



# REQUEST FOR INFORMATION FY19-I-001

*for*

## ePROCUREMENT SOLUTIONS

*for*

## DES MOINES AREA REGIONAL TRANSIT AUTHORITY

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<b>Date Issued:</b>	January 7, 2019
<b>Deadline for Questions Regarding this RFI:</b>	5:00 PM Central, January 14, 2019
<b>Answers to Questions Posted on Website:</b>	5:00 PM Central, January 19, 2019
<b>Responses Due:</b>	2:00 PM Central, February 11, 2019

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**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 INFORMATION  
FY19-I-001  
ePROCUREMENT SOLUTIONS

Responses are hereby requested by the DES MOINES AREA REGIONAL TRANSIT AUTHORITY, 620 Cherry Street, Des Moines, Iowa to be received until 2:00 p.m. local time, on February 11, 2019 for the eProcurement Solutions.

This is a Request for Information (RFI) for the Des Moines Area Regional Transit Authority (DART). This is NOT a request for competitive pricing or a process for the organization to purchase; this request is only for information gathering purposes. DART will not accept requests to view software demonstrations in response to this RFI. No award will be made based on the results of this process. Any procurement by DART will be the subject of a separate process

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 e-mail [dartprocurement@ridedart.com](mailto:dartprocurement@ridedart.com) . All submittal questions concerning this RFI are due on January 14, 2019. This will be the only notice rendered for this request. Documents can be obtained at DART Maintenance and Operations Center, 1100 DART Way, Des Moines IA 50309, 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> .

DES MOINES AREA REGIONAL TRANSIT AUTHORITY

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[ridedart.com](http://ridedart.com)

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FY19-I-001 ePROCUREMENT SOLUTIONS



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# SECTION 1 RFI SUBMITTAL REQUIREMENTS



## 1.1. GENERAL REQUIREMENTS

This is a Request for Information (RFI) for the Des Moines Area Regional Transit Authority (DART). This is NOT a request for competitive pricing or a process for the organization to purchase; this request is only for information gathering purposes. DART will not accept requests to view software demonstrations in response to this RFI. No award will be made based on the results of this process. Any procurement by DART will be the subject of a separate process

This solicitation is open to the general marketplace.

Providers are requested to submit a response to the enclosed Scope of Work. It is required that responses be submitted by date and time listed in the RFI.

Questions and Answers: Responders must submit questions to the Procurement Manager as submitted through the following email address: [dartprocurement@ridedart.com](mailto:dartprocurement@ridedart.com). DART is not obligated to respond to any questions received after the listed deadline. Answers to questions submitted will be posted to the DART website by the deadline listed in the RFI.

## 1.2. SUBMITTAL

**All responses shall be addressed to shall be delivered in digital / electronic format. If digital media is mailed, the delivery address is as follows:**

Des Moines Area Regional Transit Authority  
ATTN: PROCUREMENT DEPARTMENT  
1100 DART Way  
Des Moines, Iowa 50309  
Phone: (515) 283-5034

**Emailed responses are encouraged over hard copies, but they must be received by the deadline for submission. Emailed responses shall be sent to the following email address and a confirmation email will be sent confirming receipt:**  
[dartprocurement@ridedart.com](mailto:dartprocurement@ridedart.com)

## 1.3. ADDENDUM TO RFI

If it becomes necessary to revise this RFI, any addendums will be posted on the DART website and/or to those having expressed an interest in submitting a response.

## SECTION 2 SCOPE OF WORK



### 2.1. INTRODUCTION AND BACKGROUND

DART (Des Moines Area Regional Transit Authority) is a regional public transit entity created pursuant to Chapter 28E of the Iowa Code. The agency serves fourteen (14) member communities in the greater Des Moines, Iowa metropolitan area. The agency is a free-standing governmental entity, funded through federal and state grants, local property taxes and other local operating and non-operating revenues.

DART operates a family of transportation services that makes getting around the greater Des Moines Area easier and more convenient. Our fleet of approximately one hundred fifty (150) vehicles travel around fifteen thousand (15,000) miles daily throughout the region, making trips to shopping malls, major business districts, residential areas, and schools.

