

EXHIBIT B CONTRACT

WITNESSETH:

THIS AGREEMENT, made and entered into this **TBD** by and between the **St. Cloud Metropolitan Transit Commission of St. Cloud, MN**, whose principal place of business is located at 665 Franklin Avenue, N.E. St. Cloud, MN 56304, Party of the First Part (hereinafter termed "Metro Bus") and **TBD**, whose principal place of business is located at **TBD** Party of the Second Part (hereinafter termed "Contractor").

WHEREAS, Metro Bus needs to acquire certain services hereinafter fully described and set forth in the REQUEST FOR PROPOSAL (RFP), and any Addendum, if released, attached hereto and incorporated herein as Addendum A, in connection with an undertaking known as Vending Machine Services (hereinafter called the "PROJECT");

WHEREAS, Contractor, pursuant to Metro Bus's Request for Proposal, has submitted an acceptable BID PROPOSAL dated **TBD**, attached hereto and incorporated herein as Exhibit C, to perform those services described in the Request for Proposal.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Contractor shall perform those services described in the REQUEST FOR PROPOSAL and CONTRACTOR PROPOSAL, which are attached hereto and made a part of this Contract by reference as Exhibit A and Exhibit C, respectively, hereinafter called the "Work."

2. **THE CONTRACT**

- 2.1 This Contract, along with Metro Bus's Request for Proposal, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 2.2 Order of Precedence. Contract documents consist of: (i) this Contract; (Exhibit B) (ii) Metro Bus's Request for Proposal and any Addendum if released (the "RFP") (see Exhibit A); (iii) All Documents submitted by Contractor in their Bid Proposal dated **TBD** _____ (the "Proposal") (see Exhibit C) The Order of Precedence of the Documents shall be (First) this Agreement; (Second) the RFP; (Third) the Proposal. Written modifications and amendments signed by both parties will take precedence over documents listed above. Whenever any conflict appears in any portions of the Agreement, it shall be resolved by application of the Order of Precedence.

3. **CONTRACT TERM**

- 3.1 Contractor shall commence performance of the contracted services for a five (5) year period beginning **TBD** and ending **TBD**.

4. **INDEMNIFICATION**

- 4.1 Contractor agrees to defend, indemnify and hold harmless Metro Bus, its board members, officers, agents, and employees from and against any and all claims, judgments and awards, including court costs and reasonable counsel fees, (hereinafter collectively referred to as "Damages") arising out of any claim, suit or action at law, in equity, or otherwise, of any kind or nature whatsoever, which may be brought against Metro Bus and/or any or all of the aforementioned on account of any actual or alleged loss to property or injury to any person or persons (including death), including Contractor's and its subcontractors' officers, agents, or employees, to the extent such Damages result from the negligent or willful acts or omissions of the Contractor or its subcontractors and/or their officers, agents, servants or employees in the performance of its obligations hereunder either during the term of this Contract, or upon or after completion of the Project. Contractor shall not be liable to Metro Bus for damages for loss of revenue, cost of money or capital, or loss of goodwill. Metro Bus will provide prompt written notice within sixty (60) days of obtaining knowledge of a claim subject to this indemnification and make available all information and assistance that the Contractor may reasonably request.

5. **INSURANCE**

- 5.1 Contractor shall procure and maintain, at its own cost and expense, during the entire period of the Contract or as otherwise stated, the types of insurance specified below. Within ten (10) days after receipt from Metro Bus of the notice of award of the Contract, the Contractor shall submit to Metro Bus a Certificate of Insurance giving evidence of the required coverage. All insurance shall be procured from insurers authorized to do business in the jurisdiction where operations are to be performed. In no event shall the Notice to Proceed be issued until the required Certificate of Insurance has been submitted and reviewed by Metro Bus. The insurance shall provide for thirty (30) days prior written notice to be given to Metro Bus in the event coverage is substantially changed, canceled or non-renewed. In all cases Metro Bus shall be named as an additional insured with respect to the services to be performed under this contract and the policies shall contain a waiver of subrogation against Metro Bus, its employees or agents.
- 5.1.1 Worker's Compensation Insurance - A policy complying with the requirements of the statutes of the jurisdiction(s) in which work will be performed, covering all employees.

