



**RIO METRO**  
REGIONAL TRANSIT DISTRICT

# **Rio Metro Regional Transit District**

## REQUEST FOR BIDS

### Wheel Truing Machine

Issued: October 12, 2018

Procurement No.: RFB #2019-03

Bid Due Date/Time: November 13, 2018, 2:00 PM (MST)

Bid opening to be on November 13, 2018 at 3:00 p.m. at

MRCOG Conference Room

809 Copper Ave. NW

Albuquerque, NM 87102

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## **1.0 INTRODUCTION**

The Rio Metro Transit District (RMTD) is issuing this Invitation for Bids (IFB) for the following goods or services:

A portable wheel truing machine to support its fleet of nine (9) locomotives and twenty-two (22) standard gauge passenger rail cars. The machine will be used in various locations but primarily at the railyard in Albuquerque, New Mexico.

RMTD will receive sealed offers for the goods or services described in this request at:

Rio Metro Regional Transit District (RMTD) office, 809 Copper Avenue, NW, Albuquerque, NM 87102 for the project described herein no later than 2:00 p.m. local time, November 13, 2018. Delivery of bids is the sole responsibility of the Bidder. Hand carried offers will be received at the Rio Metro Regional Transit District Office 809 Copper Ave. NW Albuquerque, NM 87102.

This procurement may be funded in part through federal funds. As such, applicable federal laws, regulations and guidelines shall be adhered to by the Offerors as part of the contract.

### **NOTE: USE OF THE MAIL SERVICE IS AT YOUR OWN RISK FOR PROPER DELIVERY.**

Bids will be opened on November 13, 2018 at 3:00 p.m. at Rio Metro Regional Transit District Office 809 Copper Ave. NW, Albuquerque, NM 87102.

The bids will be considered by the RMTD following the opening of the bids, and an award of the Contract, if made, will be within thirty (30) days after the Bid Opening.

Instructions to Bidders, bidding proposal, and other Contract Documents, Specifications and Terms and Conditions to be used in connection with the submission of bids are available at the RMTD office or by accessing the following websites:

<http://www.mrcog-nm.gov>  
<http://www.riometro.org>

The Bidder's attention is specifically directed to the Instructions to Bidders, and the Specifications and Terms and Conditions contained herein.

**Pre-Bid Conference:** No Pre-Bid Conference will be held in conjunction with this procurement.

## **2.0 INSTRUCTIONS TO BIDDERS**

### **2.1. Definitions**

As used in this request the following definitions apply:

"RMTD" means the Rio Metro Transit District, the administrative entity for the Rail Runner.

"Company" means Herzog Transit Services, Inc., the operating and maintenance entity for the Rail

Runner.

"Contract" means any agreement for the procurement of goods, services, construction or concessions.

"Contractor" means a Bidder who has been awarded a contract.

"Bidder" means a business that submits a response to a competitive solicitation.

"Purchase Order" means a document issued by the Purchasing Office directing the Contractor to deliver goods, services or construction.

"Purchasing Office" means the Purchasing Department of the RMTD.

"Purchasing Officer" means the person charged with the responsibility of administering the Purchasing Office.

"Request" means all documents, including those attached, or incorporated by reference, issued by the Purchasing Office for soliciting offers to provide goods, services, or construction.

"Responsible Offeror" means a business which has the capability in all respects to perform fully contract requirements set out in the competitive solicitation, and the integrity and reliability which will assure good faith performance, and who has not violated or attempted to violate any provisions of law or ethical conduct. Factors which may be considered in determining the Offeror's capability to perform, among others, are its financial resources, production or service facilities, service reputation, and experience.

"Responsive Offer" means a written offer to furnish goods, services or construction in conformity with standards, specifications, delivery terms and conditions, and all other requirements established in a competitive solicitation.

## 2.2 Time and Place of Receiving and Opening of Bids

This information is found in the "Advertisement for Bids." Bids received after the specified time will be returned to the Bidder unopened.

## 2.3 Clarification of Contract Documents

2.3.1 In the event a Bidder discovers a conflict or inconsistency between any part of the bid documents, Contract Documents or an omission from the Contract Documents prior to submitting a Bid, the Bidder shall identify the conflict, inconsistency or omission, and immediately submit it in accordance with 2.3.2 below.

2.3.2 Unless otherwise designated in the Contract Documents, any and all inquiries concerning the RFB process including technical questions, Affirmative Action requirements, and bidding requirements must be submitted in writing to RMTD, to the attention of Kim Monjaras, via email to [kmonjaras@mrcog-nm.gov](mailto:kmonjaras@mrcog-nm.gov); via facsimile at (505) 247-1753.

2.3.3 Requests for Bids (RFB) including contract interpretation or reports of ambiguities, conflicts, errors or omissions, shall be submitted, in writing and shall be delivered to the RMTD five (5) days

before the published bid opening. The RMTD reserves the right to receive, respond, or "not" respond to any RFB received after the cutoff date. At the RMTD's sole discretion, any clarification or response to an RFB issued after the RFB cutoff date will allow sufficient time between the clarification or response and the Bid Opening date. No oral clarification or interpretations will be made to any bidder as to the meaning of the Contract Documents. Clarifications or interpretations by RMTD will be in the form of a written addenda. Addendum's will be consecutively numbered in the order they are issued. Depending on the number and type of inquires received; the RMTD will issue timely Addenda in Order to maintain the procurement schedule. Bidders shall not rely upon any oral statements or conversations they may have with RMTD employees, agents, or representatives regarding the Contract Documents.

#### 2. 4. Addenda

Each Addendum shall be a part of the Contract Documents to the same extent as though contained in the original documents and itemized listings thereof and all Bidders shall be bound by such Addenda. On the Bid Proposal, each Bidder shall acknowledge receipt of each Addendum. Each Bidder shall ascertain, prior to submitting the bid, that the Bidder has received all Addenda issued, and shall acknowledge receipt of each Addendum on his Bid Proposal.

#### 2.5 Examination of Contract Documents and Sites

Before submitting a Bid Proposal, each Bidder must:

- Examine the Contract Documents thoroughly.
- Visit the sites to become familiar with local conditions that may affect, in any manner, the performance of the work and employment of labor thereon.
- Be familiar with federal, state, and local laws, ordinances, rules and regulations affecting performance of the work and employment of labor thereon.
- Be familiar with the regulations governing the award and rejection of bids of the Rio Metro Regional Transit District.
- Carefully correlate observations with the requirements of the Contract Documents.

#### 2.6 Submission of Bid Proposals

Bid Proposals are to be made on the printed form, which is part of the Contract Documents. Prices shall be shown in numerals in ink, printed or typed in the space provided. Alterations to bid amounts by erasures or by interlineations shall be initialed by the signer of the Bid Proposal. All Bid Proposals shall be submitted and received with the understanding that the Bidder accepts the Specifications and Terms and Conditions contained herein. Each Bid Proposal shall be placed in a sealed envelope marked "Bid Proposal" with the project title and name and address of the Bidder and addressed to:

Kim Monjaras  
Procurement Officer  
809 Copper N.W.  
Albuquerque, NM 87102  
Phone: 505-247-1750, Fax: 505-247-1753

And submitted as provided in the Invitation for Bids. Delivery of bids is the sole responsibility of the Bidder. Bids received after the time specified in the Advertisement for Bids shall not be considered and shall be returned to Bidder unopened.

## 2.7 Modification and Withdrawal of Bid Proposals

Bid Proposals may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid Proposal must be executed) and delivered to the place where Bid Proposals are to be submitted at any time prior to the scheduled closing time for the receipt of bids. Bids shall be unconditionally accepted for consideration of award without alteration or correction except as specified below.

2.7.1 RMTD may allow a withdrawal of a bid because of an inadvertent, non-judgmental mistake in the bid, within the limitations below.

2.7.2 RMTD may require the apparent low Bidder to confirm its bid when obvious errors regarding the amount of the bid are apparent on the face of the bid or the bid amount is unreasonably lower than other bids submitted.

2.7.3 RMTD may allow a Bidder to withdraw a bid if a mistake is clearly evident on the face of the Bid Document or the intended correct bid is not evident and the low Bidder submits evidence which clearly and convincingly demonstrates that a mistake was made which:

- Relates to a material and fundamental feature of the bid
- Is of such a grave consequence that enforcement would be unconscionable
- The Bidder gave prompt notice of the mistake prior to award of Bid
- The Bidder acted in good faith
- The mistakes did not come about as a result of the violation of a positive legal duty or from gross negligence and RMTD's status has not been changed, or if changed, RMTD suffers no serious hardship or prejudice other than loss of the bargain.

