

**St. Cloud Metropolitan Transit Commission
(Metro Bus)**

Request for Proposal

Vehicle Hoist Replacement Project

**Metro Bus
665 Franklin Avenue N.E.
St. Cloud, MN 56304**

Primary Contact:

- **Gary Korneck – Procurement Manager, Ph: 320-529-4488,
gkorneck@st.cloudmtc.com**

Project Schedule:

- **RFP Issue Date:** Tuesday, January 2, 2024
- **Pre-Proposal Site Review:** Monday, January 15, 2024, to Friday, January 26, 2024, between the hours of 7:00 a.m. and 2:30 p.m. CT.
- **Proposal Due Date:** Friday, February 9, 2024, 12:00 p.m. CT.
- **Proposal Evaluations:** Monday, February 12, 2024, to Friday, February 16, 2024
- **Notice of Project Award:** Wednesday, February 21, 2024, 5:00 p.m. CT.
- **Executed Contract:** Wednesday, February 28, 2024, 5:00 p.m. CT.
- **Pre-Construction Meeting:** Monday, March 4, 2024 (Time TBD).
- **Notice to Proceed:** Tuesday, March 5, 2024, 5:00 p.m. CT.
- **Project Start Date:** TBD
- **Project Substantial Completion Date:** Monday, July 15, 2024
- **Project Completion Date:** Wednesday, July 31, 2024

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I. Project Overview

The St. Cloud Metropolitan Transit Commission (Metro Bus) will be accepting proposals from qualified contractors to remove and replace a bus maintenance area vehicle hoist at its Operations Center located at 665 Franklin Avenue, N.E. per the specifications, requirements and scope of work as defined within this RFP.

II. Project Location

Metro Bus Operations Center
665 Franklin Avenue N.E.
St. Cloud, MN 56304

III. Proposal Process

1. Proposals Due

Bid Proposals must be submitted no later than **Friday, February 9, 2024, 12:00 p.m. CT**. Proposals may be sent via email to gkorneck@stcloudmtc.com via certified mail, or hand delivered. Submitted proposals must be clearly identified as: **“Metro Bus Vehicle Hoist Replacement Project”**.

2. Pre-Proposal Meeting and Site Visit

Pre-Proposal meetings and site visits will be held at **Metro Bus Operations located at 665 Franklin Avenue, N.E., St. Cloud, MN 56304** beginning **Monday, January 15, 2024, through Friday, January 26, 2024, between the hours of 7:00 a.m. and 2:30 p.m.** Contractors are encouraged to schedule a meeting to ensure a full understanding of Metro Bus’s needs. Please contact **Mike Reid, Maintenance Manager, to schedule your date and time Ph: 320-529-4491, Email: mreid@stcloudmtc.com**

3. Pre-Proposal Inquiries

All RFP and bid proposal inquiries pertaining to the project must be directed to:

Gary Korneck, Procurement Manager
Phone: 320-529-4488
Email: gkorneck@stcloudmtc.com

4. Late Proposals

Proposals received after the closing date and time as stated in this RFP shall be deemed late, shall not be considered, and shall remain unopened.

5. Modification/Withdrawal of Proposals

Contractors will not be allowed to withdraw their bid after the closing date and time. Contractors may not change the wording of their bid proposal after the closing date and time and no words or comments may be added unless requested by Metro Bus for purposes of clarification. Metro Bus will be under no obligation to receive further information, whether written or oral, from any Contractor after the final closing date and time.

Metro Bus reserves the right to modify the language or specifications of this Request for Proposal at any time via Addendum prior to the proposal due date.

6. Errors and Omissions

Contractors will not be allowed to take advantage of any errors or omissions in the specifications. Inconsistencies in the specifications should be reported to Metro Bus whenever found. The information contained is presented solely as a guideline for all Contractors and is not guaranteed or warranted to be accurate.

7. Acceptance of Bid Proposals

This Request for Proposal should not be construed as an agreement of services. Metro Bus is not bound to accept the lowest price proposed or any of those submitted. Metro Bus may cancel this RFP at any time and shall have no liability to a Contractor or Sub-Contractor for any costs incurred in connection with preparation of a response to this Request for Proposal.

8. Agreement of RFP Terms

By submitting a bid proposal, the Contractor agrees to all of the terms and conditions set forth in this RFP. Contractors must not alter any portion of the RFP document with the exception of providing the information as requested. The conditions set forth within this RFP will hold precedence over any and all other executed agreements.

9. Addendums

Metro Bus may modify the RFP prior to the proposal due date by issuance of an addendum. In the event a Contractor should identify a discrepancy or omission in this RFP or any other documentation provided by Metro Bus, the Contractor shall immediately notify Metro Bus of such potential discrepancy or omission in writing via email. An addendum to this RFP shall be issued in writing. No oral statements, explanations, or commitments by anyone shall be acknowledged by the Contractor without receipt of a written addendum.

