



REQUEST FOR QUALIFICATIONS FY18-Q-001

for

ON-CALL GENERAL ARCHITECTURE AND ENGINEERING CONSULTING SERVICES

for

DES MOINES REGIONAL TRANSIT AUTHORITY

Service Requested:	On-Call General Architecture and Engineering Consulting Services
Contract Type:	Professional Services
Number of Contracts:	One or More
Contract Duration:	Five (5) Years
Funding Source:	DART Operating or Capital Budget (Federal, State, Local)
Date Issued:	March 13, 2018
Pre-Proposal Meeting:	March 27, 2018, 11:00 AM Central
Deadline for Questions Regarding this RFQ:	March 29, 2018
Answers to Questions Posted on Website:	April 2, 2018
Proposals Due:	April 20, 2018, 2:00 PM Central
Interviews (if necessary):	Week of May 14 – 18, 2018
Target Selection Date:	June 5, 2018

**Des Moines
Area Regional
Transit Authority**

620 Cherry Street
Des Moines, Iowa
50309-4530

515-283-8100
Fax 515-283-8135
ridedart.com



LEGAL NOTICE

REQUEST FOR QUALIFICATIONS
FY18-Q-001

ON-CALL GENERAL ARCHITECTURE AND ENGINEERING CONSULTING SERVICES

Sealed proposals are hereby requested by the DES MOINES AREA REGIONAL TRANSIT AUTHORITY (DART), 620 Cherry Street, Des Moines, Iowa to be received until 2:00 PM Central time, on April 20, 2018 for On-Call General Architecture and Engineering Consulting Services.

Requests for clarification and/or questions concerning the issued document shall be directed to Mike Tiedens in the DART Procurement Department at 515-283-5034 or Fax 515-283-8135 or e-mail dartprocurement@ridedart.com. All submittal questions concerning this RFQ are due on March 29, 2018. This will be the only notice rendered for this procurement. Proposal Documents can be obtained at DART Central Station, above address, during the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday or DART's website <https://www.ridedart.com/business-center/procurement>.

In accordance with Title VI of the Civil Rights Act of 1964, DART notifies all proposed vendors that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, Disadvantaged Business Enterprises will be afforded full opportunity to submit a proposal in response to this request and will not be discriminated against on the grounds of race, color, or national origin in consideration of an award.

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SECTION 1: PROPOSAL REQUIREMENTS

All proposals are subject to the conditions specified herein. Proposals that do not comply with these conditions are subject to rejection. Proposing firms shall include the following information, at a minimum, in their proposal and shall organize their proposal in the same order as the items are listed below.

1.1. GENERAL REQUIREMENTS

The proposal shall:

- Contain concise written materials that enable the reviewer to clearly understand the Proposer's capabilities and approach to the project.
- Specifically describe the Proposer's role in relationship to its subcontractors and shall describe the interfaces with said subcontractors.
- Reflect a level of understanding of the work required.

1.2. GENERAL FORMAT

- In preparing the proposal, please duplex print all sections to reduce paper consumption and use recycled products, where feasible.
- Proposals shall be prepared on 8.5 x 11" paper with 1" left margins and 1" top, bottom and right margins. Typing shall be single spaced and no smaller than font size 11.
- Use of 11 x 17" fold out sheets for large tables, charts or diagrams is permissible, but should be limited.
- Promotional or Advertising information will not be accepted.
- Proposals shall not exceed 40 pages total in length.

1.3. SUBMITTAL

Mailed or delivered proposals shall be addressed to:

Des Moines Area Regional Transit Authority
ATTN: PROCUREMENT DEPARTMENT
620 Cherry Street
Des Moines, Iowa 50309

E-mailed proposals shall be sent to:

dartprocurement@ridedart.com

1.4. COPIES

- One (1) unbound original in an envelope marked as "Original".
- Six (6) bound copies originals, all of which shall be enclosed and sealed in an envelope marked as "Copies".
- One (1) complete electronic copy submitted as one file via email or on a CD or flash drive.

1.5. SUBMITTAL REQUIREMENTS

A. PROPOSAL LETTER

This letter must be completed and executed by an authorized representative of the



SECTION 1: PROPOSAL REQUIREMENTS

Proposer. No other letter may replace or be included in addition to the Proposal Letter.

A proposal letter transmitting the proposal must be submitted and dated. The letter must indicate that the Proposer agrees to be bound by the proposal without modifications, unless mutually agreed to by DART and the Proposer.

The proposal letter shall also contain the name, title, address, e-mail address, and telephone number(s) of an individual(s) with authority to bind the Proposer during the period in which DART is evaluating proposals. The letter shall also identify the legal form of the firm. If the firm is a corporation, the letter shall identify in which state the company is incorporated. If a consortium, joint venture or team approach is being proposed, provide the above information for all participating firms.

The proposal letter shall be signed by a principal of the firm or other person fully authorized to act on behalf of the firm or team.

B. PROPOSED TEAM AND EXPERIENCE

The proposal shall outline the team for the project/contract. The primary focus of this section should be on the firms involved and their experience/qualifications for their proposed project(s), including any experience involving coordination with local agencies or municipalities. It shall identify the prime consultant and include any joint venture partners.

Each firm should outline their project work and processes they would like DART to consider towards their experience from the last five (5) years. In addition, each firm shall submit at least five (5) professional references for work from the last 5 years of projects.

C. KEY PERSONNEL

The proposal shall outline the staffing for the Project. The primary focus of this section will be on the people to be assigned and their individual experience and qualifications for their proposed assignments. This section shall identify the Project Manager and key management staff. An organization chart shall be included depicting staff to be assigned to the project. The organization chart shall show the employing firms and which staff members are to be assigned full-time to the project office. A matrix shall be included that provides the following for all proposed key staff:

- Current work load and location
- Proposed assignment
- Date available for assignment to Project
- Professional registration

Capsule resumes highlighting other experience relevant to their project assignment shall be included for the Project Manager and key management staff.

D. MANAGEMENT PLAN

The Management Plan should demonstrate how the firm will manage their responsibilities, schedule the work to be performed and work with DART personnel,



SECTION 1: PROPOSAL REQUIREMENTS

participating cities, and other agencies and organizations. It shall include the proposer's approach to managing the schedule for their work and the service as a whole. It shall address proposer's approach to scope, schedule, and cost control. It should also include any other information helpful to the Selection Committee in determining the proposer's unique ability to manage, control and coordinate the work assigned.

It shall present proposer's approach to Quality Control. It should include any other information helpful to the Selection Committee in determining the proposer's unique ability to manage and perform the specified project/service.

E. SUPPORTIVE INFORMATION

Supportive information includes staff resumes not included as part of Section C, project descriptions and similar information that the proposer wishes to include in support of the information required above. This information is not included in the 40 page limit.

F. DBE INFORMATION

DART has established a DBE Participation Policy Statement and goals for the agency. Specific Information regarding the policy and goal is provided in Section 5: Instructions to Proposers, 5.17. If a proposer chooses to include DBE participation in the proposal, the DBE information shall include:

- A description of any DBE firm(s) and the work it (they) will perform
- Evidence of the firm's DBE certifications

G. CONTRACT PROVISIONS

Indicate your willingness to accept the terms and conditions in the Contract Provisions (Section 6) or list those to which you take exception, and, as appropriate, provide proposed alternate wording. It is not DART's intent to make substantial changes to the outlined Contract Provisions. The Contract Provisions (and also Exhibit A) of the RFQ will form the basis of the contract that will be executed with the winning proposer(s).

H. FORMS

Compliance with these requirements is mandatory for contract award:

- ATTACHMENT 1 – Acknowledgement of Addenda
- ATTACHMENT 2 – Proposal Form
- ATTACHMENT 3 – Contractor's Statement On Sub-Contractors
- ATTACHMENT 4 – Non-Collusion Affidavit
- ATTACHMENT 5 – Certification of Primary Contractor Regarding Debarment, Suspension, and Other Responsibility Matters
- ATTACHMENT 6 – Certification of Lower-Tier Participants (Subcontractors) Regarding Debarment, Suspension, and Other Ineligibility and Voluntary Exclusion
- ATTACHMENT 7 – DBE Participation Form
- ATTACHMENT 8 – Certification of Restrictions on Lobbying
- ATTACHMENT 9 – Disclosure Of Lobbying Activities

SECTION 2: SCOPE OF WORK



2.1. INTRODUCTION AND BACKGROUND

Des Moines Area Regional Transit Authority (DART) is the regional transit authority governed by a nineteen (19) member independent commission. DART's service area includes the following communities: Alleman, Altoona, Ankeny, Bondurant, Carlisle, Clive, Des Moines, Elkhart, Granger, Grimes, Johnston, Mitchellville, Pleasant Hill, Polk City, Unincorporated Polk County, Runnells, Urbandale, West Des Moines and Windsor Heights. DART operates out of two facility locations and has 16 local fixed routes, 2 shuttles, 7 express routes, 3 flex routes and 5 On-Call zones. DART Paratransit provides both general public demand response transportation services well as ADA complimentary service. DART also has an extensive RideShare program that operates nearly 100 vans throughout the region serving over 700 customers. The population of Des Moines is approximately 200,000 and the regional metro service area has a population of approximately 580,000. About 4.6 million unlinked trips are provided annually.

DART has two main facilities:

- **Operations and Maintenance Facility (1100 DART Way, Des Moines)** – This building was built in 1976 and comprises an office building for DART's operations and maintenance personnel, two bus storage garages, a fueling station, a bus wash and an eighteen bay maintenance garage. The facility has had several additions over the years as well as being renovated due to the flood in 1993.
- **DART Central Station (620 Cherry Street, Des Moines)** – This facility opened in November 2012 and serves as DART's primary bus transfer facility as well as housing several administrative personnel. DART Central Station is a certified as LEED Platinum status.

Besides the two facilities noted above DART has several shelters in the region and has an expansion plan for shelters throughout the region. DART also has several mobility hubs throughout the region which consist of a shelter and a bikeshare station.

2.2. PROJECT DESCRIPTION

DART is interested in contracting with up to two (2) Architecture and Engineering consulting teams that DART can call on to support specific projects. Of those contracted with, DART will select from the most qualified firm based on the task order and other considerations, including availability, experience, etc. Firms selected and placed under contract are not required to accept the specific work and are not guaranteed to be selected for work.

As the need for services arises, DART will send a request summarizing the proposed Scope of Work to the selected A&E Firm. The selected firm shall prepare a written draft submittal in response to each work task request. The response to DART's request will be discussed and adjusted as necessary. Once the scope is agreed upon by both DART and the consultant, the consultant will finalize the task order and compensation will be negotiated. A formal Task Order for the specific work shall be issued at that point.



SECTION 2: SCOPE OF WORK

Any awarded contract will not be an exclusive contract for work. DART may, in its sole discretion also elect to hire consultants for the work described in this scope of work through other procurement processes.