DART's procurement actions are governed by the Iowa procurement statutes, FTA Circular 4220.1F and other federal laws, rules, and regulations for federally-participating purchases, and its approved procurement policy. DART seeks fair and open competition in all procurements above the federal minor procurement threshold.

#### Project Information

DART's goal is to increase the productivity of its procurement department and increase the efficiency of our procurement process. The agency is seeking information from qualified firms to help it plan for a future eProcurement software system ("eProcurement System"). This system may be installed software or a hosted solution. Features and functionality desired shall be described in various "modules".

We encourage all interested firms who have software products that fulfill one or more of the modules listed below to respond to this solicitation. Your applicable software products do not have to perform all the desired functions listed in a module in order for you to respond.

Modules with functionality desired include:

- Vendor Management:
  - Web-based, able to be integrated with or accessed from DART's website
  - Vendor self-registration available 24-hours per day/7-days per week
  - Vendor certification management for
    - Registration with the State of Iowa
    - Contractor Licenses
    - Professional Licenses
    - DBE Certification
    - Targeted Iowa Small Business Designation
    - SBA 8A
  - Industry or Commodity Classification (SIC, NAICS, NIGP, UNSPSC)
  - Vendor website
  - Vendor Contact Information

## SECTION 2 SCOPE OF WORK



- First Name
    - Last Name
    - Title
    - Email
    - Phone
    - Address
    - City
    - State
    - Zip
  - Vendor notification and emailing
  - Vendor directory search, filter, viewing, and reporting capabilities
  - List any other options available
- Solicitation process module:
    - Permit agency to upload solicitation templates and related documents in various formats (PDF, Word, Excel)
    - Automated supplier invitation/notification and event management of registered vendors for newly posted solicitations and participant updates
    - Indexing/Access by Industry or Commodity classification
    - Ability for agency to manually add participants
    - Sourcing project roles for collaboration
    - eCatalog punch-out
    - Secured eBidding (eRFI/eRFP/eRFQ/eIFB), including line item calculation w/Net terms
    - Administrative support functionality such as online-plan holder lists
    - Track and report on vendor notifications and downloads
    - Distribute addenda to all registered vendors who have downloaded a solicitation
    - Distribute notices to all registered vendors who have downloaded a solicitation
    - Accept and verify bid bonds
    - Permit registered vendors access to upload electronic submission in multiple files and document types
    - Provide for a confirmation of successful electronic uploads
    - Pre-bid meeting management
    - Oral interview meeting management
    - Sealed bid/proposal management
    - Bid award functions, including both split and lump sum
    - eBidding for Public Works/Construction
    - List any other available options
  - Proposal/Bid Evaluation module:
    - Receipt, security, and unsealing of sealed proposals or bids
    - RFP evaluation administration
      - Evaluation matrix configuration
      - Invite/select agency staff to be evaluators
      - Review/score/ranking by evaluators without knowledge of pricing

## SECTION 2 SCOPE OF WORK



- Monitor evaluation status,
  - Scoring/review status
  - Automated notifications
  - Custom email notifications
- Tracking of notes and information disseminated to and collected from evaluation team
  
- Contract Management module
  - Permit agency to upload contract templates and related documents in various formats (PDF, Word, Excel);
  - Track subcontractor information
  - View existing and past contract history
  - Contract modification tracking (change orders, amendments, etc.)
  - Milestone and event tracking (tasks, terms, renewals, etc.)
  - Automated email
  - Generate standard and ad-hoc reports, analysis, and graphical reports
  - Audit trails
  - Contract Management Compliance/Performance Tracking
  - Secure negotiations portal
  - Searchable contract repository w/index, publicly accessible
  - Category and Spend Analytics
  - Integrate with agency's e-signature software (Adobe E-Sign)
  - List other options
  
- Insurance Certificate module
  - Add/edit insurance certificates
  - Upload ACORD certificates (PDF)
  - Broker/Agent insurance administration
  - View existing and past ACORD certificates for history
  - Run reports
  - Integrated with rating agencies (e.g. AM Best, Fitch, Standard and Poor's, Moody's, etc.)
  - Automated notification settings (e.g. renewal, change, etc.)
  - Custom email notifications
  - List other options

### **Attachments**

Attachment 1 – Product Functionality Response Form

Attachment 2 – Standard Contract Terms and Conditions

Attachment 3 – Federal Clauses included in our agreements

DART is seeking a response to this proposal request by end of business on November 30, 2018.