10. Final Agreement

The final contract, including all attachments, certifications, conditions, specifications, etc. as made part of this Request for Proposal will contain the entire understanding of the parties hereto. With the subject matter hereof and there are no other agreements, understandings, representations, or warranties whether expressed, implied, statutory or otherwise, other than set forth herein.

11. Tax Exemption

Metro Bus is tax exempt. A copy of Metro Bus’s Certificate of Exemption Form will be provided upon request.

12. Confidentiality

Prior to the award, Metro Bus will treat as confidential all information contained in all bid proposals and other communications made.

13. Proposal Evaluation Criteria

Evaluation Elements	Max Score	Awarded Points
Company Background and Experience	20	
Proposed Hoist Equipment and Implementation	40	
Proposed Price	30	
Compliance with RFP Requirements	10	
TOTAL POINTS:	100	

14. Force Majeure

To the extent that either party is not able to perform an obligation under this contract due to fire, flood, acts of God, severe weather conditions,

strikes or labor disputes, war or other violence, acts of terrorism, epidemics, pandemics, any federal or state coronavirus mandates or protocols, any law or order of any governmental agency, or other cause beyond that party's reasonable control, that party may be excused from such performance so long as such party provides the other party with prompt written notice describing the condition and takes all reasonable steps to avoid or remove such causes of non-performance and continues performance whenever and to the extent such causes are removed.

IV. General Requirements

1. Permits

The Contractor shall be responsible for obtaining all permits required by the City of St. Cloud and Benton County in order to perform the work.

2. Project Completion

The Contractor agrees to complete all of the required primary and sub-contract work related to this project by: **Wednesday, July 31, 2024.**

The Contractor, its Sub-Contractors and Suppliers shall be entitled to a reasonable extension of time from Metro Bus for delays caused by fire, flood, hurricanes, tornadoes, earthquakes, and other extreme weather conditions; along with pandemics, coronavirus mandates, or other acts where such delays are entirely beyond the control of the Contractor, its Sub-Contractor's, or Suppliers.

Immediately upon encountering any difficulties which threaten to delay the project completion date, the Primary Contractor shall notify Metro Bus in writing wherein the Contractor shall:

- a. Describe the relative facts concerning the contemplated delay;**
- and**
- b. Request written acceptance of the delay by Metro Bus.**

Metro Bus approval must be in writing to be effective and shall constitute a change order to the project agreement. Absent written acceptance by Metro Bus of the delay shall constitute a breach of contract by the Contractor at which time Metro Bus may require compensation for this breach pursuant to the liquidated damages clause as set forth below.

3. Liquidated Damages

The Contractor represents, warrants, and guarantees that the work will be completed at the time agreed upon under **Section IV, Article 2 "Project Completion"**. In the event the Contractor fails to complete the work by said time, the Contractor shall pay Metro Bus the sum of five (5) hundred dollars (\$500.00) per day (Mon-Fri) as liquidated damages and not as a penalty after a mutually agreed upon completion schedule has been established.

The Contractor acknowledges that actual damages incurred by Metro Bus as a result of failure to complete the work within the time permitted are difficult to ascertain and that the amount fixed as liquidated damages is reasonable and not in excess or disproportionate to the damages which will be caused by the Contractor's failure to complete the work within the time permitted. Metro Bus may withhold any money due, or becoming due, to the Contractor hereunder to set off against said liquidated damages. The amount due to Metro Bus by the Contractor for said liquidated damages shall be payable upon demand and, if not paid by the Contractor upon demand, the Contractor shall pay, in addition to the amount of said liquidated damages, all costs of collection including reasonable attorneys' fees. Said liquidated damages shall continue to apply in the event of abandonment of the work by the Contractor. This paragraph shall apply to all third-party contractors, regardless of their DBE/SBE status.

4. Indemnification

The Contractor agrees to indemnify and hold harmless Metro Bus, its contractors and all officers, agents and employees thereof from any and all claims or losses occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials or supplies in connection with the performance of the contract and from any and all claims or losses occurring or resulting to any person, firm or corporation who may be injured or damaged by Metro Bus, its contractors, agents, or employees, arising out of the performance of the contract.

5. Change Orders

A Change Order may result in changes in the scope of work after execution of the project award. Change Order requests shall be based

upon an agreement between the Contractor and Metro Bus, and shall state their agreement upon all of the following:

- a. A change in the work or product;
- b. The amount of adjustment in the Contract sum, if any;
- c. The extent of the adjustment in the Contract sum, if any.

Changes in the work shall proceed promptly, unless otherwise provided in the change order. None of the work proposed by a change order shall be initiated until the Contractor and Metro Bus have duly executed the following:

- a. Fully executed Change Request between the Contractor and Metro Bus;
- b. Fully executed Change Order between the Contractor and Metro Bus.

V. Warranty Provisions

1. General

The Contractor, it's Sub-Contractors, Manufacturers and Suppliers shall indicate and provide for warranty periods on all equipment, parts, and labor. Warranties shall be based upon the typical structural components of the materials and products used. The materials and products shall maintain their structural and functional integrity throughout the warranty period. The Contractor shall provide a list of product and manufacturer names (including product stock numbers) and product specifications to include ongoing maintenance and care.