DART'S FUTURE PLANS

During the next few years, DART plans to do the following projects and other similar projects:

- Renovation and rehabilitation of DART's Operations and Maintenance Facility. Elements of the renovation and rehabilitation could include, but are not limited to: grading and paving; traffic circulation, structures, day lighting, security cameras, site lighting, landscaping, signage, enlarging the portals for the bus storage bays, sprinkler system, generator installation, electrical system updates, boiler system replacement and fuel system replacement.
- Siting studies, environmental documentation, National Environmental Policy Act (NEPA), ROW procurement, permitting, design, and construction oversight.
- Design, location, and construction of bus stops, shelters, mobility hubs, and park & rides that include: Americans with Disability Act (ADA) shelter concrete pads, sidewalks, solar lighting, benches, trash cans, bus pull outs and traffic circulation.
- Cost estimating and scheduling for small to large transit projects during preliminary design and throughout the design process.
- Design and construction coordination with contractors and consultants working on other public and/or private projects that involve and/or impact DART's service or facilities.
- Implementation of electric buses with related infrastructure improvements.
- Review and functional analysis for facility capacity, efficiency, organization, and/or safety at existing and proposed transit facilities.
- Assistance with planning and designing transit infrastructure in regional corridors.
- Master Planning for DART facilities (site and space).
- Fuel System Tanks

2.3. POTENTIAL SCOPE OF SERVICES

DART is seeking to pre-qualify one or more full service On-Call Architectural and Engineering consultant(s) that integrate architectural, engineering, landscaping, environmental, surveying and other necessary services as determined for projects. Each consultant will be pre-qualified based on their ability to bring necessary and desired services and skill sets to DART projects. Consultants must have a current license in the State of Iowa and perform all work in accordance with the laws of the State and the jurisdictions in which the work is being performed.

The Architecture and Engineering consultant(s) will document their ability to incorporate and administer a full range of technical consultant services into their work as well as to work with DART staff or other consultants on projects as needed.

The successful Architecture and Engineering Team(s) will need to be able to provide and coordinate work of the following services:



SECTION 2: SCOPE OF WORK

- **Design Architect/Services** for special projects including transit stations, bus shelters, Park & Ride shelters, new Park & Rides/Transit Centers, corridor enhancements and facility renovations.
- **Engineering Services (civil, mechanical, electrical, and structural, etc.)** to renovate existing functioning facilities as well as potentially design new transit facilities.
- **Environmental Consulting Services** for NEPA/SEPA/ESA documentation, public participation, contacting resource agencies, wetland delineation, downstream analysis, air and noise analysis, environmental justice, hazardous materials, historic preservation, and other specific resource requirements and concerns.
- **Cost Estimating Services**, including operations and maintenance costs for facility projects.
- **Construction Manager/Oversight Services** for transit facility projects including. Construction oversight service would include: project construction administration, electronic database setup and administration, taking meeting minutes, and coordinating/ routing/ processing submittals, requests for information, special inspections, change orders, etc.
- **Traffic Engineering Services** for project traffic impact analysis and mitigation reports for Park & Rides and transit facilities, transit signal priority to support transit corridors and BRT, and specific travel lane and intersection analysis and recommended solutions and related services. Coordinate traffic engineering work with other local municipalities.
- **Geotechnical Services** for transit facilities.
- **Landscaping Design Services** for new and renovated transit facilities (Bus Rapid Transit Stations, Park & Rides, and Operations Facilities).
- **Disaster Analysis Services** for site and buildings and systems

In addition, DART may request the Full Service On-Call Architecture and Engineering Consultant to include the following services/technical consultants as the need arises.

- **Special Inspection Services** for transit projects including: new facility construction and renovations at existing facilities. Special Inspectors would be capable and licensed to perform Special Inspections according to all requirements of the International Building Codes including: welding, high performance coatings, concrete construction, post-tension & pre-tension concrete, footings and foundations, rebar placement, soils moisture & compaction testing, high strength bolts & fabrication, and seismic & wind resistance.
- **Security Specialist Services** for DART facilities.
- **Economic Market Analysis Services** to help DART define preferred site development.
- **Public Art Facilitation Services** for public projects at new transit facilities. This work would include working with the general public on specific projects, coordinating with architects and engineers, defining art budgets for specific projects, technical knowledge/experience for the proposed project/material, and providing a studio workspace to complete the art project.
- **AutoCAD drawing expert/technician services** for all projects, including as-built information, existing file storage and archival recommendations, and development of software standards.

SECTION 2: SCOPE OF WORK



- **Roofing Consultant/Specialist Services** to review plans, specifications, and constructed roofs on shelters, maintenance buildings, and office buildings to provide designs/ specifications and to make design/correction recommendations.
- **Lighting Consultant Services** to assist with exterior lighting at transit facilities and some interior work office and shop lighting.
- **Interior Decorator/Space Planning Services** for transit operating facilities.
- **Signage Consultant Services** for all signage needs at transit facilities.
- **Prevailing Wage Review and Certified Payroll Processing (Davis Bacon).**
- **On-site Prevailing Wage Worker Survey (Davis Bacon).**

2.4. DART'S OBJECTIVES

DART is seeking Architecture and Engineering consultants with excellent project management, engineering, and architectural skills as demonstrated by their proposed DART Architecture and Engineering team's experience and on their performance on previous similar projects especially from the last five years. The successful Architecture and Engineering team will emphasize responsiveness and value to their client and commitment to project schedule and budget as demonstrated by their cost containment approach and success with being on budget and schedule in past projects. The successful team will also include a relationship manager and/or project managers with strong communication skills, solid professional experience/knowledge, responsive customer service, and a proactive approach to projects. In addition, project managers will have demonstrated the ability and examples to effectively negotiate and secure preferred solutions between diverse project players and to generate and maintain achievable project quality, schedules and budgets.

2.5. TASK ORDERS

DART will request specific work under this Contract. The Contractor shall submit a Task Order with an attached scope of work, including specific tasks and deliverables and a total not-to-exceed price for the work to be performed. DART will issue an executed Task Order in the amount specified to accept the submission. All Task Orders issued for services provided under this contract shall be provided under the terms and conditions of this contract.

SECTION 3: PROPOSAL EVALUATION AND AWARD PROCEDURE



3.1. GENERAL GUIDANCE

DART reserves the right to accept or reject any or all proposals and may select, and negotiate with one or more Proposers concurrently should they both be deemed to be in the competitive range, and enter into a Contract with such Proposer(s) who is determined, by the DART, to provide the services which are in the best interest of DART. DART may enter into contracts with more than one proposer.

DART's Selection Committee reserves the right to request additional information from Proposers, to negotiate terms and conditions of the Contract, request oral presentations, or ask Proposers to appear before the Selection Committee to clarify points of their proposal.

The Selection Committee will evaluate the submittals in relation to the evaluation criteria. The Selection Committee will identify and prepare a short-list of the top rated proposer or proposers to interview (should it be necessary).

3.2. EVALUATION CRITERIA

The evaluation criteria for this procurement are:

A. Quality and Availability of Key Personnel (40 Percent)

The evaluation will be based upon:

- *The technical qualifications and work experience of key personnel assigned to work with DART staff; this also includes the project team's past experience on similar projects*
- *The proposer should demonstrate the capacity of the team to deliver on products*

B. Firm and Staff Qualifications (30 Percent)

The evaluation will be based upon:

- *The technical qualifications and experience of the firm in all areas of work being requested, including any partners and subcontractors*
- *Beyond product and service history, the structure of the corporation, availability of corporate support, and the financial viability of the firm will be considered*
- *Additionally, DART is seeking the ability of the proposer to demonstrate a history of providing high quality customer service, as service quality is a vital review component*

C. Design Concepts and Innovative Ideas (20 Percent)

The evaluation will be based upon:

- *The proposer's ability to think creatively about how to solve client problems and ability to use cutting edge and cost effective measures*
- *The proposer's ability to design projects in consideration with transit specific opportunities and transit oriented development*

D. Quality and Project Controls (10 Percent)

The evaluation will be based upon:

SECTION 3: PROPOSAL EVALUATION AND AWARD PROCEDURE



- *The ability of the proposer to provide a high quality of customer service*
- *This includes project management abilities and tools used to effectively control budgets and schedules while delivering products that are friendly to the public and of superior technical quality*

Following the completion of the interview process (should it be necessary), the Selection Committee will review the evaluation of the written RFQ relative to the input received during the interview process and prepare a final ranking of the short-listed respondents.

All respondents will be notified after the Selection Committee has selected the most qualified Respondent(s).

Any award shall be on the basis of the outlined evaluation criteria and made to the Proposer (s) whose proposal is judged as providing the best value in meeting the interest of DART and the objectives of the project. DART staff will start contract negotiations with the top ranked proposer(s). The DART Commission may be required to approve the award.

**SECTION 4:
PROPOSAL TIMELINE**



4.1. PLANNED PROCUREMENT SCHEDULE

The following timeline has been established for this Request for Qualifications:

TASK	DATE
Date Issued:	March 13, 2018
Pre-Proposal Meeting:	March 27, 2018, 11:00 AM Central
Deadline for Questions Regarding this RFQ:	March 29, 2018
Answers to Questions Posted on Website:	April 2, 2018
Proposals Due:	April 20, 2018, 2:00 PM Central
Interviews (if necessary):	Week of May 14 – 18, 2018
Target Selection Date:	June 5, 2018



SECTION 5: INSTRUCTIONS TO PROPOSERS

5.1. INTERPRETATION OF RFQ DOCUMENTS

No oral interpretations will be made to any firms as to the meaning of specifications or any other contracts documents. All questions pertaining to the terms and conditions or scope of work of this RFQ must be sent in writing (mail, e-mail, or fax) to the DART Procurement Manager and received by the date specified. Responses to questions may be handled as an addendum if the response would provide clarification to requirements of the proposal. All such addenda shall become part of the contract documents. DART will not be responsible for any other explanation or interpretation of the proposed proposal made or given prior to the award of the contract. The DART Procurement Manager will be unable to respond to questions received after the specified time frame. If no request for clarification is submitted by the Proposer all conditions and requirements contained within are accepted and understood by the Proposer.

5.2. ADDENDUM TO RFQ

If it becomes necessary to revise this RFQ, an addendum will be posted on the DART procurement website and emailed to those on the distribution list.

5.3. QUESTIONS AND/OR CLARIFICATIONS

Questions and correspondence shall be directed to:

Des Moines Area Regional Transit Authority
ATTN: PROCUREMENT DEPARTMENT
620 Cherry Street
Des Moines, Iowa 50309
Phone: 515-283-8146
E-mail: dartprocurement@ridedart.com

5.4. RFQ DUE DATE

Proposals must be received by 2:00 PM Central on April 20, 2018.

They should be delivered to:

Des Moines Area Regional Transit Authority
ATTN: PROCUREMENT DEPARTMENT
620 Cherry Street
Des Moines, Iowa 50309
Phone: 515-283-8146

5.5. TYPE OF CONTRACT

DART intends to award one or more five (5) year contracts for the services described in Section 2 Scope of Work.

5.6. RIGHTS OF DART IN REQUEST FOR QUALIFICATIONS PROCESS

DART may investigate the qualifications of any Proposer under consideration. DART may require confirmation of information furnished by a Proposer, and require additional evidence of qualifications to perform the Services described in this RFQ. DART reserves the right to:

- Disqualify any Proposer in accordance with Instruction to Proposers

SECTION 5: INSTRUCTIONS TO PROPOSERS



- Reject any or all of the Proposals, at its discretion
- Remedy errors in the RFQ
- Cancel the entire RFQ
- Issue subsequent RFQ
- Appoint evaluation committees to review Proposals
- Seek the assistance of outside technical experts to review Proposals
- Approve or disapprove the use of particular Subcontractor and Suppliers
- Establish a short list of Proposers eligible for discussions after review of written Proposals
- Negotiate with any, all or none of the Proposers
- Award a contract to one or more Proposers
- Disqualify the Proposal(s) upon evidence of collusion with intent to defraud or other illegal practices on the part of the Proposer(s)
- Waive any informalities or irregularities in any Proposal, to the extent permitted by law

This RFQ does not commit DART to enter into a Contract.