## 2.8 Opening of Bids

Bidders are invited to be present at the Bid Opening. The person reading the bids will utilize the following procedure prior to reading the amount of the bid:

- A. Read name of Bidder and address.
- B. Verify Bidder's Acknowledgment of Addenda.
- C. Verify Bidder's execution of the following certifications:
  1. Certification Regarding Affirmative Action/Equal Employment Opportunity and Nondiscrimination (AHRO Form CC-2)
  2. Certification of Restrictions on Lobbying
  3. Certification Regarding Debarment, Suspension
  4. Campaign Contribution Disclosure
- D. Determine whether other requirements are met. If any of the above requirements have not been met, the bid shall be read after the deficiency or deficiencies have been announced and noted.

## 2.9 Bid Consideration Time

RMTD will require time to study and canvass each Bid Proposal and to determine which Bid Proposal it deems to be the lowest responsible bid. In consideration thereof, no Bid Proposal may be withdrawn after the scheduled closing time for receipt of bids for the period of time specified in the Bid Proposal.

## 2.10 Qualification of Bidders

RMTD may make such investigations it deems necessary to determine the ability of the Bidder to perform the work, and the Bidder shall furnish to RMTD all such information and data for this purpose as RMTD may request. RMTD reserves the right to reject any bid if the evidence submitted by, or investigation of, such Bidder fails to satisfy the RMTD that such Bidder is a responsible bidder as defined in Section 13-1-82 NMSA 1978.

## 2.11 Subcontractors, Other Persons, Organizations

2.11.1 If the Contract Documents require the identity of certain Subcontractors and other persons and organizations to be submitted to RMTD in advance of the Notice of Award, the apparent successful Bidder, and any other Bidder so requested, will within seven (7) days after the day of the Bid Opening, submit to RMTD a list of all Subcontractors and other persons and organizations (including those who are to furnish the principal items of material and equipment) proposed for those portions of the work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information as to similar projects and other evidence of qualification for each such subcontractor, person and organization if requested by RMTD. If RMTD, after due investigation, has reasonable objection to any proposed subcontractor, other person, or organization, RMTD may, before giving the Notice of Award, request the apparent successful Bidder to submit an acceptable substitute without an increase in his bid amount. If the apparent successful Bidder declines to make any such substitution, he will not thereby sacrifice his Bid Security. Any Subcontractor, other person or organization so listed and to whom RMTD does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to RMTD.

2.11.2 Some Public Works Projects may be subject to the provisions of the "Subcontractors Fair Practices Act" (Chapter 18, Laws 1988; Sections 13-4-31 through 13-4-43 NMSA 1978). When this Act is applicable, each Bidder shall comply with the requirements set forth in the Special Provisions of these Bidding Documents.

## 2.12 Award of Contract

2.12.1 RMTD reserves the right to reject any and all bids and waive any and all informalities and irregularities and the right to disregard all nonconforming or conditional bids or counter bid. RMTD reserves the right to cancel the opportunity for submission of bids. RMTD further reserves the right to reject for RMTD's convenience all bids submitted. Bidders shall not be entitled to recover damages of any nature against RMTD for RMTD's rejection of all bids, for cause or for convenience.

2.12.2 If a Contract is awarded, it will be awarded to the lowest responsible Bidder

In the event that two or more submitted bids are identical in price and are the low bid, RMTD may:

- If the identical low bids are submitted by a resident business and a non-resident business, award to the Resident Contractor;
- Award by lottery to one of the identical low Bidders,
- Reject all bids and re-solicit bids.

2.12.3 RMTD reserves the right to make multiple awards as a result of this Invitation, if doing so may be advantageous to the RMTD.



2.12.4 If the Contract is to be awarded, RMTD will give the apparent successful Bidder a Notice of Award within the period specified in the Bid Proposal unless the Bidder and RMTD agree to extend the period specified.

### 2.13 Insurance Certificates

Simultaneously with delivery of the executed Contract, the Contractor shall furnish certificates of insurance as required by the Bidding Documents.

### 2.14 Guarantee Provisions

The Contractor shall guarantee the work as provided in the Contract Documents.

### 2.15 Substitutions

RMTD will not allow for any substitutions of process or types of equipment or kinds of material to be provided.

### 2.16 Collusion

No Bidder shall be interested in more than one bid. Collusion among Bidders or the submission of more than one bid under different names by any firm or individual shall be cause for rejection of all bids without consideration.

### 2.17 Pre-Bid Conference

No Pre-Bid conference will be conducted as part of this procurement.

### 2.18 Affirmative Action Program/Civil Rights Compliance

Bidder shall comply with the Affirmative Action/Equal Employment Opportunity and Nondiscrimination requirements as provided in Appendix 6.

### 2.19 Anti-Lobbying

Bidder must furnish Anti-Lobbying Certification and Disclosure of Lobbying Activities, if applicable, as provided in Appendix 4.

### 2.20 Debarred Contractors

The bid of a Contractor that has been debarred pursuant to the procedures set forth in the Regulations Governing the Award and Rejection of Bids and the Debarment of Contractors for Public Works Projects of the State of New Mexico or its legal entities shall not be considered for award of Contract on a Public Works Project during the period for which it is debarred. Contractor must furnish Debarment Certification as provided in Appendix 5.

### 2.21 Campaign Contributions

Contractor must furnish Campaign Contribution Disclosure as provided in Appendix 7.

## 2.22 Ethical Conduct

2.22.1 By submitting its bid in response to this Invitation, the Bidder certifies that:

It has not offered, given or agreed to give any RMTD employee, a gratuity or offer of employment to influence the preparation of or recommendation of award of this Bid;

2.22.2 It has not retained a person to solicit or secure an RMTD contract for a contingent fee;

2.22.3 It has not taken any action in restraint of free competitive bidding in this Bid;

2.22.4 It has not in any way violated the ethical conduct or other provisions of applicable Public Purchasing Provisions;

2.22.5 It currently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with its performance of any contract resulting from this Requestor.

2.22.6 NMAC 1.4.1.16 requires that this Invitation for Bids (IFB) includes the following notice: The state Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for procurement violations. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kick-backs.

## 2.23 Worker's Compensation Insurance - Non-Resident Contractors

Notice is given that in addition to the requirements of the General Conditions of the Contract, Non-Resident Contractors shall comply with the provisions of Sections 52-1-66; 59A-17-10.1; 59A-18-1; and 59A-18-12 NMSA 1978, pertaining to the worker's compensation insurance policy and rate for employers not domiciled in New Mexico.

## 2.24 Submission

All offers must be submitted on the Request for Bid form enclosed. Failure to do so may disqualify your offer. It is the responsibility of the Bidder to submit sufficient additional information to allow for a thorough evaluation of the offer submitted.

## 2.25 Delivery Time

Delivery time stated in the specifications shall apply. Deviations by the Bidder shall be stated on the Bidder Comment Form included herein. Time, if stated in number of days will be consecutive calendar days.

## 2.26 Payment Terms

The Bid Proposal form contained herein provides space for the Bidder to identify the terms that the Bidder is offering. Terms of less than twenty days (20) will not be considered. The discount term, if applicable, shall not begin until the goods, services or construction have been delivered and accepted and the correct invoice is received by RMTD's Account Payable Office.

### **3.0 SPECIAL FEDERAL PROVISIONS**

#### **1. Fly America Requirements**

**49 U.S.C. §40118**  
**41 CFR Part 301-10**

*Fly America Requirements - The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.*

#### **2. Buy America Requirements – N/A**

#### **3. Charter Bus Requirements – N/A**

#### **4. School Bus Requirements – N/A**

#### **5. Cargo Preference Requirements**

**46 U.S.C. 1241**  
**46 CFR Part 381**

*Cargo Preference - Use of United States-Flag Vessels - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.*

#### **5. Seismic Safety Requirements – N/A**

#### **6. Energy Conservation Requirements**

**42 U.S.C. 6321 et seq.**  
**49 CFR Part 18**

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

## **7. Clean Water Requirements**

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

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

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

## **8. Bus Testing – N/A**

## **9. Pre-award and Post Delivery Audits Requirements – N/A**

## **10. Lobbying**

**31 U.S.C. 1352**  
**49 CFR Part 19**  
**49 CFR Part 20**

*APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING – See Appendix 4*

## **11. Access to Records and Reports**

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

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

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project,

defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i) (11).
7. FTA does not require the inclusion of these requirements in subcontracts.