2. Detection of Defects

If Metro Bus detects a defect within the warranty period, it shall promptly notify the Contractor. Within five (5) working days after receipt of notification, the Contractor shall either agree that the defect is, in fact, covered by warranty, or reserve judgment until a Contractor's representative inspects the item. In the event that defects of materials or workmanship become evident during the warranty period, the corrections of such defects shall be deemed to be within these warranty provisions, even though the necessary corrective work may extend beyond the warranty period.

3. Out-of-Warranty Repairs

In the event that defects of materials or workmanship become evident beyond the stated warranty period but within the expected or stated life expectancy, the Contractor will agree to negotiate in good faith with Metro Bus a “warranty policy adjustment” on all materials and labor for repairs deemed necessary and performed in relation to the reported defect.

4. Repair Performance

Metro Bus shall require the Contractor or its designated representative to perform warranty-covered repairs that are clearly beyond the scope of Metro Bus capabilities. In the event Metro Bus requires the Contractor to perform warranty covered repairs, the Contractor must begin the necessary repairs within ten (10) working days after receiving notification of a defect from Metro Bus. Metro Bus may complete other work or assign that responsibility to another maintenance provider with reimbursement by the Contractor.

5. Reimbursement

The Contractor shall reimburse Metro Bus for all labor necessary to complete any repairs due to non-acceptance or provision of warranty. In the event of any action by Metro Bus to enforce the warranties herein or to recover damages for breach of such warranties, the Contractor agrees to pay Metro Bus for such damages and the costs associated including all reasonable attorneys' fees.

VI. Insurance Requirements

The Primary Contractor and its Sub-Contractors will submit to Metro Bus, prior to any services performed, certificates of the Contractor’s insurance coverage indicating the presence of coverages and limits no less than the following:

1. Workers’ Compensation:

Coverage A. Statutory Benefits.

Coverage B. Employer’s Liability.

Bodily Injury by accident	\$1,000,000 each accident
Bodily Injury by disease	\$1,000,000 policy limit
Bodily Injury by disease	\$1,000,000 each employee

Coverage must include a Waiver of Subrogation endorsement as it pertains to the Contractor’s negligence.

2. Commercial Auto Coverage:

Auto Liability limits of not less than \$1,000,000 each accident, combined Bodily Injury and Property Damage Liability insurance. Certificate to reflect coverage for “Any Auto” or “All Owned, Scheduled, Hired and Non-Owned”.

Coverage must include a Waiver of Subrogation endorsement as it pertains to the Contractor’s negligence.

3. Commercial General Liability:

Each Occurrence Limit	\$1,000,000
Personal Injury/Advertising Injury Limit	\$1,000,000
General Aggregate Limit (Other than Products/Completed Operations)	\$2,000,000

Coverage must include a Waiver of Subrogation endorsement as it pertains to the Contractor’s negligence.

VII. Disadvantaged Business Enterprise (DBE) (49 CFR Part 26)

The St. Cloud Metropolitan Transit Commission (Metro Bus) has established a Disadvantaged Business Enterprise (DBE) and Small Business Enterprise (SBE) program in accordance with regulations of the U. S. Department of Transportation (DOT), 49 CFR Part 26, to ensure all entities have an equal opportunity to participate in DOT assisted contracts.

The objectives of Metro Bus’s DBE/SBE program and of 49 CFR Part 26 are:

1. To ensure non-discrimination in the award and administration of DOT assisted contracts;
2. To create a level playing field on which DBE’s can compete fairly for DOT assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that meet 49 C.F.R. Part 26 eligibility standards are permitted to participate as DBE’s;

5. To help to remove barriers to the participation of DBE's in DOT assisted contracts;
6. To promote the use of DBE's in federally assisted contracts and procurement activities;
7. To assist the development of firms that can compete successfully in the marketplace outside the DBE/SBE program.
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBE's.

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26. Therefore, the contractor must satisfy the requirements for DBE participation as stated herein. These requirements are in addition to all other Equal Opportunity Employment (EEO) requirements of this contract. The St. Cloud Metropolitan Transit Commission shall make all determinations with regard to whether or not a bidder/offeror is in compliance with the requirements stated herein.

The contractor, its subrecipients, or its subcontractors 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 DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in termination of the contract, or such remedy as deemed appropriate by the St. Cloud Metropolitan Transit Commission which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages (if applicable);
4. Disqualifying the contractor from future bidding as non-responsible (49 CFR Part 26.13 (b)).

The St. Cloud Metropolitan Transit Commission will only accept DBE's who are:

1. Certified at the time of bid opening or proposal evaluation;
2. An out-of-state firm who has been certified by either a local government, state government, or federal government entity who is authorized to certify DBE status;
3. An agency whose DBE certification process has received FTA approval.

