C. § 623, 42 U.S.C. § 2000**

**42 U.S.C. § 6102, 42 U.S.C. § 12112**

**42 U.S.C. § 12132, 49 U.S.C. § 5332**

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

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

1. *Nondiscrimination* - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. *Equal Employment Opportunity* - The following equal employment opportunity requirements apply to the underlying contract:
  - a. *Race, Color, Creed, National Origin, Sex* - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
  - b. *Age* - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
  - c. *Disabilities* - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the

requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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#### Breaches and Dispute Resolution

##### **49 CFR Part 18**

##### FTA Circular 4220.1E

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

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

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

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

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

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

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#### Patent and Rights in Data

##### **37 CFR Part 401**

##### **49 CFR Parts 18 and 19**

The FTA patent clause is substantially similar to the text of 49 C.F.R. Part 19, Appendix A, Section 5, but the rights in data clause reflects FTA objectives. For patent rights, FTA is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding

research grants. This model clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

#### CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

**A. Rights in Data** - This following requirements apply to each contract involving experimental, developmental or research work:

1. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
2. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
  - a. Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
  - b. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
    1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
    2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.
  - c. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic

data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

- d. Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
  - e. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
  - f. Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.
  - g. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
3. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (*i.e.*, a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
4. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**B. Patent Rights** - This following requirements apply to each contract involving experimental, developmental, or research work:

1. *General* - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
2. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education,

individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

3. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

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Disadvantaged Business Enterprise (DBE)

**49 CFR Part 26**

**Disadvantaged Business Enterprises**

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is \_\_ %. A separate contract goal **[of \_\_ % DBE participation has] [has not]** been established for this procurement.
- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as **{insert agency name}** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. ***[If a separate contract goal has been established, use the following]*** Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:
  1. The names and addresses of DBE firms that will participate in this contract;
  2. A description of the work each DBE will perform;
  3. The dollar amount of the participation of each DBE firm participating;
  4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
  5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
  6. If the contract goal is not met, evidence of good faith efforts to do so.

**[Bidders][Offerors]** must present the information required above **[as a matter of responsiveness] [with initial proposals] [prior to contract award]** (see 49 CFR 26.53(3)).

***[If no separate contract goal has been established, use the following]***The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

- d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the **{insert agency name}**. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to**

those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.]

- e. The contractor must promptly notify {insert agency name}, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of {insert agency name}.

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Incorporation of Federal Transit Administration (FTA) Terms

**FTA Circular 4220.1E**

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

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IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

**CONTRACTOR**

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**NORTH CENTRAL REGIONAL  
TRANSIT NCRTD:**

\_\_\_\_\_  
Anthony Mortillaro,  
Executive Director

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Peter Dwyer, Counsel