Sources of Authority

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

## **12. Federal Changes**

### **49 CFR Part 18**

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the [Master Agreement](#) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

## **13. Bonding Requirements – N/A**

## **14. CLEAN AIR**

**42 U.S.C. 7401 et seq**

**40 CFR 15.61**

**49 CFR Part 18**

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

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

## **15. Recycled Products**

**42 U.S.C. 6962**

**40 CFR Part 247**

**Executive Order 12873**

Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**16. Davis-Bacon and Copeland Anti-Kickback Acts – N/A**

**17. Contract Work Hours and Safety Standards Act – N/A**

**18. [ RESERVED ]**

**19. No Government Obligation to Third Parties**

1. *The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.*

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

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

**31 U.S.C. 3801 et seq.**

**49 CFR Part 31 18 U.S.C. 1001**

**49 U.S.C. 5307**

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

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

2. *The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.*

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

**21. Termination- see general provisions**

**22. Government-Wide Debarment and Suspension (Nonprocurement)**

**49 CFR Part 29**

**Executive Order 12549**

## **Suspension and Debarment – See Appendix 5**

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

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

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

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

## **23. Privacy Act**

**5 U.S.C. 552**

### **Applicability to Contracts**

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

### **Flow Down**

The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

### **Clause**

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

2. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

## **24. Civil Rights Requirements**

**29 U.S.C. § 623, 42 U.S.C. § 2000**

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

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

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

***Civil Rights - The following requirements apply to the underlying contract: See Appendix 6***

1. *Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the*

Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. *Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:*

1. *Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.*

2. *Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.*

3. *Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.*

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

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## **25. Breaches and Dispute Resolution – see general provisions**

## **26. Patent and Rights in Data – N/A**

## **27. Transit Employee Protective Agreements**

49 U.S.C. § 5310, § 5311, and § 5333  
29 CFR Part 215

### **Applicability to Contracts**

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

### **Flow Down**



These provisions are applicable to all contracts and subcontracts at every tier.

## **Clause**

### ***Transit Employee Protective Provisions.***

*The Contractor agrees to the comply with applicable transit employee protective requirements as follows:*

1. *General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.*

2. *Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.*

*§ 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.*

3. *Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.*

*§ 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.*

2. *The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.*

## **28. Disadvantaged Business Enterprise(DBE)**

### **49 CFR Part 26**

#### **Disadvantaged Business Enterprises**

1. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is **6.08** %. A separate contract goal of **0** % **DBE participation has** been established for this procurement.

2. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as {insert agency name} deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

## **29. [ RESERVED ]**

## **30. Incorporation of Federal Transit Administration (FTA) Terms**

### **FTA Circular 4220.1E**

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

## **40 SPECIFICATIONS AND TERMS AND CONDITIONS**

### **4.1 Scope**

Rio Metro Regional Transit District (RMRTD) is planning to purchase a portable wheel truing machine to support its fleet of nine (9) locomotives and twenty-two (22) standard gauge passenger rail cars. The machine will be used in various locations but primarily at the railyard in Albuquerque, New Mexico.

The rail vehicles consist of MP36PH-3C locomotives manufactured by MotivePower, Inc. in Boise, Idaho between 2005 and 2008. The traction motors are EMD D-78 DC motors with a 40-inch wheel diameter and a 60:17 gear ratio. We have nine spare traction motors used to support the fleet of nine locomotives. The passenger cars are Bombardier bi-level coaches also manufactured between 2005-2008. The cars are equipped with 33-inch diameter wheels with inboard bearings and a brake disc rotor mounted external of the wheel on one side of each axle. Our spare car wheel inventory is 20 complete axles.

The new machine is envisioned to be an automatic portable Computer Numerically Controlled (CNC) lathe machine. The machine will be capable of machining wheels to a 1:20 taper and controlled by a central control panel located a safe distance away from the work. The ability to cut two wheels simultaneously is preferred but one wheel at a time will be acceptable.

If the proposed machine does not provide the means to turn the wheels during the machining process (i.e. a welder is used to provide the turning motion) then the bidder will provide the necessary instructions, appropriate turning RPM and specifications required for an appropriate welder. The RMRTD will provide the means to turn the car wheels but the machine must be able to cut both locomotive and car wheels. If the bidder provides a means to turn car wheels with their machine and it is a separate component or add-on to the primary cutting machine then that portion of the machine will be priced separately from the cutting machine.

### **4.2 Cutting Rate**

It is expected that the proposed machine with an experienced operator will cut a single axle (two wheels), with a beginning profile nearing the limits of FRA compliance and ending with an optimum wheel profile, within a maximum period of three hours per axle/wheelset. Initial use as an operator gains experience and/or wheels beyond FRA condemning limits are expected to take longer, but routine cutting of a single

wheelset shall take no longer than three hours.

#### 4.3 Successful Implementations

The bidder will provide the name(s) and contact information for other rail properties within the past ten years that have purchased and are successfully using the proposed machine. If the proposed machine is not currently in use at any other location the bidder will state that fact.

#### 4.4 Maintenance

The machine shall be capable of being serviced, maintained, repaired and/or overhauled as needed (to the greatest extent possible) at the end users' location. The bidder must support the machine with parts, manuals, schematics, instructions, maintenance intervals and customer service as needed to ensure the machine remains fully functioning on-site as much as possible. Other than complete overhaul, there shall not be a requirement to routinely return the machine to the manufacturer for periodic maintenance. The bidder will work closely with RMRTD staff to ensure the efficiency of the maintenance program and to minimize any down time for the machine.

#### 4.5 Software

The purchase price of the machine will include any and all software patches, revisions and/or upgrades for a period of ten years from the date of delivery. It is anticipated that software upgrades can be performed locally without needing to return the machine to the manufacturer.

#### 4.6 Spare Parts and Tools

As part of this procurement the contractor shall provide the following lists and pricing:

- A recommended parts list for parts that are critical to machine operation, and must be in the possession of the RMRTD to prevent the machine from being out of service for extended periods of time;
- A recommended list of tools required for repair, maintenance, testing and calibration of the equipment;
- A recommended list of wear parts and consumables for a two-year period.

#### 4.7 Training

The successful bidder shall provide on-site training at the railyard in Albuquerque, New Mexico, for six mechanics and two supervisor/managers. The training will consist of classroom theory and systems operations in addition to hands-on training. A locomotive will be provided and a minimum of three wheels will be cut with the instructor available and providing oversight/instruction into the wheel truing process. RMRTD will provide the classroom and needed training support.

#### 4.8 Warranty

The proposed machine will come with a minimum of a one-year warranty, to include all parts and labor.

#### 4.9 Delivery

The proposed machine shall be delivered within twelve (12) weeks of the issuance of a purchase order. The on-site instruction personnel will allow for the time it takes to supervise the unpacking and initial setup of

the machine in addition to the previously described training requirements.

#### 4.10 Term of Contract

The term of this contract shall begin the first day of the month following the contract award date and shall end one (1) year following the contract award date, unless sooner terminated under the terms of this contract or unless extended pursuant to contract clause.

#### 4.11 Option to Extend Term

A. RMTD may extend the term of this contract for up to one (1) year at a time, by written notice to the Contractor. If feasible, the RMTD shall give the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the RMTD to an extension, and any absence of notice shall not affect the validity of any exercise of the option to extend the term of this contract.

B. If the RMTD exercises this option, the extended contract shall be considered to include this option provision.

C. The total duration of this contract, including the exercise of any options under this clause, shall not exceed four (4) years.

#### 4.12 Change of Product Manufacturer

No change in the offered product manufacturer/number, will be made without the RMTD's prior written approval. This approval request will also include changes in chemical formulation. Any such request for change will be submitted for approval to the RMTD's Contracting Officer with a 30 day advance written notice.

### 5.0 INVOICING AND PAYMENT

A. Invoices must be submitted to:

Rio Metro Regional Transit District **OR** Ap@mrcog-nm.gov  
Attn: Accounts Payable  
809 Copper N.W.  
Albuquerque, NM, 87102

and shall conform to policies or regulations adopted from time to time by the RMTD. Invoices shall be legible and shall contain, as a minimum, the following information:

1. the contract and order number (if any)
2. a complete itemization of all costs including quantities ordered and delivery order numbers
3. any discounts offered to the RMTD under the terms of the contract
4. evidence of the acceptance of the supplies or services by the RMTD; and
5. any other information necessary to demonstrate entitlement to payment under the terms of the contract. The contractor may only submit two (2) invoices per month.