5.7. DART PROTEST PROCEDURES

- A) **Who May Protest or Appeal.** Any Proposer showing a substantial economic interest in the award of a contract under this procurement who claims to be aggrieved in connection with the solicitation or proposed award of a contract under this procurement may protest to DART in accordance with the procedures set forth herein.
- B) **Timing of Protest.** A protest must be submitted by an Interested Party no later than 7 business days prior to the date and time designated for submittal of bids or proposals or within 5 business days after the allegedly aggrieved person or party is notified of contract award. All protest must be in writing and shall contain the following:
- the procurement title and/or number under which the protest is made
 - the name and address of the allegedly aggrieved party
 - a detailed description of the specific grounds for the protest and all supporting documentation
 - the specific ruling or relief requested
 - the written protest shall be addressed to DART Procurement Manager, Des Moines Area Regional Transit Authority, 620 Cherry Street, Des Moines, IA 50309
- C) **Evaluation of Protests.** A protest decision should ordinarily be written and published within ten (10) working days of receipt of the protest. The Procurement Manager may extend the response period if additional time is required to gather and evaluate information necessary for the decision or for other good cause.

Upon receipt of a protest, the Procurement Manager shall notify parties

SECTION 5: INSTRUCTIONS TO PROPOSERS



involved in the procurement as identified above, and such DART personnel or others as may be appropriate or necessary to determine the validity of the protest. A notice of the receipt of a protest pertaining to a federally participating purchase shall be sent to the FTA regional office, per FTA Circular 4220.1F, Chapter VII, Sec. 1.a(2). Copies of the protest submittal, or portions thereof, may be provided to the notified parties as appropriate.

The Procurement Manager may request additional written information from the protestor or other parties, as necessary to determine the validity of the protest. A formal or informal hearing may be held. If a formal hearing is held, testimony shall be given under oath and a transcript or electronic recording of the proceeding shall be made; the transcript or recording shall be provided to the protestor and made part of the protest record.

The Procurement Manager shall redact from any submission under the protest process information which has been identified as proprietary, and which, in his/her judgment, is protected from disclosure under the Iowa Open Records Law prior to furnishing such submission to any other party, unless the person furnishing the information consents, in writing, to distribution of the information to other interested parties.

The Procurement Manager will consult DART Legal Counsel prior to issuing a decision regarding the protest.

- D) **Response to Protest.** Upon receipt of a timely written protest, the Procurement Manager will consider the protest in accordance with established procedures and promptly issue a written decision stating the reasons for the action taken and informing the allegedly aggrieved person of his/her right to appeal the decision to the Chief Executive Officer ("CEO").

The decision document will contain four parts:

- o SUMMARY – Describes briefly the protesting party, the solicitation involved, the issue(s) raised, and the decision
- o BACKGROUND – Describes in more detail the history of the solicitation and the procurement events leading to the protest, the date the protest was received, and the process by which it was evaluated
- o DISCUSSION – Identifies the issue or issues raised by the protestor, and the factors considered in reaching a decision, and the rationale for the decision
- o DETERMINATION – States the decision and any remedy or subsequent action, e.g. cancellation of the procurement, resulting from it.

The decision made by the Procurement Manager shall be final and conclusive unless appealed in writing to the CEO within 5 business days of receipt by the Protestor. The CEO will consider the appeal and promptly issue a written decision, which shall be final and conclusive.

A Protestor may not commence litigation prior to exhausting all administrative

SECTION 5: INSTRUCTIONS TO PROPOSERS



remedies. Failure to exhaust all administrative remedies shall constitute an absolute waiver of the protestor's right, if any, to commence litigation.

Failure to comply with these protests and appeal requirements will render a protest or an appeal untimely or inadequate and may result in its rejection by DART.

After the exhaustion of all administrative remedies, the protestor shall have 10 calendar days to commence litigation. Failure to commence litigation within this limitation shall constitute an absolute waiver of the protestor's right.

- E) **Record of Protest.** Upon receipt of a protest involving FTA funded contracts, FTA shall be notified, and shall be kept informed of the status of the protest until resolved.

- F) **Protest at the Federal Transit Administration level.** Protests made to the FTA will be limited to DART's failure to have or follow its protest procedures, DART's failure to review a complaint or protest, or violations of Federal law or regulation. Any protest to the FTA must be made in accordance with the following guidelines:
 - o A protest must be filed with the FTA no later than 5 business days after the protester learns or should have learned of an adverse decision by DART or other basis of appeal to FTA
 - o A protest to FTA must be filed in accordance with FTA Circular 4220.1F, Chapter VII, as amended
 - o The Procurement Manager shall submit to the FTA Regional Office a copy of all protests and DART's response

5.8. DURATION OF OFFER

All proposals shall remain in effect for a minimum of one-hundred eighty (180) days from the proposal opening date or scheduled date for receipt of proposals. Proposers that allow less than one-hundred eighty (180) days for acceptance by DART will be considered non-responsive and will be rejected.

5.9. PRICES, TERMS AND PAYMENT

- A) Taxes: DART does not pay federal excise and sales taxes or state excise and use taxes on direct purchases.
- B) Discounts: Cash discounts for prompt payment shall not be considered in determining the lowest net cost for proposal evaluation purposes.
- C) Mistakes: Proposers are expected to examine the conditions, scope of work, proposal prices, extensions, specifications and all instructions pertaining to the request for qualifications. Failure to do so will be at the Proposers risk.
- D) Invoicing and Payment: Charges rendered by Proposer to DART shall be due and payable on terms of Net 45 days after proper and complete billing is received by DART.

SECTION 5: INSTRUCTIONS TO PROPOSERS



5.10. TAX EXEMPTION

DART is exempt from payment of all Federal, State, and local taxes in connection with this Project. Said taxes shall not be included in the proposal or proposal prices. DART will provide necessary tax exemption certificates. This provision does not relieve the selected contractor from the responsibility to pay all applicable taxes for goods, services, and labor acquired in the performance of this Project.

5.11. LATE PROPOSALS OR WITHDRAWAL OF PROPOSALS

- Any proposal received at the DART offices designated in the solicitation after the time specified for receipt of proposals will not be considered and will be returned to the proposer unopened.
- A proposal may be withdrawn in person by the proposer or their authorized representative, provided their identity is made known and a receipt is signed for the proposal, and only if the withdrawal is made prior to the time specified for receipt of proposals.

5.12. QUALIFICATIONS FOR AWARD

Award of this contract shall be made to the proposal(s) which is (are) responsive in all respects to these procurement requirements, and where the Proposer is determined to be a responsible Proposer, a determination that shall be made solely at the discretion of DART. The Proposer affirms and declares:

- The Proposer has the capacity to do business within the State of Iowa.
- The Proposer has the capability to assure completion of the required services within the time specified under this contract.
- The Proposer presently has the necessary facilities, financial resources and licenses to complete the contract in a satisfactory manner and within the required time.
- The Proposer is of lawful age and that no other person, firm or corporation has any interest in this proposal or the contract proposed to be entered into.
- The Proposer is not in arrears to the Des Moines Area Regional Transit Authority upon debt or contract and is not defaulting as surety or otherwise, upon any obligation to the Des Moines Area Regional Transit Authority.
- No member, officer, or employee of DART during his tenure or for two years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.
- To be "qualified" by DART, the proposer must have all State and Local licenses as legally required that are necessary to perform and complete the work as called for herein.
- The proposer is not on the Comptroller General's list of ineligible contractors.

5.13. WITHHOLDING AWARD

This solicitation for proposals does not commit DART to award a contract, pay any costs incurred in preparation of proposal or proposals in response to this solicitation, or to procure or contract for goods or services. Proposer shall be responsible for all costs incurred as part of their participation in the pre-award process.

SECTION 5: INSTRUCTIONS TO PROPOSERS



5.14. PROPOSAL ACCEPTANCE, REJECTION, AND POSTPONEMENT

DART reserves the right to postpone, accept, or reject any and all proposals in whole or in part, on such basis as the DART Commission deems to be in its best interest to do so, subject to the rules and regulations set forth by the U.S. Department of Transportation.

Any person, firm, corporation, Joint Venture/partnership, or other interested party that has been compensated by DART or a contractor engaged by DART for assistance in preparing the RFQ Documents and/or estimate shall be considered to have gained an unfair competitive advantage in proposing and shall be precluded from submitting a Proposal in response to the RFQ.

Any person, firm, corporation, Joint Venture/partnership, or other interested party that has continued discussions regarding this RFQ with DART or contract staff other than the Procurement Manger (with the exception of the Contract Compliance Office regarding DBE informational requests or informational requests on the Lobbying Program) after the RFQ is issued may be considered to have gained an unfair competitive advantage in proposing and may be precluded from submitting a Proposal in response to the RFQ.

5.15. USDOT/FTA/IDOT CONCURRENCE FOR CONTRACT AWARD

The award of a Contract for this Project may be subject to review and concurrence by the U.S. Department of Transportation, Federal Transit Administration and/or the Iowa Department of Transportation.

5.16. DEBARMENT AND SUSPENSION

Proposers shall complete and submit as part of their proposal, the Certification of Primary Contractor Regarding Debarment, Suspension, and Other Responsibility Matters for all projects when the total aggregate value of the contract exceeds \$100,000. The proposer shall also submit a list of subcontracts and subcontractors that will have a financial interest in this Project that exceeds \$25,000 or will have a critical influence on or a substantive control over the Project. A Certification Of Lower-Tier Participants Regarding Debarment, Suspension, And Other Ineligibility And Voluntary Exclusions shall be submitted by the proposer to DART for each listed subcontractor prior to contract award.

During the term of the Contract the successful proposer will be required to immediately notify DART of 1) any potential subcontractor that is subject to this provision and to submit the appropriate certification prior to award of a subcontract, 2) any information that its certification or certification of its subcontractors was erroneous when submitted, 3) any information that certifications have become erroneous by reason of changed circumstances.

5.17. DBE PARTICIPATION

In connection with the performance of this Contract, the successful proposer agrees to cooperate with DART in meeting its commitments and goals with regard to maximum utilization of Disadvantaged Business Enterprises (DBE). The policy and obligations for maximum utilization of DBE's are herein set forth:

SECTION 5: INSTRUCTIONS TO PROPOSERS



- A) **Policy.** It is the policy of the Department of Transportation that Disadvantaged Business Enterprises, as defined in 49 CFR, Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or apart with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR, Part 26 apply to this Agreement.
- B) **DBE Obligation.** DART or its Contractor agrees to ensure that Disadvantaged Business Enterprises, as defined in 49 CFR, Part 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, DART or its Contractor shall take all necessary and reasonable steps in accordance with 49 CF, Part 26, to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and to perform contracts. DART and its Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

DART has determined that there is no minimum DBE participation requirement for this project.

5.18. EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS

DART agrees that it will comply with the requirements of 49 U.S.C. Section 5323(h)(2) by refraining from using any federal assistance awarded by the Federal Transit Administration to support procurements using exclusionary or discriminatory specifications. DART further agrees to refrain from using state or local geographic preferences, except those expressly mandated or encouraged by federal statute.

5.19. LOBBYING OF DART STAFF, COMMISSISON MEMBERS OR OTHER AFFILIATES

Lobbying of any DART Commission member, officer, evaluation/selection committee member, employee, agent or attorney by a proposer, any member of the proposer's staff, any agent or representative of the proposer, whether compensated or not, or any person employed by any legal entity affiliated with or representing the proposer shall be prohibited on all competitive selection processes and contract awards, including but not limited to requests for proposals, requests for quotations, requests for qualification, invitation for bids, bids or the award of purchasing contracts of any type. Lobbying is strictly prohibited from the date of the advertisement or on a date otherwise established by the Des Moines Area Regional Transit Authority Commission, until an award is final, any protest is finally resolved, or the competitive selection process is otherwise concluded.

The purposes of this prohibition is to protect the integrity of the procurement process by shielding it from undue influences prior to the contract award, a protest is resolved, or the competitive selection process is otherwise concluded. Nothing herein shall prohibit a proposer from contacting the procurement department or DART's general counsel to address situations such as clarification and/or questions related to the procurement process or protest.