- 5.1.2 General Liability Insurance - Policies issued to and covering liability imposed upon the Contractor with respect to all work to be performed and all obligations assumed by the Contractor, under the terms of this Agreement. General Liability Insurance with the limits of liability of not less than \$2 million general aggregate and \$1 million per occurrence for bodily injury, personal injury and property damage; Excess or Umbrella Liability with limits of \$2,000,000 general aggregate and \$1,000,000 each occurrence
- 5.1.3 Automobile Liability Insurance - A policy issued to and covering the liability of the Contractor arising out of the use of all owned, non-owned, hired, rented or leased vehicles which bear, or are required to bear, license plates according to the laws of the jurisdiction in which they are operated. Automobile Liability Insurance with the limits of liability of not less than \$1 million per occurrence, combined single limit, for bodily injury and property damage liability.
- 5.1.4 All insurances specified shall remain in force throughout this Contract or as otherwise specified. Failure to maintain such insurance in force as stipulated shall constitute a breach of this Contract.

6. **PAYMENT**

- 6.1 In consideration for services rendered hereunder, Contractor shall pay to Metro Bus in accordance with the terms of the Contract all sums due and owing.
- 6.2 Payment will be made on a monthly basis upon submission of detailed sales reports, check payment, or ACH transfer by Contractor as agreed to by both parties.

7. **ASSIGNMENT OF RIGHTS: DELEGATION OF DUTIES**

- 7.1 Contractor shall not sell, assign, transfer, or dispose of any interests in this Contract without the prior written consent of Metro Bus thereto. Metro Bus shall not be obligated to give such consent.
- 7.2 Contractor shall not delegate any duty to be performed under this Contract other than to its employees without prior written consent of Metro Bus thereto. Metro Bus shall not unreasonably withhold its consent to such an assignment.
- 7.3 Any attempt by Contractor to assign or delegate its contract rights, except as set out above, shall give Metro Bus the right to terminate this contract with no further obligation to Contractor or anyone to whom the Contractor has attempted to assign, transfer, or delegate rights or obligations under this Contract.

8. **CHANGES**

- 8.1 Any change in this Contract shall be submitted to Metro Bus for its prior approval and, if approved, Metro Bus will make the change by a Contract Change Order to be executed by both parties. Oral Change Orders are not permitted. The Contractor shall be liable for all costs resulting from and/or satisfactorily correcting a Scope of Work change not proven ordered by written modification to the Contract.
- 8.2 Metro Bus may at any time make changes within the general scope of this Contract. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work, whether changed or not changed by any such order, an equitable adjustment shall be made in the Contract price, and the Contract shall be modified in writing accordingly.
- 8.3 Within five (5) calendar days after receipt of the Written Change Order to modify the Contract, the Contractor shall provide Metro Bus a detailed cost proposal for the work to be performed. This proposal shall be accepted or modified by negotiations between the Contractor and Metro Bus. At that time, a modification shall be executed in writing by both parties. Disagreements that cannot be resolved within negotiations shall be resolved in accordance with Section 16 (Disputes). Regardless of any disputes the Contractor shall proceed with the work ordered.
- 8.4 In the event any governmental entity adopts by statute, regulation, decree, dictate or any other mandatory matter that changes, decreases, increases or creates a new financial obligation and such statute, regulation, decree or dictate becomes effective after the date for receipt of proposal, an appropriate price change may be negotiated and resolved in the manner described above in this Section. Such price adjustments may be audited where required.

9. **TERMINATION FOR CONVENIENCE**

- 9.1 This Contract may be terminated by Metro Bus in whole, or in part, whenever Metro Bus at its sole and absolute discretion, determines that such termination is in the best interest of Metro Bus. Any such termination shall be by a Notice of Termination and specify the extent to which performance of work is terminated, and the date which such termination becomes effective. After receipt of a Notice of Termination, and except as otherwise directed by Metro Bus, the Contractor shall: stop work on the date and to the extent specified in the Notice of Termination; take no further action except as may be necessary for completion of such portion of the work that is not terminated; and terminate all orders and/or subcontracts to the extent that they relate to the work terminated. The Contractor shall be paid its costs, including contract close-out cost and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Metro Bus. If the Contractor has any property in its

possession belonging to Metro Bus, the Contractor will account for same and dispose of it in a manner Metro Bus directs.

10. **TERMINATION FOR DEFAULT**

- 10.1 Metro Bus may, by written notice of default to the Contractor, terminate the Contract in whole or in part. If within ten (10) days (or such longer period as Metro Bus may authorize in writing) of receipt of a notice of default, the Contractor fails to cure such default, the Contract shall be deemed terminated subject to the other terms, conditions and provisions of this Contract. If the Contract is terminated in whole or in part for default, Metro Bus may procure, upon such terms and in such a manner that Metro Bus may deem appropriate, services similar to those being terminated. The Contractor shall be liable to Metro Bus for any excess costs for such service, and shall continue the performance of this Contract to the extent not terminated under the provisions of this section.
- 10.2 If, after Notice of Termination, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued pursuant to Section 11.
- 10.3 The rights and remedies of Metro Bus provided in this clause are not exclusive and are in addition to any other rights and remedies provided by law or this Contract.