B. Subject to the withholding provisions of the contract, payment shall be made within 30 days after the RMTD's receipt of a properly prepared invoice.

C. Credit Card is preferable way of payment for product.

#### 5.1 Insurance Requirements for Supply Contracts

A. Required Coverage. The Contractor shall, at all times during the term of this contract and extended terms thereof, provide and maintain the following types of insurance protecting the interests of the RMTD and the Contractor with limits of liability not less than those specified below.

1. Comprehensive Automobile Liability insurance or its equivalent, covering all owned, hired and non-- owned vehicles used in connection with the work performed under this contract with limits of liability not less than \$500,000 each person and \$1,000,000 each accident for bodily injury and property damage or a combined single limit for bodily injury and property damage liability of not less than \$1,000,000.

2. Commercial General Liability insurance or its equivalent, providing limits of not less than \$2,000,000 for bodily injury and property damage per occurrence with a general aggregate of \$6,000,000 and a product and completed operations aggregate of \$1,000,000. There shall not be any policy exclusions or limitations for the following:

3. Contractual Liability covering Consultant's obligations herein Personal Injury Advertising Liability

4. Medical Payments

5. Fire Damage Legal Liability Broad Form Property Damage

6. Liability for Independent Contractors

7. Pollution Liability Insurance with limits of not less than \$1,000,000 to remain in force for the entire period of performance under this contract and any option periods.

8. Workers' Compensation Insurance or its equivalent, providing benefits comparable to those provided under the Workers' Compensation Act of the State of New Mexico and/or any other State or Federal law or laws applicable to the Contractor's employees performing work under this contract. Employer's Liability Insurance with limits of liability of not less than \$500,000 each accident, \$500,000 each employee for disease and \$500,000 policy limit for disease. This insurance must be endorsed with a Waiver of Subrogation Endorsement, waiving the carrier's right of recovery under subrogation or otherwise from the RMTD.

B. Certificates of Insurance. Before commencing execution of this contract, the Contractor shall deliver Certificates of Insurance satisfactory to the RMTD (or, as and when the RMTD may direct, copies of the actual insurance policies) at the following address:

Rio Metro Regional Transit District  
Attn: Procurement  
809 Copper NW  
Albuquerque, New Mexico, 87102

Evidencing that insurance as required by paragraph A, and all subparagraphs to A above, is in force, stating policy number dates of expiration and limits of liability thereunder. All copies of policies and Certificates of Insurance submitted to the RMTD shall be in form and content acceptable to the RMTD.

C. Approval of Forms and Companies. All coverage described in this contract shall be in a form and content satisfactory to the RMTD. No party subject to the provisions of this contract shall violate or knowingly permit to be violated any of the provisions of the policies of insurance described herein. All insurance should be provided by insurance companies with a Best's Rating of B+ or better.

**Additional Insured Endorsement.** The policy or policies providing Commercial General Liability, Automobile Liability and as otherwise required above shall be endorsed to name RMTD, their directors, officers, representatives, agents and employees as additional Insureds as respects operations performed by or on behalf of the Contractor in performance of this contract. The policy shall also be endorsed to name other interests as directed by RMTD.

**Notice of Cancellation or Material Changes.** Policies and/or Certificates shall specifically provide that a thirty (30) day notice of cancellation, non-renewal, or material change be sent to the RMTD.

**Multiple Policies.** The limits of liability as required above may be provided by a single policy of insurance or a combination of primary, excess or umbrella liability policies. But in no event shall the total limit of liability of any one occurrence or accident be less than the amount shown above.

**Deductibles.** Companies issuing the insurance policies and the Contractor shall have no recourse against the RMTD for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of the Contractor.

**Subcontractors.** If any part of the work is sublet, Contractor shall require any and all subcontractors performing work under this contract to carry workers' compensation insurance and other types of insurance with limits of liability as Contractor shall deem appropriate and adequate. In the event a subcontractor is unable to furnish adequate insurance required under the Contract, the Contractor shall endorse the subcontractor as an Additional Insured. The Contractor shall obtain and furnish to the RMTD certificates of Insurance evidencing subcontractors' workers' compensation insurance coverage. If a subcontractor's certificate of workers compensation insurance expires during the period of performance, Contractor shall obtain a renewal certificate. All certificates of workers' compensation insurance must be maintained by the Contractor for a period of not less than 1 year. All other insurance certificates for subcontractors shall be furnished to the RMTD upon request.

**No Release.** The carrying of the above-described coverage shall in no way be interpreted as relieving the Contractor of any other responsibility or liability under this agreement or any applicable law, statute, regulation or order.

## 5.2 Commercial Trade and Resale Authority

At all times during the performance of this contract, the Contractor must be authorized to engage in the commercial trade and resale of any item to be furnished under this contract by the manufacturer of that item.

## 5.3 Excusable Delays

A. Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the RMTD in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.

B. If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless -

1. the subcontracted supplies or services were obtainable from other sources;
2. the RMTD ordered the Contractor in writing, or verbally, to purchase these supplies or services from the other source; and
3. the Contractor failed to comply reasonably with this order.
4. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the RMTD determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the RMTD under the Termination Clause of this contract.

#### 5.4 Subcontractors and Supplies

The contractor shall be solely responsible for the performance of subcontractors and suppliers and the fulfillment of all requirements of the contract documents. In all matters concerning this contract the RMTD shall deal exclusively with contractor.

#### 5.5 Default/Termination for Cause

A. If through any cause, the Contractor fails to fulfill the Contractor's obligations under any contract resulting from this IFB in a timely and proper manner, or if the Contractor violates any of the covenants, agreements or stipulations of such contract, the RMTD shall notify the contractor of such violations in writing and allow the Contractor a reasonable time, set out in the notice, to correct the default. If the default is not corrected within the specified time the RMTD shall have the right to cancel the contract and any or all other current contracts with the Contractor, and if applicable, to purchase the required goods or services from another source or sources. The RMTD shall provide written notice to the Contractor specifying the date of cancellation. The notice of cancellation may be contained in the notice of default.

B. If a contract resulting from this IFB is cancelled, the Contractor shall not be relieved of liability to the RMTD for damages caused by its breach of contract. The RMTD reserves the right to recover such damages, including but not limited to any excess cost incurred in having to purchase contract goods/services from other sources by a deduction from an unpaid balance due to the Contractor, collection against a performance or labor and materials payment bond, a combination of these remedies, or any other legal method available. In addition, the Contractor may be removed from the Purchasing Office Vendor List or determined to be ineligible to respond to future solicitations, as being not responsible.

#### 5.6 Termination for the convenience of the RMTD

The RMTD may terminate any contract resulting from this IFB at any time by giving at least thirty (30) days' notice in writing of such termination to the Contractor. In such even, the Contractor shall be paid under the terms of the contract for all goods/services provided to and accepted by the RMTD, if ordered or accepted by the RMTD prior to the effective date of termination.

#### 5.7 Termination for Lack of Appropriations

Funding for the contract resulting from this IFB has been appropriated by various governmental entities. Notwithstanding any other provisions in the contract, its continuation beyond the end of the/any fiscal year is contingent on the receipt by the RMTD of appropriations necessary to fund the contract. If

sufficient appropriations are not made the contract may be terminated. Such termination shall not constitute a default. All payment obligations of the RMTD and all of its interest in the contract will cease upon the date of termination. The RMTD's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

## 5.8 Indemnification

To the fullest extent permitted by law, it is expressly agreed and understood that the Contractor shall indemnify, defend, and hold harmless the RMTD, Herzog Transit Services, Inc., hereinafter "Company", (including its owners, affiliates and subsidiaries), its officers, directors, agents, shareholders, successors and employees from and against any and all claims, liability, actions, causes of actions, complaints, laws, expenses and demands whatsoever, in law and in equity, including without limitation for bodily injury, personal injury, sickness, disease, death or property damage (including but not limited to the work itself), arising out of, or alleged to arise out of, or as a result of, or alleged as a result of, or to arise out of the performance of the Contractor's work under this Purchase Order regardless of negligence. Contractor, at Contractor's sole expense, shall promptly handle all such claims, defend all lawsuits filed against the RMTD and or Company on account thereof, pay all judgments rendered against the RMTD and Company in such lawsuits (including any prejudgment interest assessed against any Indemnity hereunder), and reimburse the RMTD and Company in cash upon demand for all reasonable expenses incurred by the RMTD and Company on account thereof including, but not limited to, attorney fees, expert witness fees and court costs. It is expressly agreed and understood by Contractor that Contractor shall indemnify RMTD and Company and hold it harmless from the above referenced claims regardless of whether such claim is caused or alleged to be caused in part by any joint concurrent negligent act (either active or passive) or omission by a party indemnified hereunder.