The contractor is required to pay its subcontractors for satisfactory performance of their work in relation to this contract no later than thirty (30) days after the contractor's receipt of payment for that work from the St. Cloud Metropolitan

Transit Commission or in accordance with state statutes, whichever is more restrictive. In addition, the contractor is required to return any retainage payments to those subcontractors within thirty (30) days (or in accordance with state law, whichever is more restrictive) after the subcontractor's work related to this contract is satisfactorily completed.

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

DBE PARTICIPATION GOAL: There is no DBE participation goal for this contract.

VIII. Protest Procedures

Contractors that feel an alleged violation of Metro Bus's procurement procedures has occurred during a solicitation may file a written protest with the Chief Executive Officer (CEO) up to the date and time of the proposal opening. The CEO will review the protest and determine if the proposals will be opened or delayed. The CEO's decision will be transmitted in writing to the protesting party within five (5) working days.

Contractors that feel that an alleged violation of Metro Bus's procurement procedure has occurred after proposal opening may file a written protest with the CEO up to three working days after the date and time proposals were opened. The CEO will review the protest and determine if the award of the contract to the responsive Proposer should be delayed. The CEO's decision will be transmitted in writing to the protesting party within three (3) working days.

Parties not satisfied by the CEO's decision regarding either type of protest described above may, within five (5) working days of receipt of the CEO's written decision, appeal the decision to the Metro Bus Board of Commissioners. The appeal must be made in writing. The Commission Board will schedule a hearing where the appellant may be heard. Once the Commission's decision is announced, no further local appeals may be made.

Contractors should file all protests in care of the CEO, as appropriate, at the following address:

Metro Bus
Request for Proposal Protest
665 Franklin Avenue NE
St. Cloud, MN 56304

The decision of the Metro Bus Board of Commissioners is final.

The Federal Transit Administration (FTA) will only review protests regarding the alleged failure of the purchases to have a written protest procedure or alleged failure to follow such procedures. Protestors may file a protest with the FTA regional office no later than five federal working days after a final decision of Metro Bus. Metro Bus will not award any contracts until it is sure that no protest has been filed with the FTA. The protest filed with the FTA shall:

- a. Include the name and address of the protestor.
- b. Identify the grantee, project number, and the proposal number.
- c. Contain a statement of the grounds for protest and any supporting documentation.

This should detail the alleged failure to follow protest procedures or the alleged failure to have procedures and be fully supported to the extent possible.

(d) Include a copy of the local protest filed with the grantee and include a copy of the grantee's decision, if any.

Protests to the FTA should be addressed to:

Office of Program Oversight
Federal Transit Administration
200 West Adams Street, Suite 320
Chicago, IL 60606

Contractors are cautioned that Metro Bus takes all protests seriously and that frivolous protests lacking factual basis will subject a protestor to assessment of Metro Bus's cost and legal fees in responding to the protest. Contractors must review the Metro Bus proposal protest guidelines carefully before filing a protest. At the time of filing a protest, the contractor agrees to be bound by these guidelines.

IX. Retainage / Final Payment Terms

A retainage amount equal to five (5) percent must be deducted from the total payment due amount for each Pay Application.

Prior to submittal of the request for final payment, the contractor agrees to:

1. Have completed all required work to the satisfaction of Metro Bus;
2. Have corrected any deficiencies identified by Metro Bus;
3. Have paid all amounts due to any of the contractor's sub-contractors or suppliers;
4. Have settled any and all liens pertaining to any aspect of the project and provided Metro Bus with receipts, or waivers of liens in such form as acceptable to Metro Bus;
5. Have provided Metro Bus with all applicable warranties, literature, maintenance manuals, specifications, contact info, and a complete component listing including item stock numbers and current pricing.

A certified statement by the contractor shall be included with the final Pay Application that payment of the final invoice shall constitute completion of the terms of the project.

X. Contractor Information

1. Each contractor must include the following information with their bid proposal:
 - a. Contractor's principal business name
 - b. Contractor's principal business address
 - c. Contractor's business address through which most contract work will be performed
 - d. Contractor's main point of contact to include:
 - a) Name
 - b) Business phone
 - c) Mobile phone
 - d) Email address
 - e. Sub-Contractor list to include the same info as above

2. References

The contractor will provide a list of three (3) references where the proposed equipment has been in operation a minimum of two (2) years.

3. Project Updates:

The contractor will be required to provide bi-weekly updates via email or in person to Metro Bus's Chief Operations Officer and Maintenance Manager.

XI. Scope of Work

Metro Bus is looking for a turn-key installation of all equipment. The project includes providing and installing one (1) heavy duty in-ground vehicle hoist that shall be designed to lift transit buses and paratransit vehicles. The desired lift shall be constructed as a self-contained unit to prevent the leaking in or out of fluids and ground water. The project also includes the removal and disposal of one (1) existing in-ground lift.