### **Planned project goals and objectives**

## SECTION 2 SCOPE OF WORK



The agency has a small procurement team and a challenging compliance environment. The agencies goals and objectives for a future eProcurement system are:

- Increase productivity
- Improve efficiency and effectiveness of monitoring and reporting over procurement activities
- Increase efficiency in performing complex procurement tasks
- Improve vendor management and oversight
- Improve the procurement process for our vendors
- Maintain and document compliance

### Request for Information

DART is evaluating the need to update its current procurement processes. The is seeking information on eProcurement applications or software which will enable the agency to perform various functions related to the procurement and contract management process, improve the procurement interactions with its various stakeholders; all while maintaining and documenting its compliance with all applicable laws, rules, and regulations.

### Questions

1. Describe the applications or software you currently provide as they relate to the "modules" DART has identified, including whether the software is on-site or hosted. (Please complete Exhibit A: Product Functionality Response Form)
2. Provide an overview of how you price your products, (e.g. licensed based, software as a service, pay to purchase, subscription, etc.) along with any published pricing information publicly available.
3. Does your self-service vendor registration module allow for multiple vendor personnel to complete the form?
4. Does your self-service vendor registration module allow the vendor to assign online roles to different people in its organization? (e.g. project estimator, engineering/technical review, etc.)
5. Does your contract management module have a dashboard with key information? What types of information are included on the dashboard?
6. Does your contract management module perform exceptions reporting for key terms? What terms and metrics are included in your exceptions reporting?



## SECTION 2 SCOPE OF WORK



7. Does your contract management module perform automatic notifications to internal and external users on upcoming dates (renewals, options, certificate expirations, etc.)? What metrics are included in your automatic notifications?
8. Does your contract management module allow for custom or ad-hoc reporting?
9. Does your insurance certificate module allow the import of coverage requirements from the contract module?
10. Does your insurance certificate module allow the vendors' insurance agent to manage Certificates of Insurance on their behalf?
11. Does your insurance certificate module monitor compliance and report on compliance issues such as certificates that are expiring, policies which are being or have been cancelled, or policies which have had modifications to coverages, and other changes that may affect compliance to contract terms?
12. Does your application or software support open standards or at its core integrate with financial and other back office systems?
13. Is your application or software easy to maintain and update?
14. If you offer more than one application or module, do various applications or modules share information? If yes, describe to what extent.
15. If this is a locally installed product, will DART need special hardware or software to run your products?
16. Will your system handle simplified purchases where the agency only requires competitive quotes (eRFQs)?
17. Does your system include a sourcing tool and is it easy to use?
18. Would you have any exceptions to DART's standard terms and conditions or federal clauses?



# ATTACHMENT 1 PRODUCT FUNCTIONALITY RESPONSE FORM

1. Company Information:

Name of Firm: \_\_\_\_\_

Point of Contact: \_\_\_\_\_

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Website: \_\_\_\_\_

2. Product Information:

Please provide the names of the software products which you offer which provide some or all of the functionalities listed in Section 2 (Scope of Work).

Software or Application Name/DART Module

Example: OurSoftware/Vendor Management

Select One

A. \_\_\_\_\_

On-Site

Hosted

B. \_\_\_\_\_

On-Site

Hosted

C. \_\_\_\_\_

On-Site

Hosted

D. \_\_\_\_\_

On-Site

Hosted

3. Pricing Model:

License

Software as a Service

Pay to Play

Subscription Other: \_\_\_\_\_

4. Functionality:

Please indicate if your products have the following functionality:

A. Vendor Management:

Function	Yes	No
Web-based, abled to be integrated with or accessed from DART's website		
Vendor self-registration available 24-hours per day/7-days per week		
Vendor certification management for the following		
▪ Registration with State of Iowa		
▪ Contractor Licenses		
▪ Professional Licenses		
▪ Disadvantaged Business Enterprise Certification		
▪ Targeted Iowa Small Business Certification		
▪ Small Business Administration 8A Certification		
Classification by Industry or Commodity Class		
▪ SIC		
▪ NAICS		
▪ NIGP		
▪ UNSPSC		
Place to enter vendor's website		
Vendor contact information		
▪ First Name		
▪ Last Name		
▪ Title		

**ATTACHMENT 1  
PRODUCT FUNCTIONALITY RESPONSE FORM**



▪ Email		
▪ Phone		
▪ Address		
▪ City		
▪ State		
▪ Zip		
Vendor notification and emailing		
Vendor directory search, filter, viewing, and reporting capabilities		
Is there any other available functionality (List in remarks or attach literature)		
Is product literature attached?		

B. Proposal/Bid Evaluation module

Function	Yes	No
Receipt, security, and unsealing of sealed proposals or bids		
RFP evaluation administration		
▪ Set up evaluation matrix		
▪ Invite/select agency staff to evaluation team		
▪ Review/score/ranking by evaluators with knowledge of pricing		
Monitor evaluation status		
▪ Scoring/review status		
▪ Automated notifications		
▪ Custom notification		
Tracking of notes and information disseminated to and collected from evaluation team		
Is there any other available functionality (List in remarks or attach literature)		
Is product literature attached		

C. Contract Management module:

Function	Yes	No
Permit agency to upload contract templates and related documents in various formats (PDF, Word, Excel, etc.)		
Track subcontractor information		
View existing and past contract history		
Track contract modifications (change orders, amendments, etc.)		
Milestone and event tracking (tasks, terms, renewals, etc.)		
Automated email		
Standard and ad-hoc reports, analysis, and graphical reports		
Audit trails on all documents (contracts, contract modifications, etc.)		
Contract management compliance and performance tracking and reporting		
Secure negotiations portal		
Searchable contract repository, with index, publicly accessible		
Category and spend analytics		
Integrate with Adobe E-Sign (agency e-signature software)		
Is there any other available functionality (List in remarks or attach literature)		
Is product literature attached		

D. Insurance Certificate module:

Function	Yes	No
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**ATTACHMENT 1  
PRODUCT FUNCTIONALITY RESPONSE FORM**



Add/edit certificates		
Upload ACORD certificates (PDF)		
Broker/Agent Administration		
View existing and past ACORD certificates		
Standard and ad-hoc reports		
Integrated with rating agencies (e.g. AM Best, Fitch, Standard and Poor's, Moody's, etc.)		
Automated notification (renewal, change, cancellation, etc.)		
Custom email notifications		
Is there any other available functionality (List in remarks or attach literature)		
Is product literature attached		

5. Remarks

Please provide us with any other information you wish to submit.

**ATTACHMENT 2  
DART STANDARD TERMS AND CONDITIONS**



**CONTRACT  
FOR [INSERT PROJECT NAME]**

This CONTRACT FOR **[INSERT PROJECT NAME]** (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 the **[INSERT PROJECT NAME AND/OR DESCRIPTION]** project for DART (the "Project") in accordance with the terms of this Contract;
- B. DART desires to obtain goods and/or services provided by Contractor (collectively, "Services") for the Project according to the requirements set forth in **[Option 1: the Request for Proposal] [Option 2: the Invitation for Bid for the Project]** (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:

**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":

## ATTACHMENT 2 DART STANDARD TERMS AND CONDITIONS



- a. The third-party contracting requirements in **Appendix A-1** and **Appendix A-2** attached hereto;
- 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; 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 **Appendix A-1** attached hereto and made a part hereof. Further, Contractor agrees to execute all federal certifications (the "Federal Certifications") set forth in **Appendix A-2** 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 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 (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 A** attached hereto and made a part hereof.

## ATTACHMENT 2 DART STANDARD TERMS AND CONDITIONS



7. **PERFORMANCE SCHEDULE.** The parties will perform their respective obligations in accordance with the schedule for performance (the "Performance Schedule") as set forth in **Exhibit B** attached hereto and made a part hereof.