**APPENDIX 1**  
**BIDDER COMMENT**  
**RFB 2019-03**

It is requested that bidders provide any additional information concerning the goods or services related to the bid that will assist in bid evaluation.

Information provided below pertains to the following (please check applicable box)

- D    Equivalent Product
- D    Clarification
- D    Exception(s) to Requirements
- D    General or Miscellaneous Comments

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If additional space is required, please use reverse side of form or attach additional documents.

\_\_\_\_\_  
Name of Bidder

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**APPENDIX 2  
COST SHEET  
RFB 2019-03**

**WHEEL TRUING  
COST SHEET  
RFB #2019-03**

Wheel Truing Machine

|                              |    |
|------------------------------|----|
| One wheel cutting            | \$ |
| Two wheel cutting (optional) | \$ |

|  |    |
|--|----|
| Component or add-on needed for turning motion (optional) | \$ |
|--|----|

|                     |    |
|---------------------|----|
| Routine Maintenance | \$ |
|---------------------|----|

|                  |    |
|------------------|----|
| On-site training | \$ |
|------------------|----|

|   |    |
|---|----|
| Any additional fees - please list in detail below | \$ |
|---|----|

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**APPENDIX 3  
BID FORM  
RFB#: 2019-03**

Bidding Organization \_\_\_\_\_  
Mailing Address \_\_\_\_\_  
City/State/Zip Code \_\_\_\_\_

Head of Organization \_\_\_\_\_  
Title \_\_\_\_\_  
Telephone Number \_\_\_\_\_ E-Mail Address \_\_\_\_\_

Bid Contact Person \_\_\_\_\_  
Title \_\_\_\_\_  
Telephone Number \_\_\_\_\_ E-Mail Address \_\_\_\_\_

Contract Signatory Authority \_\_\_\_\_  
Title \_\_\_\_\_  
Telephone Number \_\_\_\_\_ E-Mail Address \_\_\_\_\_

Tax/Legal Status  Corporation  For Profit  Not-for-Profit  Government   
Individual

Federal ID Number \_\_\_\_\_ State ID Number \_\_\_\_\_

1. I (We) am submitting on the procurement titled: \_\_\_\_\_.
2. I (We) accept the Conditions Governing the Procurement stated within this solicitation.
3. I (We) acknowledge receipt of any and all amendments to this RFB, Nos. \_\_\_ to \_\_\_\_\_.

Signature of Officer: \_\_\_\_\_ Date: \_\_\_\_\_

**APPENDIX 4**  
**CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING**  
**RFB#: 2019-03**

I, \_\_\_\_\_, hereby certify on  
(name and title of official)

behalf of \_\_\_\_\_ that;  
(name of Contractor)

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) 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 this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. 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.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
(Signature of authorized official)

\_\_\_\_\_  
(Title of authorized official)

**APPENDIX 5**  
**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND**  
**OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED**  
**TRANSACTIONS**  
**RFB#: 2019-03**

To be submitted with each bid or offer exceeding \$25,000.

The Contractor, certifies to the best of its knowledge and belief, that it and its principals:

- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (2) Have not within a three-year period preceding this bid been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
- (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
- (4) Have not within a three-year period preceding this agreement had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such Contractor shall attach an explanation to this bid.

THE CONTRACTOR, \_\_\_\_\_, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. sub section 3801 ET SEQ. ARE APPLICABLE THERETO.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By \_\_\_\_\_  
(Signature of authorized official)

\_\_\_\_\_  
(Title of authorized official)

**APPENDIX 6**  
**CERTIFICATION REGARDING**  
**AFFIRMATIVE ACTION/EQUAL EMPLOYMENT**  
**OPPORTUNITY AND NONDISCRIMINATION**  
**AHRO Form CC 2**  
**RFB#: 2019-03**

The Offeror hereby acknowledges and agrees to abide by the Special Provisions for Affirmative Action/Equal Employment Opportunity and Nondiscrimination and all other provisions, regulations and/or requirements of the Owner for Affirmative Action/Equal Employment Opportunity and Nondiscrimination.

The Offeror has participated with any agency in a previous contract or subcontract subject to any Equal Employment Opportunity and Nondiscrimination in Employment requirements.

Yes  No

Compliance reports were required to be filed in connection with such contract or subcontract.

Yes  No

The Offeror has filed all compliance reports due under applicable instruction. If this does not apply, leave blank.

Yes  No

\_\_\_\_\_  
Company Name of Offeror

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Signature

\_\_\_\_\_  
FAX Number

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

\_\_\_\_\_  
E-Mail Address

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**APPENDIX 7**  
**CAMPAIGN CONTRIBUTION DISCLOSURE**  
**RFB#: 2019-03**

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

**THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.**

The following definitions apply:

**“Applicable public official”** means any person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

**“Campaign Contribution”** means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

**“Family member”** means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

**“Pendency of the procurement process”** means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

**“Prospective contractor”** means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or a small purchase contract.

**“Representative of a prospective contractor”** means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

**DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:**

Contribution Made By: \_\_\_\_\_  
Relation to Prospective Contractor: \_\_\_\_\_  
Date Contribution(s) Made: \_\_\_\_\_  
Amount(s) of Contribution(s): \_\_\_\_\_  
Nature of Contribution(s): \_\_\_\_\_  
Purpose of Contribution(s): \_\_\_\_\_

\_\_\_\_\_  
Signature Title (Position) Date

-OR-

**NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE TO AN APPLICABLE PUBLIC OFFICIAL BY ME, A FAMILY MEMBER OR REPRESENTATIVE:**

\_\_\_\_\_  
Signature Title (Position) Date



**APPENDIX 8**  
**DRAFT CONTRACT**  
**RFB#: 2019-03**

This Contract ("Contract") made and entered into on the date last entered below, by and between \_\_\_\_\_ ("Contractor"), and the Rio Metro Regional Transit District ("RMRTD"), a New Mexico political subdivision created pursuant to the Regional Transit District Act, Sections 73-25-1 through 73-25-18, NMSA 1978, herein referred to as "Parties."

**RECITALS**

**WHEREAS**, the Parties desire to engage the Contractor to render certain services in connection therewith, and the Contractor is willing to provide such services.

**NOW, THEREFORE**, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

**Section 1. Miscellaneous Representations**

- A. The Contractor is licensed or otherwise authorized to conduct the business activities described in this Contract by all governmental agencies having jurisdiction over Contractor, and Contractor has the experience and expertise to perform the work or services required in this Contract.
- B. The Parties have the right and power to enter into this Contract.

**Section 2. Scope of Services**

- A. The Contractor shall personally perform the services specified in Exhibit A (hereinafter referred to as "Services") in a satisfactory and proper manner, and shall provide all necessary personnel, material, and facilities and perform all matters necessary or incidental to the Services as determined by the Parties.
- B. Staffing. The Parties designate \_\_\_\_\_ as the Parties Project Manager. The Contractor shall keep the Project Manager fully informed on all aspects of its performance of the Services. The Project Manager will review and approve Contractor's invoices prior to payment. In the absence of the Project Manager, the Parties Director shall serve as Project Manager.
- C. Contractor designates \_\_\_\_\_ as Contractor's Project Manager. Contractor's Project Manager shall transmit all work product and invoices to the Project Managers. The Contractor Project Manager shall direct the technical aspects of the Services; however, the Contractor may provide additional qualified personnel to meet its obligations under this Contract. Contractor shall provide to the Parties a statement of qualifications for each individual performing work under this Contract when requested to do so by the Parties. Any change in Contractor's appointment of its Project Manager shall not be allowed until approved in writing by RMRTD.

**Section 3. Compensation and Method of Payment**

- A. For performing the Services specified in Exhibit A hereof, the Parties agree to pay the Contractor up to the amount of \_\_\_\_\_ Dollars \$ \_\_\_\_\_, which amount shall include any

gross receipts tax and which shall constitute full and complete compensation for the Services under this Contract, including all expenditures made and expenses incurred by the Contractor in performing such services in accordance with Exhibit B Schedule of Fees included in this Contract.