1. Hydraulic System

- a. The system shall be comprised of two (2) high pressure cylinders, one in each lifting unit.
- b. The hydraulic system shall be a power up / gravity down design. Hoists that rely on the power units to run during the lowering cycle shall not be acceptable due to increased power consumption and wear.
- c. High pressure seals shall be internal to the cylinder where they are protected from salt, dirt, etc.
- d. Each cylinder shall include a safety check valve integrally mounted to prevent excessive loss of fluid from the cylinder.
- e. All hoses shall be of reinforced construction and utilize JIC fittings throughout.
- f. Hoses feeding the moveable hoist carriage shall be supported and contained by a cable carrier to prevent the hoses from dragging or tangling.
- g. The hoist shall be driven by two individual power units operating independently for front and rear vehicle lifting. The power units must be readily available as an off-the-shelf component.

2. Adaptors

- a. The system will include a variety of axle engaging accessory adapters designed to raise heavy duty vehicles by the axles and frame. Adapters shall be either axle or frame oriented. Spinning adapters will not be accepted due to the risk of accidental rotation during vehicle setup.
- b. The base adapter must have at least a five (5) whole pattern that will allow every accessory adapter to be used in reverse direction allowing up to eight (8) positions of the accessory adapter on the base adapter.
- c. Sliding base adapters shall be restrained to prevent over-extension.
- d. Bolster and base adapters shall recess below finished floor.
- e. Adapter adjustment options must be included.

3. Controls

- a. The control system shall conform to all current NEC, UL 201, and OSHA codes.
- b. The control system shall be PCB operated and continuously monitor all operating functions and safety systems of the hoist.
- c. The control system shall utilize safe inclinometers to constantly monitor the elevation of the hoist to ensure synchronized operation.
- d. The control system shall allow the user to adjust the sensitivity of the electronic synchronization without the use of special tools.
- e. The control system shall have the ability to receive regular software updates and upgrades as they become available. All updates/upgrades shall be possible through data transfer without the need for component replacement.
- f. On the face of the control console, control elements shall include:
 - a) "Up" button
 - b) "Down" button
 - c) "Confirm" button
- g. The face of the control console shall also include a high definition LCD touch screen (preferred), which shall be specifically designed for a harsh workshop environment. The touch screen shall be capable of providing the following functions:
 - a) Operating mode; single or group

- b) Actual height of all lifting units
- c) User configured height restriction
- d) Hoist unit motion indicators
- e) Service/maintenance notifications
- f) Operation manual on-screen
- g) Tracking of specific operations and information codes
- h) User configurable system with user ID key
- i) Individual user settings for language and units of measure
- j) Protections against unauthorized use

4. Safety Devices

- a. The lifting unit shall be equipped with double lock jaw, gravity engaged, mechanical locks with the first lock position engaging at a height of 18 inches.
- b. The unit shall include a minimum of twelve (12) of mechanical lock stops.
- c. Mechanical locks shall be made of high strength T-1 steel.
- d. All push buttons shall be of momentary contact, dead-man type.

5. Automatic Wheelbase Positioning

- a. The control system shall be equipped with an automatic wheelbase positioning (AWBP) system that allows the operator to program an infinite number of wheelbase positions into the control system for reduced set-up times.
- b. The AWBP shall be controlled via the LCD touch screen to allow the operator to store wheelbase positions by vehicle brand and model year for ease of use and safety to avoid selection of the incorrect vehicle.
- c. Once a vehicle has been selected, the movable lifting unit shall travel to the pre-programmed position without interruption or stops.

XII. Proposal Requirements

1. Each contractor must include the following information with their bid or their proposal will be deemed non-responsive:
 - a. Contractor must indicate in their proposal the heavy duty lift manufacturer that will be used on this project;

- b. A preliminary installation drawing to include physical component layout;
- c. A manufacturers list of major components including detailed technical specifications to be used for proposal evaluation;
- d. Shop drawings from the manufacturer detailing the proposed heavy duty lift fabrication and installation including large-scale details showing the layout of the equipment, components, and accessories.
- e. Rough-in dimensions, service connections and the location of all field connections shall be provided. Required clearances for equipment service and lift operation must also be included.

2. Codes and Standards

All work and materials shall be in accordance with the requirements of all applicable local codes, ordinances, rules, and regulations of all authorities that have jurisdiction. The contractor and their sub-contractors shall be responsible for obtaining any required permits needed to accomplish the work per the City of St. Cloud and Benton County.

3. Quality Assurance

- a. The proposed heavy duty lift shall be labeled and listed by a nationally recognized Testing Laboratory as established by OSHA for conformance to ANSI/ALI ALCTV-2006 automotive lifts, "Safety Requirements for the construction, care and use of automotive lifts" as published by the American National Standards Institute. The lift shall be Gold labeled certified with the ETL/ALI certification. The lift manufacturer shall comply with all applicable requirements of the Buy America Act.
- b. The lift installer shall be certified as a factory authorized installer, trained, and authorized by the same manufacturer supplying the lift equipment.

4. Maintenance Manuals, Training, and Instruction

- a. The contractor shall provide two (2) paper copies and one (1) electronic (i.e. - flash drive) copy of the equipment operation and maintenance manuals. Each paper copy shall be enclosed in a binder with each page inserted into a clear sheet protector.