SECTION 5: INSTRUCTIONS TO PROPOSERS



For the purposes of this Paragraph, lobbying shall mean influencing or attempting to influence action or non-action, and/or attempting to obtain the goodwill of persons specified herein relating to the selection, ranking, or contract award in connection with the bidding process through direct or indirect oral or written communication. Lobbying includes such actions whether performed by the proposer itself, any employee of the proposer, the proposer's attorney, agent or other paid or non-paid representative, or any person who performs such actions of behalf or at the behest of the proposer. Further, lobbying includes the attempt to influence Commission members while they are performing their functions for other governmental entities (e.g.) a city or Polk County). The final award of the contract shall be the effective date of the contract.

Any board member, officer, evaluation/selection committee member, employee, agent or attorney who has been lobbied shall immediately report the lobbying activity to the CEO.

5.20. FEDERAL LOBBYING CERTIFICATION

Proposers shall complete and submit as part of their proposal the Certification of Restrictions on Lobbying for all projects when the total aggregate value of the contract exceeds \$100,000. The Contractor shall also submit a list of subcontracts and subcontractors that will exceed \$100,000. A Certification of Restrictions on Lobbying shall be submitted by the proposer to DART for each listed subcontractor prior to contract award.

5.21. COLLUSION

The Proposer, by affixing his signature to the Certification Form, agrees to the following: "Proposer certifies that their proposal is made without previous understanding, agreement, or connections with any person, firm, or corporation making a proposal for the same items and is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action".

5.22. LEGAL REQUIREMENTS

Federal, state, county and local laws and ordinances, rules and regulations shall govern submittal and evaluation of proposals received and shall govern claims and disputes between Proposer(s) and DART by and through its officers, employees, authorized representatives, or any person, natural or otherwise. Lack of knowledge by Proposer is not a cognizable defense against legal effects.

5.23. EXCEPTIONS

Proposer is advised that if it wishes to take exception to any of the terms contained in this RFQ it must identify the term and the exception in its response to the procurement. Failure to do so may lead DART to declare any such term non-negotiable. Proposer's desire to take exception to a non-negotiable term will not disqualify it from consideration for award.

SECTION 5: INSTRUCTIONS TO PROPOSERS



5.24. PROJECT STARTUP

The selected contractor agrees to commence work on this Project immediately upon the signing of this Contract by both parties and the issuance of a Notice To Proceed by DART.

**SECTION 6:
CONTRACT PROVISIONS**



CONTRACT [DRAFT]

FOR ON-CALL GENERAL ARCHITECTURE AND ENGINEERING CONSULTING SERVICES

This CONTRACT FOR ON-CALL GENERAL ARCHITECTURE AND ENGINEERING CONSULTING SERVICES (the "Contract") is made as of the _____ day of _____, 20__ (the "Effective Date") by and between Des Moines Area Regional Transit Authority, an entity created pursuant to Chapter 28E of the Iowa Code ("DART"), whose address is 620 Cherry Street, Des Moines, Iowa 50309, and _____, a _____, whose address is _____ ("Contractor").

RECITALS

- A. Contractor, for and in consideration of the Contract Price as hereinafter specified, hereby covenants and agrees to commence and complete work for On-Call General Architecture and Engineering Consulting Services for DART (the "Services") in accordance with the terms of this Contract;
- B. DART desires to obtain goods and/or services provided by Contractor (collectively, "Services") according to the requirements set forth in the Request for Qualifications (the "Solicitation") and as further described in this Contract;
- C. Contractor has submitted a bid or response in connection with the Solicitation (the "Response"), which DART has selected for the Project;
- D. Contractor represents and warrants to DART that Contractor is qualified and duly licensed to furnish the Services in Iowa;
- E. Contractor warrants that all representations made by Contractor in the Response remain valid, accurate, and binding; and
- F. Contractor desires to render the Services and meet the obligations set forth in the Contract Documents (defined below).

NOW, THEREFORE, in consideration of the promises herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

SECTION 6: CONTRACT PROVISIONS



AGREEMENT

1. **DEFINITIONS.** Terms not defined in the Contract Documents shall have the meanings ascribed to such terms in applicable federal, state or local laws and regulations. In the event there is a conflict between any defined terms, DART's reasonable interpretation of said term shall govern.

2. **CONTRACT DOCUMENTS.** For the purposes of this Contract, the following documents are collectively referred to herein as the "Contract Documents":

- a. The third-party contracting requirements located herein;
- b. Written change orders or amendments to this Contract which have been mutually agreed and executed by both parties;
- c. This Contract together with all Exhibits and attachments hereto; and
- d. The Solicitation.

In the event of a conflict between the terms of any of the documents that constitute the Contract Documents, the order of precedence of such documents shall be in descending order starting from (a). Unless specifically incorporated as an Exhibit or attachment hereto, Contractor's Response shall not constitute part of the Contract Documents. Any inclusion of the Response in an Exhibit or attachment hereto shall be for purposes of scope of work reference only, and any terms or provisions contained in the Response shall not be applicable and shall not constitute part of the Contract Documents.

3. **COMPLIANCE WITH APPLICABLE LAW; LICENSES AND PERMITS; FEDERAL CLAUSES; STATE CERTIFICATIONS; FEDERAL CERTIFICATIONS.** Contractor agrees to comply with all applicable federal, state, and local laws, ordinances, rules and/or regulations that in any manner relate to or affect the Services. Contractor must also maintain any and all appropriate licenses and permits to conduct business in DART's service territory and the state of Iowa. Contractor shall bind its Subcontractors to the obligations of this provision. Without limiting the foregoing, as applicable, Contractor agrees to abide by the provisions of the federal clauses (the "Federal Clauses") set forth in **[Exhibit X]** attached hereto and made a part hereof. Further, Contractor agrees to execute all state and federal certifications (the "State and Federal Certifications") set forth in **[Exhibit X]** attached hereto and made a part hereof, as applicable to Contractor and its performance hereunder. Contractor shall at all times be responsible for ensuring that it is in compliance with the most current version of the Federal Clauses and State and Federal Certifications.

4. **NON-EXCLUSIVE CONTRACT.** This is a non-exclusive contract. Contractor acknowledges and agrees that DART is not obligated to utilize Contractor for all of DART's needs for procurement goods and/or services which are the same or similar to the type provided by Contractor under this Contract. DART specifically reserves the right to concurrently contract with other companies for the same or similar goods and/or services if DART deems such action to be in DART's best interest.

5. **REQUIRED NOTICE TO PROCEED.** Contractor shall not proceed with any work required under the Contract Documents without a written notice of award from DART

SECTION 6: CONTRACT PROVISIONS



(the "Notice to Proceed"). Any work performed or expenses incurred by Contractor prior to receipt of the Notice to Proceed shall be entirely at Contractor's risk.

6. STATEMENT OF WORK. Contractor shall provide the Services to DART in conformance with the project description and scope of work (the "Statement of Work") as set forth in **[Exhibit X]** attached hereto and made a part hereof.

7. CONTRACT PRICE. The rate schedule and Not-to-Exceed (NTE) contract amount (the "Contract Price") shall be set forth on **[Exhibit X]** attached hereto and made a part hereof. Contractor shall not provide Services of an amount that would require payment by DART that is greater than the Contract Price, unless otherwise agreed by the parties in writing. Further, Contractor shall not be required to provide Services in excess of said amount, except as otherwise provided in the Contract Documents.

8. CONTRACT TERM. Unless terminated earlier in accordance with the provisions of this Contract or extended by mutual agreement of the parties, the term of this Contract shall commence on the Effective Date and shall remain in effect for a period of five (5) years thereafter (the "Term").

9. PAYMENT.

a. Invoicing and Payment Procedures; Audit and Setoff Rights. Invoices for work performed by Contractor pursuant to the Contract Documents shall be sent to:

DART
Attn: Accounts Payable
620 Cherry Street
Des Moines, Iowa 50309

Contractor shall submit invoices in accordance with the rate schedule as set forth in **[Exhibit X]** attached hereto and made a part hereof. Payment will be made by DART in accordance with the rate schedule and only for work which is actually performed by Contractor and accepted and approved by DART in writing. DART may request additional documentation from Contractor prior to payment of any invoice from Contractor. DART may disallow and deduct any cost for which proper documentation is not provided, and DART may withhold payment for Services in the event DART deems such Services were improperly performed or failed to meet specifications. Contractor shall, at a minimum, keep and maintain all records in connection with the Contract for a minimum of three (3) years following completion of the Contract, or for such longer times as may be required by law, but in any case in accordance with the record retention requirements contained in the Contract Documents. DART may, at any time, conduct an audit of any and all records kept by Contractor in connection with the Contract. Any overpayment to Contractor by DART discovered during the course of such an audit shall be immediately refunded to DART or may be set off against future amounts owed to Contractor by DART, at DART's sole option.

SECTION 6: CONTRACT PROVISIONS



- b. Time of Payment by DART. DART shall make full payment within net thirty (30) days after receipt and approval by DART of Contractor's invoice, unless otherwise stated in the Contract Documents.
- c. Prohibited Costs. Notwithstanding any other provision in the Contract Documents to the contrary, the provisions of Federal Acquisition Regulations Subparts 31.201 through 31.205 regarding "allowable costs" are hereby specifically incorporated by this reference.
- d. Receipt of Payment by Contractor as Release of DART. The acceptance by Contractor, its successors, or assigns of any progress payment or final payment due pursuant to the Contract Documents shall constitute a full and complete release of DART from any and all claims, demands, or causes of action whatsoever that Contractor, its successors, or assigns may have against DART in connection with the Services performed under the Contract Documents, through the date that the Services are rendered and for which such payment is made.
- e. Subcontractor Payments and Documentation. Contractor shall not subcontract any of its obligations under this Contract except to the extent specifically authorized herein. In the event Contractor utilizes any subcontractors and/or suppliers (each a "Subcontractor") in accordance with this Contract, Contractor agrees to pay each Subcontractor for satisfactory performance of their applicable subcontract no later than ten (10) business days from the receipt of each payment Contractor receives from DART. Contractor agrees further to return any retainage payments to each Subcontractor within ten (10) business days after the Subcontractor's Work is satisfactorily completed. Any delay or postponement of payment from the above-referenced timeframe may occur only for good cause following written approval of DART. This clause applies to both Disadvantaged Business Enterprise (as such term is used in the Third-Party Contracting Requirements) ("DBE") and non-DBE Subcontractors. If Contractor fails to pay a Subcontractor within ten (10) business days, Contractor must notify DART and the affected Subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

Contractor is obligated to pay interest to any Subcontractor on all amounts owed by Contractor that remain unpaid after ten (10) business days following receipt by Contractor of payment from DART for Work performed by a Subcontractor under the contract between Contractor and said Subcontractor, except for amounts withheld as allowed in subsection (A) of this section. Unless otherwise provided under the terms of the Contract, interest shall accrue at the rate of one percent (1%) per month, except for the amounts withheld.

Upon request by DART, Contractor shall provide DART with copies of billings and other invoices which may be received from any Subcontractors. In addition, Contractor will obtain lien waivers and releases in favor of DART, and in a form acceptable to DART, from any Subcontractor(s) for work so performed by that Subcontractor. DART shall have the right, but not the obligation, to directly contact and discuss with a Subcontractor any work performed by that Subcontractor under the Contract Documents.

SECTION 6: CONTRACT PROVISIONS



10. CONTRACTOR'S OBLIGATIONS.

a. As an independent contractor, Contractor shall, at its sole cost and expense, provide all labor, materials, equipment, tools, supplies and incidentals necessary to perform this Contract in the manner and to the full extent as set forth in the Contract Documents.

b. Contractor will render its Services in accordance with the standard of care, skill and diligence exercised by members of the same profession providing similar services under similar conditions at the locale of the Contract and at the time the Services are to be performed.