11. **TAX EXEMPTION**

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

12. **PERMITS**

- 12.1 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.

13. **DISPUTES**

- 13.1 Disputes arising in the performance of this Contract which are not covered by agreement of the parties shall be decided in writing by the authorized representative of Metro Bus. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to Metro Bus's Chief Executive Officer (CEO). In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The

decision of Metro Bus's CEO shall be binding upon the Contractor and the Contractor shall abide by the decision.

14. **COMMUNICATIONS**

14.1 All communications and notices shall be in writing and shall be made via email within four (4) business days, to the officers(s) or employee(s) of Metro Bus and of the Contractor designated below to receive such communications and notices. Telephone calls may be used to expedite communications and notices but shall not be official communications and notices unless confirmed in writing.

14.2 Communicationa and Notices to Metro Bus shall be addressed to:

Name: Gary Korneck, Procurement Manager
Address: St. Cloud Metropolitan Transit Commission
665 Franklin Avenue N.E.
St. Cloud, MN 56304
Phone: 320-529-4488
Email: gkorneck@stcloudmtc.com

14.3 Notices to Contractor shall be addressed to:

Name:
Address:
Phone:
Email:

14.4 Either Metro Bus or Contractor may change its address of record for receipt of official notice by giving the other written notice of such change and any necessary mailing instructions.

15. **COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS**

15.1 Contractor shall comply with all applicable laws, ordinances, and regulations of Federal, State and Local governments in effect during the term of this Contract. This Contract shall be construed in accordance with and governed by the laws as set forth by the sate of Minnesota.

16.1 **GOVERNING LAW**

16.1 Unless otherwise specified, this Contract shall be governed by the applicable laws of the City of St. Cloud and State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in the court located in Benton

County, Minnesota. However, litigation in Federal Courts involving the Parties shall be in the appropriate federal court in the State of Minnesota.

17. **MN GOVERNMENT DATA PRACTICES ACT**

17.1 Contractor must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by Metro Bus under this contract, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Contractor under this contract. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by the Contractor. If Contractor receives a request to release data referred to in this clause, Contractor must immediately notify Metro Bus and consult with the Metro Bus as to how the Contractor should respond to the request. Contractor's response to the request must comply with applicable law.

18. **INDEPENDENT CONTRACTOR**

18.1 It is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the Parties hereto or of constituting the Contractor as an agent, representative or employee of Metro Bus for any purpose or in any manner whatsoever. Contractor and any officers or employees thereof shall not be considered an employee of Metro Bus, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Contractor arising out of employment or alleged employment, including without limitation, claims of discrimination against Metro Bus, its officers, agents, contractors and employees shall in no way be the responsibility of Metro Bus. Contractor and its officers, agents, contractors and employees shall not be entitled to any compensation rights or benefits of any hospital care, sick leave and vacation pay, Worker's Compensation, Unemployment Insurance, disability pay or severance pay. Furthermore, Metro Bus shall not in any way, be responsible to defend, indemnify or save harmless Contractor from liability or judgments arising out of the intentional or negligent acts or omissions of Contractor or its agents, representatives or employees while performing the work specified by this Contract.

19. **NOTICE OF FEDERAL AND STATE CONTRACT REQUIREMENTS**

19.1 Contractor shall at all times comply with all applicable regulations, policies, procedures and directives attached hereto and made a part hereof. Contractor's failure to comply shall constitute a material breach of this contract.

20. **ADDITIONAL CLAIMS**

- 20.1 Contractor shall make no claims and Metro Bus, shall not be liable for payment, or any other concession because of the Contractor's misinterpretation or misunderstanding of the Contract, or of any failure to fully acquaint itself with any of the conditions relating thereto.
- 20.2 Contractor understands and agrees that any costs incurred prior to the contract effective start date, even though incurred in the performance of services to be rendered under the Contract, are not allowable costs and Contractor will not be reimbursed by Metro Bus for any such costs.

21. **ADDITIONAL EXHIBITS**

- 21.1 Contractor shall abide by all certifications and requirements attached hereto and made part hereof for all work performed in connection with this Contract.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the undersigned duly authorized officers, under seal, as of the day and the year first above written.

St. Cloud Metropolitan Transit Commission

Contractor:

Name

Signature

Title

Date

Name

Signature

Title

Date

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