The manual shall include but not be limited to:

- a) Table of contents;
 - b) Description of system and components;
 - c) Starting and stopping instructions;
 - d) Emergency stopping instructions;
 - e) Routine maintenance procedures;
 - f) Servicing and lubrication schedule;
 - g) Wiring diagram;
 - h) Trouble shooting procedures.
- b. The contractor shall provide a complete list of major components and a recommended spare parts list.
 - c. The contractor's representative shall provide one (1) full day of training (at Metro Bus's location) on the operation and maintenance of the entire system.

XIII. Project Execution

Questions and additional project detail will be addressed during the pre-proposal meeting / site tour.

1. Primary Project Requirements

- a. Replace inoperative Rotary Lift Model MC2-460VR with like or similar unit;
- b. Drain antifreeze from in-floor heat;
- c. Disconnect electrical;
- d. Remove cylinders and hydraulic reservoir tanks from hoist boxes;
- e. Cut concrete to remove old hoist;
- f. Jack hammer concrete;
- g. Remove concrete;
- h. Remove insulation;
- i. Remove dirt;
- j. Remove hoist boxes from floor;
- k. Dirt work to install footings for new hoist;
- l. Install footings for new hoist;
- m. Fill dirt around boxes;
- n. Install insulation;
- o. Repair in-floor heat piping;
- p. Pressure test in-floor heating piping;
- q. Pour concrete for floor;

- r. Fill in-floor heat with antifreeze;
- s. Install hoist cylinders in boxes;
- t. Install hoist control panel;
- u. Connect electrical;
- v. Seal floor around repaired area.

2. Work Hours

Contractors shall be permitted to work on-site from 7:00 a.m. to 5:00 p.m. Monday through Friday. All work must be coordinated through **Mike Reid, Metro Bus Maintenance Manager.**

3. Work Staging

- a. The contractor shall develop a work schedule to ensure that Metro Bus's maintenance operations are maintained.
- b. Metro Bus must be able to have access to at least two (2) functional vehicle lifts at all times during this project.
- c. Metro Bus shall provide the contractor temporary storage area(s) for equipment, materials, and supplies.

4. Safety

- a. Suitable barriers to prevent public entry and to protect the work area shall be provided. Barriers must be available and maintained throughout the entire project. Barriers will be removed upon completion of the project.
- b. The contractor and all sub-contractors shall adhere to all OSHA, Metro Bus, and local and state safety rules and regulations.
- c. The contractor and all sub-contractors shall assure the safety of its personnel by providing all protection and safety devices in relation to the safe conduct of this work and in accordance to all local, state, and federal regulations.

5. Housekeeping

- a. The contractor shall be responsible for the daily clean-up of all waste materials and debris from the work area.
- b. The contractor shall provide a dumpster for the deposit of waste materials and debris.

- c. Any hazardous materials shall be removed and legally disposed of at an area away from the job site.

5. Functional test and acceptance

The system shall be considered acceptable after it has performed successfully for one (1) normal workday without any major problems. The manufacturer must have a qualified representative onsite during the test period. Training of appropriate personnel can be conducted during the functional test period.

XIV. Required Forms and Certifications

Each contractor shall familiarize themselves with all of the RFP attachment forms, including the required Federal and State certification forms and all bid documents as the bidder will be held responsible to comply fully therewith.

The following required forms **MUST** be signed, dated, and returned with each proposal:

1. Buy America
2. Integrity Certification, Debarment-Suspension
3. New Restrictions on Lobbying
4. Schedule C – Contractors Schedule of DBE Participation
5. Schedule D – Certificate of Compliance with DBE Requirements
6. Schedule F – Letter of Intent to Perform as a Subcontractor
7. Responsible Contractor Verification Form
8. STATE OF MINNESOTA Affirmative Action Certification over \$100,000

Copies of the above referenced forms can be found at the following web address: <https://www.ridemetrobus.com/business-metro-bus/>

XV. Davis-Bacon

Prevailing wage rates must be determined using the following website: <https://sam.gov/content/wage-determinations> for Region 5 in Benton County, MN.

(1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the

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

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

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

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

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

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

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

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

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

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they

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

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

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

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

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as

the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

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

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

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

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

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

XVI. Contracting Ethics

1. Gratuities

It is a breach of contracting ethics for any person to offer, give, or agree to give any Metro Bus employee or former employee, or for any Metro Bus

employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

2. Kickbacks

It is a breach of contracting ethics for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

3. Contingent Fees

It is a breach of contracting ethics for a person to be retained, or to retain a person, to solicit or secure a Metro Bus contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

4. Collusion

It is a breach of contracting ethics for a person to collude, conspire, or agree with other persons, firms, or corporations to submit a sham proposal, to refrain from proposal, to fix prices, costs, or profits, or to secure any other advantage against Metro Bus.