Contractor's performance shall be considered acceptable when:

i. Contractor's performance has been inspected and approved by DART;

ii. All the other duties and obligations to be performed by Contractor under the Contract Documents have been satisfactorily met or performed, including the delivery to DART of any materials or documentation relating to the Services.

c. Contractor acknowledges that DART is a public agency that receives both federal and state funding. Contractor agrees to abide by and conform to all applicable federal and state laws, rules, and regulations, whether or not such laws, rules, and regulations are expressly set forth in the Contract Documents. Contractor hereby specifically agrees to abide by and conform to those certain rules and regulations promulgated by FTA and/or the Iowa Department of Transportation.

d. Contractor acknowledges DART is exempt from payment of Iowa sales and use taxes, and DART agrees to sign an exemption certificate submitted by Contractor, if required. Contractor shall pay all applicable license fees and all applicable sales, use and other similar taxes relating to or arising out of the Contract Documents. Contractor shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with DART, and Contractor is not authorized to use DART's tax exemption number in securing such materials.

e. Contractor shall be responsible for payment of its employee(s)' Federal Insurance Contributions Act and Social Security benefits with respect to this Contract.

f. Unless otherwise expressly set forth in the Contract Documents, Contractor shall be responsible for securing, at Contractor's sole expense, all necessary permits and approvals. Contractor shall promptly furnish copies of all such permits and approvals to DART as and when obtained.

g. Contractor shall be responsible to coordinate all tests and inspections necessary for the proper execution and timely completion of this Contract.

h. Contractor shall be required to obtain and maintain during the term of this Contract, at Contractor's sole expense, any and all insurance required under the Contract Documents or as may be otherwise reasonably required by DART. DART shall be listed as an additional insured under said insurance policies. Contractor shall furnish certificates of insurance to DART.

i. Contractor shall provide to DART such additional information as DART may reasonably request from time to time. At DART's request, Contractor and certain

SECTION 6: CONTRACT PROVISIONS



of its employees and representatives shall also meet with DART from time to time regarding the Services to be rendered under this Contract.

11. SUBCONTRACTING.

a. Identification of Subcontractors. Contractor shall identify any and all intended Subcontractor(s) in the Contractor's Response. Such identification shall include the entity name, address, primary contact person, and phone number for each Subcontractor, along with the type and percentage of the Services to be subcontracted.

b. Binding of Subcontractors. Contractor is solely responsible for ensuring that all Subcontractors comply with the terms and conditions of this Contract as applicable to the work to be performed by the Subcontractor. At a minimum, Contractor shall bind any and all Subcontractors to the confidentiality, indemnification, insurance, and dispute resolution provisions and third-party contracting requirements provided hereunder.

12. DELAYS.

a. Force Majeure. Neither party will be liable for its non-performance or delayed performance if caused by a Force Majeure Event (as defined herein). A "Force Majeure Event" shall be a condition beyond the performing party's control including, but not limited to acts of God, governmental restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected. A party that becomes aware of a Force Majeure Event that will significantly delay performance will notify the other party promptly in writing (but in no event later than ten (10) days) after it discovers the scope of the delay. Contractor shall not be entitled to any claim for damages on account of hindrances or delays for any Force Majeure Event whatsoever. This includes, but is not limited to, any actions which result in delays of scheduling, changes in the scope of Services as set forth in the Statement of Work, or increases in the cost of performance of the Services.

b. Performance Delays Caused by Contractor. If Contractor delays the Services, DART will get appropriate credits to any invoices submitted by Contractor; and the parties will execute a written change order to credit DART for all reasonable charges incurred because of the delay. Delay charges may include costs incurred by DART for suspending and re-mobilizing the work; project management, and standby time calculated at then current rates; and preparing and implementing an alternative implementation plan. Contractor shall not deny DART's right to an adjustment of time of performance and price based solely on DART's failure to timely assert its rights under this provision.

c. Notification of Delay by Contractor. Contractor will verbally and via email notify DART's project manager as soon as Contractor has knowledge that an event has occurred which will cause a substantial delay. Within five (5) business days, Contractor will confirm such notice in writing, furnishing as much detail as is available and, if applicable, Contractor shall suggest an extension of time for completion. DART will review the letter and suggested extension. DART shall respond to Contractor within ten (10) calendar days in writing. DART may withhold

SECTION 6: CONTRACT PROVISIONS



amounts necessary to cover any claims of which it has been notified of subcontractors, materialmen, or suppliers from final payment to Contractor. Both parties shall keep in contact with each other as to the status of such delay and shall agree in writing to a restart date when the facts or matters giving rise to such delay have concluded and further delays are not foreseen.

d. Notification of Delay by DART. DART will verbally and via email notify Contractor's project manager as soon as DART has knowledge that an event has occurred which will cause a substantial delay. Within five (5) business days, DART will confirm such notice in writing, furnishing as much detail as is available and, if applicable, DART shall suggest an extension of time for completion. Contractor will review the letter and suggested extension. Contractor shall respond to DART within ten (10) calendar days in writing. Both parties shall keep in contact with each other as to the status of such delay and shall agree in writing to a restart date when the facts or matters giving rise to such delay have concluded and further delays are not foreseen.

e. Unavoidable Delays. If delivery of service is unavoidably delayed, DART may negotiate the performance expectation as equal to the time of the unavoidable delay. A delay is unavoidable only if it was substantial, not reasonably foreseeable to Contractor or its Subcontractors, and in fact, caused Contractor to miss any deadlines.

13. CHANGE ORDERS, AMENDMENTS OR OTHER MODIFICATIONS.

a. Generally. Any and all change orders, amendments, or other modifications to any of the Contract Documents, including this Contract, shall have no effect unless set forth in a writing signed by both parties. A party may request a change order or other amendment or modification as permitted hereunder by providing a written request to the other party. Contractor will not be compensated for any work performed or goods delivered unless and to the extent mutually agreed and provided for in a written change order signed by both parties.

b. Additional Services. DART reserves the right to request additional goods and/or services related to this Contract. Changes affecting the Contract Price, or Statement of Work must follow these guidelines for implementation of the requested change:

- i. DART's authorized representative may, at any time, make changes within the general scope of this Contract by providing a written, detailed request for the change. Upon receipt of DART's requested change order, Contractor shall provide DART's authorized representative a written, detailed proposal including updated price, schedule, and scope of work changes for work to be performed.
- ii. When approved by DART as an amendment or change order to this Contract and authorized in writing by DART and Contractor, Contractor shall provide such additional requirements as may become necessary.
- iii. Failure of the parties to agree to any written amendment or change order shall be resolved under the Dispute Resolution procedures set forth in this Contract.

SECTION 6: CONTRACT PROVISIONS



14. REPRESENTATIONS AND WARRANTIES. Throughout the Term, Contractor represents and warrants that the Services will be in conformance with the specifications set forth in the Statement of Work and as otherwise set forth in the Contract Documents, in all material respects.

15. EXCESS RE-PROCUREMENT LIABILITY. In the event Contractor fails to perform any of its duties and obligations under the Contract Documents, Contractor shall be liable for all expenses and costs incurred by DART in re-procuring elsewhere the same or similar items or services that were to be provided by Contractor. Contractor's re-procurement expense obligation shall be limited to the excess over the price specified in the Contract Documents for such items or services.

16. COVENANT AGAINST GRATUITIES. Contractor warrants that it has not offered or given gratuities (in the form of entertainment, gifts, or otherwise) to any official or employee of DART with a view toward securing favorable treatment in the awarding, amending, or evaluating performance of this Contract.

17. PATENT, INTELLECTUAL PROPERTY, AND COPYRIGHT INFRINGEMENT AND INDEMNIFICATION.

a. No Infringement. Contractor represents and warrants that it owns or has the absolute right to sell, license, or otherwise grant the rights in the Services, including, without limitation, any equipment, hardware and software, conveyed to DART pursuant to this Contract, and that neither the Services nor any of components thereof infringe any patent, copyrights, or other intellectual property right of, or misappropriates the trade secrets of any person or entity. Contractor hereby grants to DART a perpetual, non-exclusive, and royalty-free license to use the Services without limitation, but Contractor shall retain all rights in patents, copyrights, trademarks, trade secrets, and any other intellectual property. Software utilized under this Contract is proprietary and ownership of the software remains with Contractor and/or its subcontractors, as the case may be. DART agrees to: (1) take reasonable steps to maintain Contractor's and Subcontractor's rights in the software; (2) not sell, transfer, publish, display, disclose, or make available the software, or copies of the software, to third parties except where DART may disclose the software to designated Federal representatives under a nondisclosure agreement executed by both parties, (3) not use or allow to be used, the software either directly or indirectly for the benefit of any other person or entity, and (4) not use the software, along with its Updates (as defined herein), patches or Upgrades (as defined herein), on any equipment other than the equipment on which it was originally installed, without Contractor's written consent. "Updates" are defined as bug fixes or patches. "Upgrades" are defined as any new feature or major enhancement to the software or hardware.

b. Indemnity. Contractor will defend, at its expense, any suit brought against DART to the extent it is for infringement of any patent, copyright, or other intellectual property rights, which covers, or alleges to cover, Contractor's Services or any components thereof or the products or equipment of any Subcontractor that are part of the Services, and Contractor will indemnify DART for damages and costs of DART for an infringement claim. Contractor shall not enter into any

SECTION 6: CONTRACT PROVISIONS



settlement that obligates DART to incur any expense, adversely impacts DART's rights under this Contract or interferes with the operation of DART's business without DART's prior written consent. If in any such suit so defended, the Services or any components thereof are held to constitute an infringement and its use is enjoined, or if in light of any claim of infringement Contractor deems it advisable to do so, Contractor may at its option and expense (i) procure for DART the right to continue using the Services and all components, or (ii) replace or modify it so that it becomes non-infringing while providing functionally equivalent performance.

18. CONFIDENTIALITY AND PROPRIETARY RIGHTS. In connection with this Contract, DART may provide, or Contractor may otherwise have access to, certain confidential information of DART, whether in written or oral form. Contractor shall maintain the confidentiality of DART's confidential information and will not copy, reproduce, or disclose it to any third party. Contractor shall only use the confidential information in furtherance of its performance under this Contract and shall restrict disclosure of confidential information to its employees who have a "need to know" the information for such purpose. To the extent DART's confidential information is furnished to a Subcontractor to procure supplies or otherwise perform Services for this Contract, Contractor shall ensure that such disclosure is strictly limited to the extent necessary for the Subcontractor to perform its portion of the Services, and Contractor shall bind each such Subcontractor to the obligations of this section. Contractor shall take all necessary and appropriate precautions to safeguard the confidentiality of the confidential information. These precautions shall in any case be of at least the same degree of care that Contractor applies to its own confidential information and will not be less than reasonable care. Further, such precautions shall include binding its employees to confidentiality provisions consistent with this section. The confidential information, including any and all proprietary rights and intellectual property contained therein, is and shall at all times remain the property of DART, and no grant of any proprietary rights in the confidential information or intellectual property is given or intended, including any express or implied license, other than the strictly limited right of Contractor to use the confidential information in the manner and to the limited extent permitted by this Contract. Contractor acknowledges that compliance with this section is necessary to protect the business and proprietary information of DART, and that a breach of the same will cause irreparable and continuing damage for which money damages may not be adequate. Consequently, if Contractor breaches or threatens to breach this section, DART is entitled to seek temporary, preliminary, or permanent injunctive relief, or other equitable relief, in order to prevent such damage in addition to money damages and any and all other relief and remedies available to DART under applicable law.