#### **Section 4. Method of Payment.**

A. Payment to Contractor. Amounts due to Contractor shall be paid to the Contractor upon receipt by the Parties of properly documented invoices for payment as determined by the budgetary and fiscal guidelines of the Parties and upon receipt of payment by the Parties from the funding agency. Payments to the Contractor shall be paid within the time periods prescribed by statute.

B. Reports Required. Contractor will attach to the invoice a detailed work effort and progress report in a format mutually agreed upon by the Parties Project Manager and the Contractor. Payments shall be made only after verification and acceptance of the progress reports by the Parties Project Manager.

C. Verification of Invoices. The Parties shall be entitled to verify the personnel time and other costs charged to the Parties pursuant to the provisions of this Contract.

#### **Section 5. Time of Performance**

The Services described herein shall commence on the date this Contract is executed and shall be completed within one (1) year, unless the time for completion is extended pursuant to Option to Extend Term contract clause contained herein.

#### **Section 6. Option to Extend Term**

A. The Parties may extend the term of this Contract for up to three (3) years in one (1) year increments by written notice to the Contractor. If feasible, RMRTD shall give Contractor a preliminary written notice of its intent to extend at least sixty (60) days before the Contract expires. The preliminary notice does not commit the Parties to an extension, and any absence of notice shall not affect the validity of any exercise of the option to extend the term of this Contract.

B. If the Parties exercise this option to extend the term of the Contract, the extended Contract shall be considered to include this option provision.

C. The total duration of this Contract, including the exercise of any options under this clause, shall not exceed four (4) years.

#### **Section 7. Independent Contractor**

A. Neither Contractor nor its employees are considered to be employees of the Parties for any purpose whatsoever. Contractor is considered an independent contractor at all times in the performance of the Services described herein. Contractor further agrees that neither it nor its employees are entitled to any benefits from the Parties under the provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the Parties.

#### **Section 8. Personnel**

A. Contractor represents that it has, or will secure at its own expense, all personnel required in performing all of the Services required under this Contract. Such personnel shall not be employees of nor have any contractual relationship with the Parties.

B. All the Services required hereunder will be performed by Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such Services.

C. None of the work or the Services covered by this Contract shall be subcontracted without the prior approval of the Parties. Any work or Services subcontracted hereunder shall be specified by written contract or Contract and shall be subject to each provision of this Contract.

## **Section 9. Insurance**

A. General Requirements. The Contractor shall, at its own cost and expense, procure and maintain in full force and effect during the term of this Contract, such insurance as is required in this Contract. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico, and policies of insurance shall be on forms properly filed and approved by the Superintendent of Insurance, State of New Mexico. Policies of insurance shall be procured for all required coverage limits of such policies of insurance and shall not be reduced or replaced in part or in whole by self-insurance, including self-insurance retention amounts, except as provided hereinafter.

If the Contractor sublets, assigns or otherwise transfers any interest in any part of this Contract, the Contractor shall include any or all transferees in the Contractor's insurance policies or require such transferees to secure insurance to cover all hazards enumerated in this Contract that are not covered by the Contractor's insurance policies.

The Contractor shall not violate the terms or prohibitions of insurance policies required to be furnished by the Contractor. The Contractor shall promptly notify the Parties of any claim or loss exceeding the amount of the deductible under such insurance policies and certify that proper notice has been given the appropriate insurance carrier.

B. The Contractor shall furnish the Parties with certificates of insurance, substantially the same as attached hereto in Exhibit B, and shall deliver said certificates to the Project Manager, MRCOG 809 Copper Ave., N.W., Albuquerque, New Mexico 87102. All insurance certificates shall provide that thirty (30) days written notice be given to the Project Manager before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. A certificate or policy which states that the failure to give the Parties notice imposes no liability or obligation on the insurer shall not be in compliance with this Section. For instance, certificates or policies stating that the insurance company shall "endeavor to notify" and that "failure to give such notice imposes no obligation" on the insurance company are unacceptable to the Parties. Documents establishing the continuation or replacement of insurance shall be received by the Parties no less than thirty (30) days prior to the expiration of the insurance coverage.

C. Approval of Insurance. Even though a "notice to proceed" may have been given, neither the Contractor nor any subcontractors, assignees or other transferees of the Contractor shall begin any operations pursuant to this Contract until the required insurance has been obtained and proper certificates of insurance delivered to the Project Manager. Neither approval nor failure to disapprove insurance certificates of insurance by the Parties shall relieve the Contractor or any transferees of full responsibility to maintain the required insurance in full force and effect.

D. Increased Limits. If, during the term of this Contract, the legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (Sections 41-4-1 through 41-4-27, NMSA 1978) to an amount greater than that required for commercial general liability including auto above,

the RMRTD may require Contractor to increase the limits of any insurance required herein to an amount equal to such increased Tort Claim Act maximum limits of liability.

E. Additional Insured. The MRCOG and the RMRTD shall be named as an additional insured on each insurance policy required for commercial general liability including auto above.

F. Workers' Compensation Insurance. The Contractor shall comply with the provisions of the New Mexico Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. The Contractor shall procure and maintain during the term of this Contract complete Workers' and Employer's Liability Insurance in accordance with New Mexico laws and regulations. Such insurance shall include coverage permitted under Section 52-1-10, NMSA 1978, for safety devices. With respect to Workers' Compensation Insurance, if the Contractor elects to be self-insured, the Contractor shall comply with the applicable requirements of law. If any portion of the work is to be sublet, the Contractor shall require the subtenants similarly to provide such coverage (or qualify as a self-insured) for all the latter's employees to be engaged in such work. The Contractor hereby covenants and agrees that the Parties, its officers, or employees will not be liable or responsible for any claims or actions occasioned by the Contractor's failure to comply with the provisions of this subparagraph and that the indemnification provision of this Contract shall apply to this paragraph. It is expressly agreed that the employees of Contractor are not the Parties employees for any purpose.

G. Self-Insurance Retention/Deductibles. In the event any of the insurance policies required in this Section (except as allowed by New Mexico law regarding Workers' Compensation) contain a self-insurance retention provision (whether or not in the form of a deductible), for each such amount, the Contractor shall post a bond or an irrevocable letter of credit made exclusively for the benefit of the Parties and held by a bank authorized to do business in New Mexico which is acceptable to the Parties.

H. Contents Insurance. Contractor shall be solely responsible for obtaining insurance policies that provide coverage for losses of Contractor owned property. The Parties shall not be required to provide such insurance coverage or be responsible for payment of Contractor's cost for such insurance.

#### **Section 10. Reports, Information and Ownership of Documents**

A. Reports and Information. During the performance of this Contract and upon the completion or earlier termination of the services required under this Contract, Contractor shall furnish to the Parties such statements, records, reports, data and information as requested by the Parties pertaining to matters covered by this Contract.

B. Release of Information. Contractor shall not release any data, reports or other information of any nature whatsoever to any entity or person other than to the Parties unless specifically authorized to do so in writing in advance by the Parties.

C. Ownership and Use of Documents. Contractor's work product produced pursuant to this Contract shall become the sole property of the Parties. Such work product shall include but not be limited to reports, background data, drawings, calculations, technical data, data related specifically to this Contract, specifications, manuals and/or related documents.

D. Computer Program Licensing Contracts. The Parties shall have the option to require (at Parties cost) that the Contractor provide any and all computer licensing Contracts necessary to permit the Parties to use computer programs and data related to the services performed by Contractor under this Contract.

E. Future Use. The Parties' use of computer programs and computer stored data developed under the

requirements of this Contract for purposes other than the services required of Contractor as specified in this Contract shall be at the Parties' risk, and Contractor shall be held harmless for such use. Contractor does not represent that the computer programs and computer data developed under this Contract are suitable for reuse under different conditions. This paragraph shall not apply to the performance of this Contract nor in instances where the Contractor is retained to perform subsequent services using the work product developed pursuant to this Contract.

F. **Publication, Reproduction and Use of Materials.** No materials or documents produced in whole or in part under this Contract shall be subject to copyright in the United States or in any other country. The Parties shall have the unrestricted authority and right to copyright, publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials (hereafter "Materials") prepared under this Contract. Contractor may use Materials created under this Contract as reference and research materials and as representations of the services performed under this Contract only after the Materials are completed and accepted by the Parties, provided that such Materials shall not include the Parties confidential or proprietary information, to the extent the Parties provides Contractor with notice that such materials are considered confidential or proprietary by the Parties. The Parties shall provide professional credit for Contractor in promotional materials for services rendered pursuant to this Contract, if so requested in writing by Contractor.