5. Certification

Contractors are cognizant of these requirements and thereby certify that it has not breached any of the foregoing contracting ethics. No contractor shall sign the proposal without reviewing all material facts. False or fraudulent certifications shall subject the contractor to all penalties and remedies provided by law, and to liability for Metro Bus costs and fees, including attorney's fees, in enforcing this provision.

6. Specification Documents

These documents shall not include any exclusionary or discriminatory provisions that are not needed to meet the requirements of Metro Bus.

XVII. FTA Third-Party Clauses

REQUIRED CLAUSES AND CONTRACT PROVISIONS

The services identified in these specifications are to be purchased with the assistance of a grant from the Federal Government under the Urban Mass Transportation Act of 1964, as amended hereinafter referred to as Federal Transit Administration (FTA). The successful Contractor will be required to comply with all terms and conditions prescribed for third party contracts in grant contracts between the United States of America and the St. Cloud Metropolitan Transit Commission (DBA – Metro Bus).

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 Metro Bus and the FTA, as they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to comply shall constitute a material breach of this contract.

ACCESS TO RECORDS AND REPORTS

Applicability to Contracts

Under 49 U.S.C. § 5325(g), FTA has the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

a. Record Retention. The Contractor will retain and will require its subcontractor of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts, and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

c. Access to Records. The Contractor agrees to provide sufficient access to the FTA and its Contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its Contractors access to the sites of performance under this contract as reasonably may be required.

BUY AMERICA

Clause

The Buy America regulation at 49 C.F.R. § 661.13 requires notification of the Buy America requirements in a recipients' bid or request for proposal for FTA funded contracts.

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

The [bidder or proposer] must submit to Metro Bus the appropriate Buy America certification as part of their proposal. Bids or proposals that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

Clause

The Contractor agrees:

- 1) It will not use any violating facilities;
- 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- 3) It will report violations of use of prohibited facilities to FTA; and
- 4) It will comply with all requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

Violations will be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY

Flow Down

Civil Rights requirements flow down to all third party Contractors and their contracts at every tier.

Clause

Metro Bus is an Equal Opportunity Employer. As such, Metro Bus agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, Metro Bus agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. Nondiscrimination. In accordance with 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, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., 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. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated fairly during employment, without regard to their race,

color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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.

3. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, 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.

4. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §

4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

DISADVANTAGED BUSINESS ENTERPRISES (DBE)

Overview

It is the policy of Metro Bus and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts. Metro Bus's DBE Program and DBE Goal can be found on our website at ridemetrobus.com.

Clause

For all DOT-assisted contracts, each third party Contractor must include assurances that they will comply with the DBE program requirements of 49 C.F.R.

part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

The Contractor, subrecipient or subcontractor 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 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the Contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Further, all prime Contractors agree to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment Metro Bus makes to the prime Contractor. (49 C.F.R. § 26.29(a)).

Finally, for contracts with defined DBE contract goals, the Contractor shall utilize the specific DBEs listed unless the Contractor obtains Metro Bus's written consent; and that, unless Metro Bus's consent is provided, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

For the purpose of this Contract, Metro Bus will accept only DBE's who are:

1. Certified, at the time of bid opening or proposal evaluation, by the [certifying agency or the Unified Certification Program (UCP).

PROMPT PAYMENT

1. The Contractor is required to pay all Subcontractors for all work that the Subcontractor has satisfactorily completed, no later than thirty (30) business days after the Contractor has received payment from Metro Bus.
2. In addition, all retainage amounts must be paid by the Contractor to the Subcontractor no later than fifteen (15) business days after the Subcontractor

has, in the opinion of Metro Bus, satisfactorily completed its portion of the work.

3. A delay in, or postponement of, payment to the Subcontractor requires good cause and prior written approval of Metro Bus.
4. The Contractor is required to include, in each subcontract, a clause requiring the use of appropriate arbitration mechanisms to resolve all payment disputes.
5. Metro Bus will not pay the Contractor for work performed unless and until the contractor ensures that the Subcontractors have been promptly paid for the work they have performed under all previous payment requests, as evidenced by the Contractor's sworn statement that it has complied with the prompt payment requirements.
6. Failure to comply with these prompt payment requirements is a breach of the Contract, which may lead to any remedies permitted under law, including, but not limited to, Contractor debarment.

EMPLOYEE PROTECTIONS

Prevailing Wage and Anti-Kickbacks

For all prime construction, alteration, or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

Contract Work Hours and Safety Standards For Construction

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be

responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

Contract Work Hours and Safety Standards For Awards Not Involving Construction

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The Contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

ADA ACCESS

The Contractor agrees that all work performed will be in compliance with all applicable laws pertaining to access. The Contractor also agrees to comply with all applicable provisions of the ADA Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals

with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable.

ENERGY CONSERVATION

Clause

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.

SAFE OPERATION OF MOTOR VEHICLES

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles company rented vehicles, or personally operated vehicles. The terms "company-owned vehicles" and "company-leased vehicles" refer to vehicles owned or leased either by the Contractor or Metro Bus.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer and driving a vehicle the driver owns or rents, a vehicle the Contractor owns, leases, or rents, or a privately-owned vehicle on official business in connection with the work performed under this agreement.