19. USE OF "DES MOINES REGIONAL TRANSIT AUTHORITY" NAME IN CONTRACTOR ADVERTISING OR PUBLIC RELATIONS. Contractor acknowledges and agrees that DART reserves the right to review and approve any advertising copy or other advertising material related in any manner to this Contract prior to any publication thereof. Contractor agrees that it will not allow any such copy or other material to be published in any advertisements or public relations programs until after such time as Contractor has submitted such copy to and received prior written approval thereof from DART.

SECTION 6: CONTRACT PROVISIONS



Contractor agrees that any published information relating to this Contract will be factual and will in no manner imply that DART endorses Contractor's firm, service, or product.

20. DATA PRIVACY AND SECURITY REQUIREMENTS. Contractor hereby agrees to at all times abide by the provisions and requirements of **[Exhibit X]** attached hereto and made a part hereof.

21. TERMINATION.

a. Termination by DART for Convenience. DART may terminate this Contract, in whole or in part, at any time by written notice to Contractor when it is in DART's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to DART to be paid Contractor. If Contractor has any property in its possession belonging to DART, Contractor will account for the same, and dispose of it in the manner DART directs.

b. Termination by DART for Breach or Default. If Contractor does not deliver the Services in accordance with the manner called for in the Contract, or if Contractor fails to comply with any other provisions of the Contract, DART may terminate this Contract for default. Termination shall be effected by serving a Notice of Termination on Contractor setting forth the manner in which Contractor is in default. Contractor will be paid only the Contract Price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the Contract.

c. Opportunity to Cure. DART, in its sole discretion may, in the case of a termination for breach or default, allow Contractor seven (7) calendar days in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to DART's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within seven (7) calendar days after receipt by Contractor of written notice from DART setting forth the nature of said breach or default, DART shall have the right to terminate this Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude DART from also pursuing all available remedies against Contractor and its sureties for said breach or default.

22. DISPUTE RESOLUTION.

a. Disputes. Disputes arising in the performance of this Contract which are not resolved by concurrence of the parties shall be decided in writing by an authorized representative of DART. Such decision shall be final and conclusive unless within ten (10) days from the date of receipt of notice thereof by Contractor, Contractor mails or otherwise furnishes a written appeal to DART. In connection with any such appeal, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Chief Executive Officer (CEO) of DART shall be binding upon the Contractor and the Contractor shall abide by the decision.

**SECTION 6:
CONTRACT PROVISIONS**



- b. Performance During Dispute. Unless otherwise directed by DART, Contractor shall continue performance of its duties and obligations under the Contract Documents while matters in dispute are being resolved.
- c. Claims for Damages. If either party suffers injury or damage to person or property because of any act or omission of the other party or of any of the other party's employees, representatives, or agents, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
- d. Remedies. Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between DART and Contractor arising out of or relating to the Contract Documents will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction in Polk County, Iowa.
- e. Rights and Remedies. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by DART or Contractor shall constitute a waiver of any right or duty afforded under the Contract Documents, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

23. NOTICES. All notices to be provided pursuant to this Contract shall be directed to the appropriate party staff members as provided below:

- a. Primary point of contact for daily operations regarding the Services pursuant to this Contract is:

For DART: Tim Sanderson
Chief Operating Officer
1100 DART Way
Des Moines, IA 50309
Phone: (515) 283-5008
Email: tsanderson@ridedart.com

For Contractor: [NAME]
[TITLE]
[ADDRESS]
[CITY, ST ZIP]
Phone:
Email:
[to be updated upon contract execution]

- b. Primary point of contact for legal notices and overall Contractor performance is:

For DART: Mike Tiedens
Procurement Manager
620 Cherry St.
Des Moines, Iowa 50309

SECTION 6: CONTRACT PROVISIONS



Phone: (515) 283-5034
E-mail: mtiedens@ridedart.com

For Contractor: [NAME]
[TITLE]
[ADDRESS]
[CITY, ST ZIP]
Phone:
E-mail:
[to be updated upon contract execution]

c. DART and Contractor may change their staff member designations upon written notice to the other party. The designated DART staff member shall not have the authority to modify the Contract Documents except in accordance with the terms of the Contract Documents and applicable laws, rules and regulations. Notwithstanding anything herein to the contrary, no change, modification or amendment shall be valid or binding upon DART if the staff member executing such instrument has acted without proper authority.

24. INSTRUCTIONS BY UNAUTHORIZED THIRD PERSONS. DART's Chief Executive Officer ("CEO") and his/her authorized representative are the only persons authorized to make changes or amendments to this Contract on DART's behalf. Any instructions, written or oral, given to Contractor by someone other than DART's CEO or his/her authorized representative, which are considered to be a change in this Contract, will not be considered as an authorized amendment or modification of this Contract. Any action on the part of Contractor taken in compliance with such instructions will not be grounds for subsequent payment or other consideration in compliance with the unauthorized change.

25. INDEMNIFICATION.

a. Indemnity by Contractor. The parties recognize that Contractor is an independent Contractor. Contractor agrees to assume liability for and indemnify, hold harmless, and defend DART, its commission, board, officers, employees, agents and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, death, property damage, equitable relief, or loss of use, arising out of the execution, performance, nonperformance, or enforcement of this Contract, whether or not due to or caused by the negligence of DART, its commission, board, officers, employees, agents, and attorneys excluding only the sole negligence of DART, its officers, employees, agents, and attorneys. Contractor's liability hereunder shall include all attorney's fees and costs incurred by DART in the enforcement of this indemnification provision. The obligations contained in this provision shall survive termination of this Contract and shall not be limited by the amount of insurance

SECTION 6: CONTRACT PROVISIONS



required to be obtained or maintained under this Contract. Subject to the limitations set forth in this provision, Contractor shall assume control of the defense of any claim asserted by a third party against DART and, in connection with such defenses, shall appoint lead counsel, in each case at Contractor's expense. DART shall have the right, at its option, to participate in the defense of any third party claim, without relieving Contractor of any of its obligations hereunder. If Contractor assumes control of the defense of any third party claim in accordance with this section, Contractor shall obtain the prior written consent of DART before entering into any settlement of such claim. Notwithstanding anything to the contrary in this provision, Contractor shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by DART and all expenses including experts' fees, if (i) an adverse determination with respect to the third party claim would, in the good faith judgment of DART, be detrimental in any material respect of DART's reputation; (ii) the third party claim seeks an injunction or equitable relief against DART; or (iii) Contractor has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

26. CONTRACTOR'S LIABILITY INSURANCE. Contractor acknowledges and agrees that DART will not provide any insurance for Contractor, and that Contractor shall be solely responsible for procuring and maintaining any and all insurance required under this Contract or as otherwise necessary to protect Contractor in its operations. At a minimum, Contractor shall maintain insurance of the types set forth below, including such insurance as will protect it from claims under Workers' Compensation Acts and other employee benefit acts; from claims for damages because of bodily injury, including death, to its employees and all others and from claims for damages to property; any or all of which may arise out of or result from Contractor's operations under the Contract, or from any Subcontractor or anyone directly or indirectly employed by either of them. This insurance shall be written for not less than the limits specified below. DART shall be named as additionally insured in respect to all liability insurance policies. All policies shall contain an endorsement that written notice shall be given to DART prior to termination, cancellation or reduction in coverage in the policy. Certificates evidencing such insurance shall be filed with DART prior to commencement of Contractor's performance under the Contract.

- a. Worker's compensation insurance shall be in the amount and coverage required by the State of Iowa to protect it from claims under the Worker's Compensation Act and other employee benefit acts.
- b. General comprehensive liability insurance, including bodily injury and death, and property damage insurance in the minimum amount of Two Million Dollars (\$2,000,000) per occurrence.

SECTION 6: CONTRACT PROVISIONS



- c. Automobile liability and garage keepers liability, including bodily injury and property damage, insurance in the minimum amount of One Million Dollars (\$1,000,000) per occurrence.
- d. Professional Liability insurance with limits for each claim of at least One Million Dollars (\$1,000,000) for Contractor and all Subcontractors performing design work.
- e. Cyber Liability insurance (including, at a minimum, coverages for: (i) data breach and privacy crisis management; (ii) multimedia and media liability coverage; (iii) extortion liability coverage; (iv) network security coverage; and (v) errors and omissions) with such insurance in the minimum amount of Five Million Dollars (\$5,000,000) per occurrence.

27. SEVERABILITY. The invalidity or unenforceability of any provision of this Contract shall not affect the remaining provisions hereof. If any provision of this Contract is held to be invalid, illegal, void, or unenforceable, in any respect by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect and will not be affected as long as the parties' basic intent under this Contract can be achieved.

28. SURVIVAL OF TERMS *[to be updated upon contract execution]*. The following provisions shall survive the termination of this Contract for any reason: Section [] (Contract Price); Section [] (Payment); Section [] (Representations and Warranties); Section [] (Patent, Intellectual Property, and Copyright Infringement and Indemnification); Section [] (Confidentiality and Proprietary Rights); Section [] (Dispute Resolution); Section [] (Indemnification); and any other rights or obligations which by their nature survive termination of this Contract.

29. GOVERNING LAW, VENUE, AND JURISDICTION. The rights, obligations, and remedies of the parties shall be governed by the laws of the State of Iowa. Venue for any action shall lie solely and exclusively in Polk County, Iowa. All work done pursuant to this Contract will be controlled and governed by the laws of the State of Iowa, and any arbitration or litigation related to this Contract must be filed in Polk County, Iowa. The parties hereby irrevocably submit to jurisdiction in the Polk County, Iowa.

30. ATTORNEY FEES. In the event of any legal action, including arbitration proceedings, seeking enforcement of this Contract, the prevailing party shall be entitled to recover reasonable attorneys' fees and the costs of such proceedings from the other party, including without limitation fees and costs associated with any trial, appellate or bankruptcy proceeding.

31. WAIVER OF JURY TRIAL. Each party hereby agrees not to elect a trial by jury of any issue triable of right by jury, and waives any right to trial by jury fully to the extent that any such right shall now or hereafter exist with regard to the contract documents, or any claim, counterclaim or other action arising in connection therewith. This waiver of right to trial by jury is given knowingly and voluntarily by each party, and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue.

SECTION 6: CONTRACT PROVISIONS



32. ASSIGNMENT. The terms and provisions of the Contract Documents shall be binding upon DART and Contractor and their respective partners, successors, heirs, executors, administrators, assigns and legal representatives. The rights and obligations of Contractor under the Contract may not be transferred, assigned, sublet, mortgaged, pledged or otherwise disposed of or encumbered in any way without DART's prior written consent. Notwithstanding anything to the contrary in this section, but subject to DART's prior written approval as required in this Contract, Contractor may subcontract a portion of its obligations to subcontractors.

DART may assign its rights and obligations under the Contract to any successor to the rights and functions of DART or to any governmental agency to the extent required by applicable laws or governmental regulations or to the extent DART deems necessary or advisable under the circumstances.

33. ENTIRE AGREEMENT. This Contract contains the entire understanding of the parties and supersedes all previous verbal and written agreements; there are no other agreements, representations or warranties not set forth herein. This Contract shall not be modified except and to the extent set forth in a writing executed by the duly authorized representatives of both parties.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

SIGNATURE PAGE ON THE FOLLOWING PAGE.]

**SECTION 6:
CONTRACT PROVISIONS**



IN WITNESS WHEREOF, the authorized signatories named below have executed this Contract on behalf of the parties as of the Effective Date.