#### **Section 11. Establishment and Maintenance of Records**

A. Records shall be maintained by Contractor in accordance with applicable law and requirements prescribed by the Parties with respect to all matters covered by this Contract. Except as otherwise authorized by the Parties, such records shall be maintained for a period of three (3) years after receipt of final payment under this Contract.

#### **Section 12. Audits and Inspections**

A. At any time during normal business hours and as often as the Parties may deem necessary, there shall be made available to the Parties or the funding agency and the State Auditor for examination all of Contractor's records with respect to all matters covered by this Contract. Contractor shall permit the Parties, or its authorized representatives, to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Contract. Contractor shall maintain such records at its office and provide them to the Parties at the Parties offices in Albuquerque, New Mexico, within fifteen (15) days after receiving a written request for such records by the Parties. In the event Contractor does not wish to make its books and records available at the Parties offices, then Contractor shall pay reasonable travel and accommodation expenses for the Parties staff or its duly authorized representatives to travel to Contractor's offices to conduct the audit.

#### **Section 13. Changes**

A. The Parties may, from time to time, request changes in the Services to be performed hereunder. Such changes, including any increase or decrease in the amount of Contractor's compensation, that are mutually agreed upon by and between the Parties and Contractor shall be incorporated in written amendments to this Contract.

## **Section 14. Suspension**

A. **Suspension of Work.** The Parties shall be entitled at any time to suspend, delay, or interrupt all or any part of the Services required of Contractor by this Contract. Such order shall be in writing and identified as a "Suspension of Work Order". Contractor shall incur no further costs allocable to the Services during the period of suspension, delay, or interruption. Contractor shall be reimbursed for all services performed up to the time of its receipt of the Suspension of Work Order; to the extent such services are accepted pursuant to Section 4 of this Contract.

B. **Resumption of Work.** In the event the Parties cancels a Suspension of Work Order, Contractor shall resume performing the Services in a timely manner and shall be entitled to an equitable adjustment in compensation but only if the Parties determines that the Suspension of Work Order resulted in additional costs to Contractor in its performance of the Services and Contractor asserts a claim for such additional costs within thirty days after the cancellation of the Suspension of Work Order.

## **Section 15. Termination**

A. **Termination by the Parties for Cause, ten (10) day notice.** If through any cause Contractor shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if Contractor shall violate any of the covenants, Contracts or stipulations of this Contract, the Parties shall thereupon have the right to terminate this Contract by giving written notice to Contractor of such termination and specifying the effective date thereof at least ten (10) days before the effective date of such termination.

Notwithstanding the above, Contractor shall not be relieved of liability to the Parties for damages sustained by the Parties by virtue of any breach of this Contract by Contractor, and the Parties may withhold any payment to Contractor for the purposes of set-off until such time as the exact amount of damages due the Parties from Contractor is determined.

B. **Termination by the Parties: twenty (20) day notice.** The Parties may terminate this Contract at any time by giving at least twenty (20) day notice in writing to Contractor. Said twenty (20) days shall run from the day on which Contractor received said notice of termination. In the event this Contract is terminated by the Parties as provided herein, the Contractor shall be paid an amount that bears the same ratio to the total compensation as the Services actually performed bear to the total Services of Contractor covered by this Contract, less payments of compensation previously made. If this Contract is terminated due to the fault of Contractor, Paragraph A of this section hereof, relative to termination, shall apply.

C. **Work Product.** In the event of termination under the provisions of this section, all finished or unfinished documents, data, maps, studies, surveys, drawings, models, photographs and reports prepared by Contractor under this Contract shall, at the option of the Parties, become the property of the Parties, and Contractor shall deliver such work product to the Parties within thirty (30) days of receipt of the request of the Parties.

D. **Termination by Contractor: thirty (30) Day notice.** The Contractor shall be entitled to terminate this Contract in the event of a default by the Parties in the performance of any covenant or Contract herein required to be performed by the Parties and the failure of the Parties to remedy such default for a period of thirty (30) days after receipt from the Contractor of written notice to remedy the same; provided, however, that no notice of termination, as above provided, shall be of any force or effect if the Parties shall have remedied the default prior to receipt of the Contractor's notice of termination.

E. **Non-Funding.** The performance of this Contract is contingent upon the necessary appropriations and authorizations forthcoming for the performance of this Contract. If sufficient appropriations and

authorizations are not made, this Contract may be terminated by the Parties by giving notice to Contractor. Such event shall not constitute an event default by the Parties. All payment obligations of the Parties shall cease upon the date of termination. The Parties' decision as to whether sufficient appropriations are available or sufficient shall be binding on Contractor and shall be final. The date of termination issued pursuant to this paragraph shall be the date a notice of termination is received by Contractor.

## **Section 16. General Conditions**

### **A. Contract Interpretation.**

1) **Severability.** In the event any covenant, condition or provision herein is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provisions of this Contract shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the Parties or the Contractor in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Contract.

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

3) **Gender, Singular/Plural.** Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

4) **Captions and Section Headings.** The captions, section headings, and table of contents contained in this Contract are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Contract.

5) **Entire Contract.** This Contract represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Contract incorporates all of the conditions, Contracts, and understandings between the parties concerning the subject matter of this contract, and all such conditions, understandings and Contracts have been merged into this written Contract. No prior condition, Contract, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Contract.

6) **Relationship of Contract Documents.** All documents attached to this Contract or incorporated into this Contract are complementary, and any requirement of one contract document shall be as binding as if required by all.

7) **Exhibits Certificates, Documents Incorporated and Attachments.** Incorporation by Reference: All certificates, documents, exhibits, attachments, riders, and addenda referred to in this Contract are hereby incorporated into this Contract by reference and made a part hereof as though set forth in full in this Contract to the extent they are consistent with its conditions and terms.

8) Applicable Law. This Contract shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of the Parties.

9) Successors. All covenants, stipulations and Contracts in this Contract shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.

10) Governmental Rights and Powers. Nothing in this Contract shall be construed or interpreted as limiting, relinquishing, or waiving any rights of ownership enjoyed by the Parties or waiving or limiting the Parties' control over the management, operations, or maintenance of its property, except as specifically provided in this Contract, or impairing, exercising or defining governmental rights and the police powers of the Parties.

#### B. Discrimination Prohibited.

1) General. In the use and occupation of the Parties premises, the Contractor shall not discriminate against any person or class of persons by reason of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap.

2) Civil/Human Rights Laws. In the operation and use of the Parties premises, the Contractor shall not on the grounds of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Title 49 CFR Part 21, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, and the New Mexico Human Rights Act. Without limiting the generality of the foregoing, the Contractor agrees to not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap. Such action shall include, but not be limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and disciplinary actions and grievances. The Contractor agrees to post in conspicuous places available to employees, and applicants for employment, notice to be provided setting forth the provisions of this non-discrimination clause.

3) The Contractor, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration of this Contract, does hereby covenant and agree that: (1) no person on the grounds of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Contractor shall use the Parties facilities (when applicable) in compliance with all other requirements imposed by, or pursuant to, the New Mexico Human Rights Act, and 49 CFR Parts 21 and 23, and as said regulations may be amended.

4) Contractor's violation of this section shall be deemed a material breach of this Contract.

5) Contractor shall include the provisions of this section in every subcontract, including procurement of materials and leases of equipment (unless exempt by the above referenced regulations or orders of instructions issued pursuant thereto), in the performance of this Contract.



C. Indemnification Contract.

1) General Indemnification. The Contractor agrees to indemnify and hold harmless the Parties, including its officers, employees or agents, against all liability, claims, damages, losses or expenses, including attorney fees, only to the extent that the liability, claims, damages, losses or costs are caused by, or arise out of, the acts or omissions of the Contractor or its officers, employees or agents.

2) Insurance. The indemnity required herein shall not be limited by the specification of insurance coverages in this Contract.

3) Survives the Term. This indemnification Contract shall survive the term of this Contract.

4) Scope of Indemnification. With respect to any liability, claims, damages, losses or costs that are caused by, or arise out of, the acts or omissions of the Contractor or its officers, employees or agents, the Contractor shall: (a) investigate or cause the investigation of such liability, claims, damages, losses or costs, (b) negotiate or cause to be negotiated all claims made, even when Contractor considers such claims to be groundless, false or fraudulent in the name of the Parties and on behalf of the Parties, (c) and satisfy judgments finally establishing the liability of the Parties in all actions for which the Contractor is obligated to indemnify the Parties, including its officers, employees or agents, pursuant to this section, and (d) pay, or cause to be paid: (1) all costs assessed against the Parties in any such legal proceeding, (2) any interest accruing up to the date of payment by Contractor, (3) all premiums charged upon appeal bonds required in such proceedings, and (4) all expenses incurred by the Parties for investigation, negotiation, and defense, including but not limited to expert witnesses' and attorneys' fees incurred.