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

Clause

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible

to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

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 Metro Bus. If it is later determined by Metro Bus that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Metro Bus, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid 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.

LOBBYING RESTRICTIONS

Clause

The Contractor certifies, to the best of its knowledge and belief, that no Federal appropriated funds have been paid or will be paid by or on behalf of the Contractor for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification or any federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting

to influence 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 a Federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor 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 Metro Bus has relied to enter this Contract. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. section 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.

By its signature on this Contract, the Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Contractor understands and agrees that the provisions of 31 U.S.C. Section 3801, et seq., apply to this certification and disclosure, if any.

NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS (ITS) ARCHITECTURE AND STANDARDS

To the extent applicable, the Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23U.S.C. §section 502 note, and to comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and other Federal requirements that may be issued.

TELECOMMUNICATIONS CERTIFICATION

The Contractor certifies through the signing of this contract that, consistent with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (Aug. 13, 2018), the Contractor does not and will not use any equipment, system, or service that uses "covered telecommunications equipment or services" (as that term is defined in Section 889 of the Act) as a substantial or essential component of any system or as critical technology as part

of any system. The Contractor will include this certification as a flow down clause in any subcontract related to this Contract.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Clause

Metro Bus and the 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 Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

Clause

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.

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. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

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.

RECYCLED PRODUCTS

Clause

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

TERMINATION

Termination for Convenience (General Provisions)

Metro Bus or the Contractor may terminate this contract, in whole or in part, at any time by thirty (30) day written notice to either party when it is in Metro Bus's or the Contractor's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Metro Bus to be paid. If the Contractor has any property in its possession belonging to Metro Bus, the Contractor will account for the same, and dispose of it in the manner Metro Bus directs.

Termination for Default (Breach or Cause) (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services and the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provision of the contract, Metro Bus may terminate this contract for default. Termination shall be effected by serving an advanced thirty (30) day written Notice of Termination on the Contractor setting forth the manner

in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

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

Opportunity to Cure (General Provision)

Metro Bus, 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 any other appropriate conditions will be specified.

If the Contractor fails to remedy to Metro Bus'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 Metro Bus setting forth the nature of said breach or default, Metro Bus shall have the right to terminate the contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude Metro Bus from also pursuing all available remedies against the Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach

In the event Metro Bus elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Metro Bus shall not limit Metro Bus's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Metro Bus may terminate this contract for default. Metro Bus shall terminate by delivering to the Contractor a thirty (30) day Notice of Termination specifying the nature of the

default. In this event, Metro Bus may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to Metro Bus resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by Metro Bus in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if:

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include acts of God, acts of AGENCY, acts of another contractor in the performance of a contract with Metro Bus, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within [10] days from the beginning of any delay, notifies Metro Bus in writing of the causes of delay. If, in the judgment of Metro Bus, the delay is excusable, the time for completing the work shall be extended. The judgment of Metro Bus shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Metro Bus.

Termination for Convenience or Default (Architect and Engineering)

Metro Bus may terminate this contract in whole or in part, for Metro Bus's convenience or because of the failure of the Contractor to fulfill the contract obligations. Metro Bus shall terminate by delivering to the Contractor a thirty (30) day Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to Metro Bus's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Metro Bus has a

royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of Metro Bus, Metro Bus's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, Metro Bus may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by Metro Bus.

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 Metro Bus.

VIOLATION AND BREACH OF CONTRACT

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 Metro Bus or the 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.

Substantial failure of the Contractor to complete the project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, Metro Bus will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before Metro Bus takes action contemplated herein, Metro Bus will provide the Contractor with sixty (60) days written notice that Metro Bus considers that such a breach has occurred and will provide the Contractor thirty (30) days to respond and to take necessary corrective action.

Rights and Remedies of Metro Bus

Metro Bus shall have the following rights in the event that Metro Bus deems the Contractor is guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

For purposes of this Contract, breach shall include, but not be limited to, failure to proceed with work, failure to perform, failure to supervise, failure to comply with Metro Bus written directives in accordance with the contract.

Rights and Remedies of the Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by Metro Bus, the Contractor expressly agrees that no default, act or omission of Metro Bus shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless Metro Bus directs Contractor to do so) or to suspend or abandon performance.

DISPUTES

Metro Bus and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within Metro Bus and the Contractor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious, or grossly erroneous manner.

Performance during Dispute

Unless otherwise directed by Metro Bus, the 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 its employees, agents, or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within ten (10) days after the first observance of such injury or damage. In addition, the Contractor agrees to notify Metro Bus's project manager within 24 hours either verbally or in writing of any injury or damage that occurs relating to the project.

INCORPORATION OF STANDARD 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 the most current FTA Circular 4220, 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 an act, fail to perform an act, or refuse to comply with any Metro Bus requests which would cause Metro Bus to be in violation of the FTA terms and conditions.