CONTRACTOR:

DART:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

**SECTION 7:
ATTACHMENTS**



ATTACHMENTS

ATTACHMENT 1 – Acknowledgement of Addenda

ATTACHMENT 2 – Proposal Form

ATTACHMENT 3 – Contractor's Statement On Sub-Contractors

ATTACHMENT 4 – Non-Collusion Affidavit

ATTACHMENT 5 – Certification of Primary Contractor Regarding
Debarment, Suspension, and Other Responsibility Matters

ATTACHMENT 6 – Certification of Lower-Tier Participants (Subcontractors)
Regarding Debarment, Suspension, and Other Ineligibility and
Voluntary Exclusion

ATTACHMENT 7 – DBE Participation Form

ATTACHMENT 8 – Certification of Restrictions on Lobbying

ATTACHMENT 9 – Disclosure of Lobbying Activities

**SECTION 7:
ATTACHMENTS**



ATTACHMENT 1

ACKNOWLEDGEMENT OF ADDENDA

The undersigned acknowledges receipt of the following addenda to the Documents.

(Give number and date of each)

Addendum Number _____ Dated _____

Addendum Number _____ Dated _____

Addendum Number _____ Dated _____

Addendum Number _____ Dated _____

Addendum Number _____ Dated _____

Failure to acknowledge receipt of all addenda may cause the proposal to be considered non-responsive to this Request for Qualifications, which will require rejection of the proposal.

Signature

Title

Date

**SECTION 7:
ATTACHMENTS**



ATTACHMENT 2

PROPOSAL FORM

TO: Des Moines Area Regional Transit Authority
1100 DART Way
Des Moines, Iowa 50309

The undersigned hereby agrees to furnish the services in accordance with the scope of work herein with the Des Moines Area Regional Transit Authority, which have been carefully examined and attached hereto.

Contractor's Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Age of Firm (years): _____ Contractor Federal I.D. #: _____

Annual Gross Receipts of the Firm:

Telephone #: _____ E-Mail: _____

Is the Firm Certified by the State of Iowa as a Disadvantaged Business Enterprise:

Person to Contact after Award: _____

I Hereby Agree To Abide By All Conditions Of This Proposal and Certify That I Am Authorized To Sign This Proposal For The Proposer.

Print Authorized Name: _____

Title: _____

Authorized Signature (Written): _____

**SECTION 7:
ATTACHMENTS**



ATTACHMENT 3

CONTRACTOR'S STATEMENT ON SUB-CONTRACTORS

1. There are NO sub-Contractors associated with this proposal.

Authorized Signee: _____

Printed Name: _____

Title: _____ Date: _____

For (Company): _____

OR

2. Listed below are sub-Contractors associated with this proposal. Additional sheets are attached as required. I _____ have also attached appropriate Disadvantage Business Certifications.

Name of Company: _____

Address: _____

Contact Person: _____

Telephone #: _____

E-mail: _____

Name of Company: _____

Address: _____

Contact Person: _____

Telephone #: _____

E-mail: _____

**SECTION 7:
ATTACHMENTS**



ATTACHMENT 4

NON-COLLUSION AFFIDAVIT

STATE OF _____

COUNTY OF _____

_____, being first duly sworn, on
Name

his/her oath says he is _____ of _____
Title Name of Firm

and not a sham or collusive proposal, or made in the interest of or on behalf of any collusive proposal, or made in the interest of or on behalf of any person not herein named; and he/she further states that said proposer has not directly or indirectly induced or solicited any other proposer for this work to put in a sham proposal, or any other person or corporation to refrain from proposing; and that said proposer has not in any matter sought by collusion to secure to self-advantage over any other proposer or proposers.

(SIGN HERE): _____

County _____ In and for the State of

Subscribed and Sworn to before me this ___ day of _____, 20___

Notary Public

My Commission Expires: _____

**SECTION 7:
ATTACHMENTS**



ATTACHMENT 5

**CERTIFICATION OF CONTRACTOR REGARDING DEBARMENT,
SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

The undersigned, an authorized official of the Proposer stated below, 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 proposal been convicted of 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 these offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this proposal had one or more public transactions (federal, state, or local) terminated for cause or default.

(If the undersigned is unable to certify to any of the statements in this certification, such official shall attach an explanation to this proposal).

THE UNDERSIGNED 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. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Name of Proposer _____

Address _____

City, State, Zip _____

Signature of Authorized Official _____

Title of Official _____

Telephone _____ Date _____

Notary Public Name (Printed)

Notary Public Signature County of

Expiration Date

**SECTION 7:
ATTACHMENTS**



ATTACHMENT 6

**CERTIFICATION OF LOWER-TIER PARTICIPANTS (SUBCONTRACTORS) REGARDING
DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION**

The Undersigned Lower Tier Participant (Subcontractor to the Primary Contractor), certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. If the above named Lower Tier Participant (Subcontractor) is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this proposal.

The Undersigned Lower-Tier Participant (Subcontractor), 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. Sections 3801 et seq. are applicable thereto.

Name of Proposer _____

Address _____

City, State, Zip _____

Signature of Authorized Official _____

Title of Official _____

Telephone _____ Date _____

Notary Public Name (Printed)

Notary Public Signature County of

Expiration Date

**NOTICE TO PROPOSER: THIS CERTIFICATION SHALL BE COMPLETED BY ALL
SUBCONTRACTORS WHICH WILL HAVE A FINANCIAL INTEREST IN THIS PROJECT WHICH
EXCEEDS \$25,000 OR SUBCONTRACTORS WHICH WILL HAVE A CRITICAL INFLUENCE ON
OR A SUBSTANTIVE CONTROL OVER THE PROJECT.**

**SECTION 7:
ATTACHMENTS**



ATTACHMENT 7

DBE PARTICIPATION FORM

If Proposer chooses to include DBE participation on this contract, the following information must be provided.

Separate information is required for each DBE subcontractor. This form may be duplicated as necessary.

PLEASE ATTACH A COPY OF THE DBE'S MOST RECENT CERTIFICATION LETTER OR DOCUMENT.

1. **DBE Firm Name:** _____

Address: _____

2. **Dollar amount awarded:** _____

3. **Description of work to be performed:**

4. **Contractor's Commitment to use DBE Firm**

_____ is committed to utilize the DBE contractor to utilize the above
(Name of Contractor)

named DBE subcontractor/supplier in the manner and amount described on this form.

Dated _____
(Authorized Signature)

5. **DBE's Commitment to Participate**

_____, as a DBE firm, is committed to perform the work as described
(Name of subcontractor/supplier)

above for the amount specified.

Dated _____
(Authorized Signature)

**SECTION 7:
ATTACHMENTS**



ATTACHMENT 8

CERTIFICATION OF RESTRICTIONS ON LOBBYING

The undersigned (contractor) certifies, to the best of his/her knowledge and belief, that:

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 any 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 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 making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instruction as amended by government-wide guidance for new restrictions on lobbying 61 Fed. Reg. 1413 (1/19/96).
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 sub recipients 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 certificate is a prerequisite for making or entering into this transaction imposed by 31 USC 1352. 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.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 USC 3801, et. seq., apply to this certification and disclosure, if any.

Date: _____

Company: _____

Name: _____

Signature: _____

Title: _____

**SECTION 7:
ATTACHMENTS**



ATTACHMENT 9

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known: 4c	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District, if known:	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$	
10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI):</i>	b. Individuals Performing Services <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

SECTION 7: ATTACHMENTS



INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

APPENDIX A: FEDERAL CLAUSES



1. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

DART 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 DART, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract.

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

2. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

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, 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, 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.

Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on Contractor, to the extent the Federal Government deems appropriate. 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.

3. ACCESS TO RECORDS AND REPORTS

- a. Record Retention. Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- b. Retention Period. Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of

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termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

- c. Access to Records. Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d. Access to the Sites of Performance. Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

4. CHANGES TO FEDERAL REQUIREMENTS

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 current Master Agreement between DART and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to comply shall constitute a material breach of this contract.

Further, Contractor acknowledges and understands that federal requirements that apply to the Contract may change due to changes in federal law, regulation, other requirements, or guidance, or changes in DART's underlying agreement with the Federal Government under which federal assistance for the Project was awarded to DART including any information incorporated by reference and made part of that underlying agreement. Contractor understands and agrees that applicable changes to those federal requirements will apply to this Contract and parties thereto at any tier.

5. CIVIL RIGHTS AND EQUAL OPPORTUNITY

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

- a. Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, and Federal transit laws at 49 U.S.C. § 5332, Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends

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or supersedes it, referenced in 42 U.S.C. § 2000e note. 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, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

- c. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
- d. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

6. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as DART deems appropriate, which may include, but is not limited to:

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

Contractor agrees to comply with the foregoing clause and shall require its subcontractors of every tier to comply with and include the foregoing clause in all subcontracts.

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Contractor shall pay subcontractors for satisfactory performance of their contracts no later than thirty (30) days from Contractor's receipt of each payment from DART. In the event this Contract contains defined DBE contract goals, Contractor shall utilize the specific DBEs listed unless Contractor obtains DART's prior written consent. Unless DART's written consent is provided, Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

This Contract is subject to 49 C.F.R. part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract.

7. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION).

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- 1) Debarred from participation in any federally assisted Award;
- 2) Suspended from participation in any federally assisted Award;
- 3) Proposed for debarment from participation in any federally assisted Award;
- 4) Declared ineligible to participate in any federally assisted Award;
- 5) Voluntarily excluded from participation in any federally assisted Award; or
- 6) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by DART. If it is later determined by DART that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to DART, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid 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.

8. LOBBYING RESTRICTIONS

Contractor shall provide the following certification required by 49 C.F.R. part 20:

The undersigned certifies, to the best of his or her knowledge and belief, that:

- 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

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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.

_____ Signature of Contractor's Authorized Official
_____ Name and Title of Contractor's Authorized Official
_____ Date

9. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Contractor shall report each violation to FTA and the Regional Office of the Environmental Protection Agency (EPA).

Further, Contractor agrees:

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

Contractor shall require all subcontractors to agree to comply with the foregoing and shall include such provisions in all subcontracts of every tier.

10. FLY AMERICA REQUIREMENTS

- a. Definitions. As used in this clause--
- i. "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
 - ii. "United States" means the 50 States, the District of Columbia, and outlying areas.
 - iii. "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- b. When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- c. If available, Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- d. In the event that Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. *[State reasons]:*

(End of statement)

- e. Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this Contract that may involve international air transportation.

11. SEISMIC SAFETY

Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. Contractor also agrees to ensure that all work performed under this Contract, including work performed

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by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

12. ENERGY CONSERVATION

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.

13. ACCESS FOR INDIVIDUALS WITH DISABILITIES

Contractor agrees to comply with, and assure that any Subcontractor under this Contract complies with all applicable requirements of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 et seq. and 49 U.S.C. § 322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. app § 1612; and the following regulations and any amendments thereto:

- a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities," 49 C.F.R., part 37;
- b) Joint Access Board/U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38;
- c) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R., part 27;
- d) U.S. Department of Justice ("DOJ") regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R., part 35;
- e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36;
- f) General Services Administration regulations, "Construction and Alteration of Public Buildings," "Accommodations for the Physically Handicapped," 41 C.F.R., part 101-19;
- g) U.S. Equal Employment Opportunity Commission (EEOC) regulations, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act." 29 C.F.R., part 1630;
- h) Federal Communications Commission regulations, "Telecommunications Relay Services and Related DART Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R., part 64, subpart F;
FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R., part 609.

14. INCORPORATION OF 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 4220.1D (also see Change 1), dated April 15, 1996, 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

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shall not perform any act, fail to perform any act, or refuse to comply with any DART requests which would cause DART to be in violation of the FTA terms and conditions.