5) Miscellaneous. The Parties shall, promptly upon receipt, give Contractor every demand, notice, summons, or other process received in any claim or legal proceeding for which Contractor is required to indemnify the Parties. In the event the Parties fails to give Contractor notice of any such demand, notice, summons, or other process received by the Parties, and such failure to give said notice shall result in prejudice to Contractor in its defense of any action or legal proceeding in which Contractor is required to indemnify the Parties, then such failure or delay shall release Contractor of its liability as set forth in this Indemnification Contract, but only insofar as the particular claim or legal proceeding is concerned, and only to the extent of such prejudice. Nothing in this subsection shall be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim or legal liability against the Parties. This section shall not be construed as a waiver of the Parties' immunity. The provisions of this section shall not be construed to prohibit Contractor from seeking contribution or indemnity from any third party which may have caused or contributed to the event for which Contractor indemnifies the Parties.

D. Assignment and Subletting. The Contractor shall not assign or otherwise transfer, in whole or in part, any of the rights granted in this Contract without the prior written approval of the Parties. The Parties shall not be required to approve any assignment or other transfer of this Contract that would result in the Services required in this Contract being performed by any other person or entity than the Contractor.

E. Ethics.

1) Conflict of Interest. As a condition of this Contract, the Contractor shall furnish the Parties with a Campaign Contribution Disclosure form, substantially the same as Exhibit D, and shall deliver said disclosure to the Project Manager, Rio Metro Regional Transit District, 809 Copper Ave., N.W., Albuquerque, New Mexico 87102. The Contractor shall disclose whether any member of the Parties Board



attempted execution of this Contract.

I. No Partnership or Agency. Nothing contained in this Contract is intended or shall be construed in any respect to create or establish any relationship other than that of owner and Contractor, and nothing herein shall be construed to establish any partnership, joint venture or association or to make Contractor the general representative or agent of the Parties for any purpose whatsoever.

J. Force Majeure. Except as expressly provided in this Contract, neither the Parties nor Contractor shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations, other than payment of rentals, fees and charges hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of the public enemy, weather conditions and the results of acts of nature, riots, rebellion, sabotage, or any other similar circumstances for which it is not responsible or which are not within its control.

K. Forum Selection. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Contract shall only be brought in a state district court located in Bernalillo County, New Mexico or in a federal district court located in New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of either or both of said courts. The provisions of this section shall survive the termination of this Contract.

L. Compliance with Law. The Contractor shall comply with all applicable laws, ordinances, regulations and procedures of federal, state, and local governments, including, but not limited to the Parties rules. The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101) and federal regulations promulgated there under (28 C.F.R. Parts 35, 36, and 37).

M. Patents and Trademarks. Contractor represents that it is the owner or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its performance under this Contract. Contractor agrees to defend, indemnify and hold harmless the Parties, pursuant to the Indemnification Contract above, from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark, copyright, trade secret or proprietary right, or arising from any alleged or actual unfair competition or other similar claim arising out the performance of this Contract by Contractor. In the event a claim is made that the use of materials is such an infringement, the Contractor shall either procure for the Parties the right to continue using such materials, make modifications resulting in the elimination of the infringement (and continue to meet the requirements of this Contract) or replace such material with non-infringing materials of a like functionality that meet the requirements of this Contract.

N. Savings. The Parties and Contractor acknowledge and agree that they have thoroughly read this Contract, including all exhibits thereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. The Parties and Contractor further acknowledge that the Contract is the result of negotiations between them and that this Contract shall not be construed against either party by reason of that party's preparation of all or part of this Contract.

**IN WITNESS WHEREOF**, the Parties referenced herein have executed this Contract on the dates specified below.

**RIO METRO REGIONAL TRANSIT DISTRICT**

By: \_\_\_\_\_  
Executive Director

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

**CONTRACTOR**

By: \_\_\_\_\_

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

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

New Mexico State Taxation and Revenue  
Taxpayer I.D. Number:

Federal Taxation I.D. Number:

\_\_\_\_\_  
\_\_\_\_\_

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
Legal Counsel

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

**EXHIBIT A**

**SCOPE OF SERVICES**

**EXHIBIT B**

**COST SHEET**

**EXHIBIT C  
CERTIFICATE OF INSURANCE FORM**

| <b>CERTIFICATE OF INSURANCE</b>   |  |  |   |                        | ISSUE DATE (MM/DD/YY)          |    |
|---|--|--|---|------------------------|--------------------------------|----|
| PRODUCER  |  | THIS CERTIFICATE DOES NOT AMEND< EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW |   |                        |                                |    |
|   |  | COMPANIES AFFORDING COVERAGE   |   |                        |                                |    |
|   |  | LETTER A COMPANY   |   |                        |                                |    |
|   |  | COMPANY LETTER B   |   |                        |                                |    |
| INSURED   |  | COMPANY LETTER C   |   |                        |                                |    |
|   |  | COMPANY LETTER D   |   |                        |                                |    |
| INSURED   |  | COMPANY LETTER E   |   |                        |                                |    |
|   |  | COMPANY LETTER F   |   |                        |                                |    |
| <p><b>COVERAGES:</b> THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED FOR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.</p> |  |  |   |                        |                                |    |
| CO. LTR.  | TYPE OF INSURANCE  | POLICY NUMBER  | POLICY EFFECTIVE DATE   | POLICY EXPIRATION DATE | LIMITS                         |    |
|   | GENERAL LIABILITY*<br><input type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR.<br><input type="checkbox"/> OWNER'S & CONTRACTOR'S PROTECT.<br><input type="checkbox"/> SELF INSURANCE RETENTION |  |   |                        | GENERAL AGGREGATE              | \$ |
|   |  |  |   |                        | PRODUCTS-<br>GENERAL LIABILITY | \$ |
|   |  |  |   |                        | PERSONAL & ADV.<br>AUTOMOBILE  | \$ |
|   |  |  |   |                        | EACH OCCURRENCE                | \$ |
|   |  |  |   |                        | FIRE DAMAGE (Any one fire)     | \$ |
|   |  |  |   |                        | MED. EXPENSE (Any one person)  | \$ |
|   |  |  |   |                        | SELF INSURANCE AMOUNT          | \$ |
|   | AUTOMOBILE LIABILITY *<br><input type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS<br><input type="checkbox"/> HIRED AUTOS<br><input type="checkbox"/> NON-OWNED AUTOS<br><input type="checkbox"/> GARAGE LIABILITY                             |  |   |                        | COMBINED SINGLE LIMIT          | \$ |
|   |  |  |   |                        | BODILY INJURY (Per Person)     | \$ |
|   |  |  |   |                        | BODILY INJURY (Per Accident)   | \$ |
|   |  |  |   |                        | PROPERTY DAMAGE                | \$ |
|   |  |  |   |                        | SELF INSURANCE AMOUNT          | \$ |
|   | EXCESS LIABILITY *<br><input type="checkbox"/> UMBRELLA FORM<br><input type="checkbox"/> OTHER THAN UMBRELLA FORM  |  |   |                        | EACH OCCURRENCE                | \$ |
|   |  |  |   |                        | AGGREGATE                      | \$ |
|   | WORKERS' COMPENSATION<br>AND<br>EMPLOYER'S LIABILITY   |  |   |                        | STATUTORY LIMITS               | \$ |
|   |  |  |   |                        | EACH ACCIDENT                  | \$ |
|   |  |  |   |                        | DISEASE - POLICY LIMIT         | \$ |
|   |  |  |   |                        | DISEASE - EACH EMPLOYEE        | \$ |
|   | OTHER  |  |   |                        |                                |    |
| DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS  |  |  |   |                        |                                |    |
| CERTIFICATE HOLDER  |  |  | MODIFICATION/CANCELLATION:<br>THE ABOVE IDENTIFIED POLICY (POLICIES) OF INSURANCE SHALL NOT BE MATERIALLY CHANGED OR ALTERED, OR CANCELED WITHOUT FIRST GIVING THIRTY (30) DAYS ADVANCE WRITTEN NOTICE BY CERTIFIED MAIL RETURN RECEIPT REQUESTED TO THE PARTIES. |                        |                                |    |