APPENDIX B: DART DATA PRIVACY AND SECURITY



A. **Overview** The Contract involves the sharing of a significant amount of legally protected Personal Information (as defined below) such as Personally Identifiable Information ("PII"), Personal Health Information ("PHI") and/or Personal Credit Information ("PCI"). The sharing of Personal Information is necessary to enable DART to provide the services relevant to the Contract. The privacy of Personal Information is governed by a number of laws including the Gramm-Leach-Bliley Act ("GLBA"), the Health Insurance Portability and Accountability Act ("HIPAA"), the Health Information for Economic and Clinical Health Act ("HITECH"), the Fair Credit Reporting Act ("FCRA"), and the Children's Online Privacy Protection Act ("COPPA"), as well as other federal and state laws, regulations, common law privacy principles, and industry standards and guidelines. DART could face serious financial and/or reputational harm should there be an unauthorized use, security incident, or security breach. Accordingly, Contractor shall conform to the following standards of care and obligations with respect to the treatment of Personal Information.

B. **Definitions**

1. **"Authorized Employees"** means the Contractor's employees who have a need to know or otherwise access Personal Information to enable the Contractor to perform its obligations under the Contract.
2. **"Authorized Persons"** means (i) Authorized Employees and (ii) Contractor's independent contractors, vendors, agents, outsourcers, and auditors who have a need to know or otherwise access Personal Information to enable the Contractor to perform its obligations under the Contract, and who are bound in writing by confidentiality obligations sufficient to protect Personal Information in accordance with the terms and conditions of this DDPS.
3. **"Highly Sensitive Personal Information"** means an individual's (i) government-issued identification number (including Social Security number, driver's license number, or other state-issued identification number); (ii) financial account number, credit card number, debit card number, credit report information, with or without any required security code, access code, personal identification number, or password that would permit access to an individual's financial account; (iii) biometric or health data; and (iv) birth date.
4. **"Personal Information"** means information provided to the Contractor by or at the direction of DART or to which access was provided to the Contractor at the direction of DART, in the course of the Contractor's performance under the Contract that: (i) identifies or can be used to identify an individual (including without limitation names, signatures, addresses, telephone numbers, e-mail addresses, and other unique identifiers); (ii) can be used to authenticate an individual (including with limitation employee identification numbers, government issued identification numbers, passwords or personal identification numbers, financial account numbers, credit report information, biometric or health data,

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answers to security questions, and other personal identifiers); and (iii) without limitation, all Highly Sensitive Personal Information. DART employees' business contact information is not by itself deemed to be Personal Information.

5. **"Security Incident"** means (i) any act or omission that compromises the security, confidentiality, or integrity of Personal Information, including any compromise of physical, technical, administrative, or organizational safeguards put in place by the Contractor or any Authorized Persons which relate to the security, confidentiality, or integrity of personal information; or (ii) receipt of a complaint in relation to the privacy practices of the Contractor or any Authorized Persons or a breach or alleged breach of the provisions of this DDPS.

C. **Standards of Care** The Contractor agrees to abide by the following standards of care concerning the treatment of Personal Information:

1. Contractor acknowledges and agrees that Contractor may receive or have access to Personal Information in connection with the Contract. Contractor shall comply with the terms and conditions set forth in this DDPS in its collection, receipt, transmission, storage, disposal, use, disposal, and disclosure of such Personal Information under its control or in its possession by all Authorized Employees and Authorized Persons. Contractor shall be responsible for, and remain liable to, DART for the actions and omissions of all Authorized Persons that are not Authorized Employees concerning the treatment of Personal Information as if they were the Contractor's own actions and omissions.
2. Personal Information is deemed to be the confidential information of DART and is not confidential information of the Contractor. If the event of a conflict or inconsistency between the Contract and this DDPS, the terms and conditions set forth in this DDPS shall govern.
3. In recognition of the foregoing, Contractor agrees and covenants that it shall:
 - a. Keep and maintain all Personal Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized access or disclosure;
 - b. Use and disclose Personal Information solely and exclusively for the purposes for which the Personal information, or access to it, is provided pursuant to the terms and conditions of the Contract, and not use, sell, rent, transfer, distribute, or otherwise disclose or make available Personal Information for the DART's own purposes or for the benefit of anyone other than DART, in each case without DART's prior written consent; and
 - c. Not directly or indirectly disclose Personal Information to any person, other than the Contractor's Authorized Employees and Authorized Persons, including any unauthorized employees, independent contractors,

APPENDIX B: DART DATA PRIVACY AND SECURITY



subcontractors, agents, outsourcers, or auditors (an “Unauthorized Third Party”), without the express written consent from DART unless and to the extent required by government authorities or as otherwise to the extent expressly required by applicable law. In such cases Contractor shall (i) use its best efforts to notify DART before such disclosure as soon thereafter as reasonably possible; (ii) be responsible and remain liable to DART for the actions and omissions of such Unauthorized Third Party concerning the treatment of such Personal Information as if they were the Contractor’s own actions and omissions; and (iii) require the Unauthorized Third Party that has access to Personal Information to execute a written agreement agreeing to comply with the terms and conditions of this DDPS relating to the treatment of Personal Information.

D. Security Standards The Contractor agrees to abide by the following standards concerning the treatment of Personal Information:

1. Contractor represents and warrants that its collection, access, use, storage, disposal and disclosure of Personal Information does and will comply with all applicable federal, state, and foreign privacy and data protection laws, as well as all other applicable regulations and directives.
2. Without limiting the Contractor’s obligations, Contractor shall implement administrative, physical and technical safeguards to protect Personal Information that are no less rigorous than accepted industry practices and shall ensure that all such safeguards, including the manner in which Personal Information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this DDPS.
3. If, in the course of its engagement by DART, Contractor has access to or will collect, access, use, store, process, dispose of or disclose credit, debit or other payment cardholder information, DART shall at all times remain in compliance with the Payment Card Industry Data Security Standard (“PCI DSS”) requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at the Contractor’s sole cost and expense.
4. At a minimum, Contractor and its Authorized Persons’ safeguards for the protection of Personal Information shall include: (i) limiting access of Personal Information to Authorized Employees and Authorized Persons; (ii) securing business facilities, data centers, paper files, servers, back-up systems and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (iii) implementing network, device application, database and platform security; (iv) securing information

APPENDIX B: DART DATA PRIVACY AND SECURITY



transmission, storage and disposal; (v) implementing authentication and access controls within media, applications, operating systems and equipment; (vi) encrypting Highly-Sensitive Personal Information stored on any mobile media; (vii) encrypting Highly-Sensitive Personal Information transmitted over public or wireless networks; (viii) strictly segregating Personal Information from information of Contractor or its other customers so that Personal Information is not commingled with any other types of information; (ix) implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law; and (x) providing appropriate privacy and information security training to Contractor's employees.

5. During the term of each Authorized Employee's employment by the Contractor, Contractor shall at all times cause such Authorized Employees to abide strictly by Contractor's obligations under this DDPS. Contractor further agrees that it shall maintain a disciplinary process to address any unauthorized access, use or disclosure of Personal Information by any of Contractor's officers, partners, principals, employees, agents or sub-contractors. Upon DART's written request, Contractor shall promptly identify for DART in writing all Authorized Employees as of the date of such request.
6. Upon DART's written request, Contractor shall provide DART with a network diagram that outlines Contractor's information technology network infrastructure and all equipment used in relation to fulfilling of its obligations under this DDPS, including, without limitation: (i) connectivity to DART and all third parties who may access Contractor's network to the extent the network contains Personal Information; (ii) all network connections including remote access services and wireless connectivity; (iii) all access control devices (for example, firewall, packet filters, intrusion detection and access-list routers); (iv) all back-up or redundant servers; and (v) permitted access through each network connection

E. Security Incident The Contractor agrees to abide by the following standards governing Security Incidents:

1. In the event of a Security Incident, the Contractor shall:
 - a. Notify DART of the Security Incident as soon as practicable, but no later than twenty-four (24) hours after the Contractor becomes aware of the Security Incident, as follows: (i) by telephone at (515) 283-5020, and (ii) by email, including a read receipt requested, to it@ridedart.com, with a carbon copy to DART's CEO.
 - b. Provide DART with the name and contact information for an employee of Contractor who shall serve as DART's primary security contact and shall be available to assist DART twenty-four (24) hours per day, seven (7) days per week as a contact in resolving issues associated with the Security Incident.

APPENDIX B: DART DATA PRIVACY AND SECURITY



2. Immediately following Contractor's notification to DART of a Security Incident, the parties shall coordinate with each other to investigate the Security Incident. Contractor agrees to fully cooperate with DART in DART's handling of the matter, including, without limitation: (i) assisting with any investigation; (ii) providing DART with physical access to the facilities and operations affected; (iii) facilitating interviews with Contractor's employees and others involved in the matter; and (iv) making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law, regulation, industry standards or as otherwise reasonably required by DART.
 3. Contractor shall take reasonable steps to immediately remedy any Security Incident, and prevent any further Security Incidents, at Contractor's expense in accordance with applicable privacy rights, laws, regulations and standards. Contractor shall reimburse DART for actual costs incurred by DART in responding to, and mitigating damages caused by, any Security Incident, including all costs of notice and/or remediation
 4. Contractor agrees that it shall not inform any third party of any Security Incident without first obtaining DART's prior written consent, other than to inform a complainant that the matter has been forwarded to DART's legal counsel. Further, Contractor agrees that DART shall have the sole right to determine: (i) whether notice of a Security Incident is to be provided to any individuals, regulators, law enforcement agencies, consumer reporting agencies or others as required by law or regulation, or otherwise in DART's discretion; and (ii) the contents of such notice, whether any type of remediation may be offered to affected persons, and the nature and extent of any such remediation.
 5. Contractor agrees to fully cooperate at its own expense with DART in any litigation or other formal action deemed reasonably necessary by DART to protect its rights relating to the use, disclosure, protection and maintenance of Personal Information.
- F. **Oversight of Security Compliance** Upon DART's written request, to confirm Contractor's compliance with this DDPS, as well as any applicable laws, regulations and industry standards, Contractor grants DART or, upon DART's election, a third party on DART's behalf, permission to perform an assessment, audit, examination or review of all controls in Contractor's physical and/or technical environment in relation to all Personal Information being handled and/or services being provided to DART pursuant to the Contract. Contractor shall fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, documentation, infrastructure and application software that processes, stores or transports Personal Information for DART pursuant to the Contract. In addition, upon DART's written request, Contractor shall provide DART with the results of any audit by or on behalf of Contractor performed that assesses the effectiveness of Contractor's information security program as

APPENDIX B: DART DATA PRIVACY AND SECURITY



relevant to the security and confidentiality of Personal Information shared during the course of the Contract.

- G. Return or Destruction of Personal Information** At any time during the term of the Contract at the DART's written request or upon the termination or expiration of the Contract for any reason, Contractor shall, and shall instruct all Authorized Persons to, promptly return to DART all copies, whether in written, electronic or other form or media, of Personal Information in its possession or the possession of such Authorized Persons, or securely dispose of all such copies, and certify in writing to DART that such Personal Information has been returned to DART or disposed of securely. Contractor shall comply with all reasonable directions provided by DART with respect to the return or disposal of Personal Information.
- H. Equitable Relief** Contractor acknowledges that any breach of its covenants or obligations set forth in this DDPS may cause DART irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, DART is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which DART may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this DDPS to the contrary.
- I. Material Breach** Contractor's failure to comply with any of the provisions of this DDPS is a material breach of the Contract. In such event, DART may terminate the Contract in accordance with the procedures outlined in the Contract.
- J. Contractor's Liability Insurance** Contractor shall maintain at all times during the term of the Contract cyber liability insurance that provides (i) data breach and privacy crisis management, (ii) multimedia and media liability coverage, (iii) extortion liability coverage, (iv) network security coverage, and (v) errors and omissions. Coverage shall be in the minimum amount of Five Million Dollars (\$5,000,000) per occurrence.