8. **CONTRACT PRICE. [OPTION 1:** The total fixed contract price (the "Contract Price") shall be set forth on **Exhibit C** attached hereto and made a part hereof. The Contract Price shall not be modified except as provided in the Contract Documents.] **[OPTION 2:** The Not-to-Exceed (NTE) contract amount (the "Contract Price") shall be set forth on **Exhibit C** 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.]

9. **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 [ ] years thereafter (the "Term").

### 10. **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 payment schedule (the "Payment Schedule") as set forth in **Exhibit D** attached hereto and made a part hereof. Payment will be made by DART in accordance with the Payment 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 project specifications. Contractor shall, at a minimum, keep and maintain all records in connection with the Project for a minimum of three (3) years following completion of the Project, 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 Project. Any overpayment to Contractor by DART discovered during the course of such an audit shall be immediately

## ATTACHMENT 2 DART STANDARD TERMS AND CONDITIONS



refunded to DART or may be set off against future amounts owed to Contractor by DART, at DART's sole option.

b. Retainage A retainage of five percent (5%) will be held from each invoice. Retainage will be released when the Project is fully completed in accordance with this Contract, including DART's receipt of lien waivers executed by all subcontractors providing labor or materials for this Contract

c. Time of Payment by DART DART shall make full payment within net forty-five (45) days after receipt and approval by DART of Contractor's invoice, unless otherwise stated in the Contract Documents.

d. 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.

e. 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.

f. 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



## ATTACHMENT 2 DART STANDARD TERMS AND CONDITIONS



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.

### 11. 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 Project 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 and, if applicable, all punch-list items have been properly corrected to DART's satisfaction;

ii. Contractor has delivered to DART a final affidavit in form acceptable to DART, which incorporates a full, general release of DART from Contractor and its subcontractor(s), if any; and

iii. 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, including any warranty materials.

c. As applicable, Contractor will assume responsibility for all equipment in the deliverables list (the "Deliverables List") as set forth in **Exhibit E** attached hereto and made a part hereof, whether the same is manufactured by Contractor or purchased ready-made from a source outside Contractor's company.

d. 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,

## **ATTACHMENT 2 DART STANDARD TERMS AND CONDITIONS**



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.

e. 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. DART reserves the right to "direct buy" from suppliers any materials to be furnished by Contractor under the Contract Documents, and, if DART elects to exercise such right, Contractor and DART shall enter into an appropriate amendment or change order reflecting the changed terms resulting from the "direct buy" (e.g., reduced contract price to be paid by DART, reduced delivery costs for the materials, etc.). In the event DART elects to exercise its "direct buy" right, Contractor shall still fully warrant those materials as if those materials were purchased from Contractor, and any bonds furnished by Contractor shall continue to apply to those materials.

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

g. 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.

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

i. 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.

j. Contractor shall provide to DART such additional information as DART may reasonably request from time to time. At DART's request, Contractor and certain of its employees and representatives shall also meet with DART from time to time regarding the Services to be rendered under this Contract.

### **12. SUBCONTRACTING.**

## ATTACHMENT 2 DART STANDARD TERMS AND CONDITIONS



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.

### 13. 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. If a Force Majeure Event occurs, the parties will execute a change order to extend the Performance Schedule for a time period that is reasonable under the circumstances. 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 Schedule Delays Caused by Contractor If Contractor delays the Performance Schedule, 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 substantially delay completion of the Project. 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

## ATTACHMENT 2 DART STANDARD TERMS AND CONDITIONS



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 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 substantially delay completion of the Project. 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 items is unavoidably delayed, DART may extend the Performance Schedule an equivalent number of days as 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 delivery dates.

### 14. **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, Performance Schedule, 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.

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- 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.

### 15. REPRESENTATIONS AND WARRANTIES.

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

b. General Warranty Contractor warrants that it has reviewed and evaluated all information furnished by DART. Contractor warrants that during the Term, the Services, including the equipment and software and the initial supply of spare components and any spare components purchased at DART's option, (1) shall be free from defects in design, material and workmanship, and shall remain in good working order, and (2) shall function properly and in conformity with the Statement of Work and as otherwise set forth in the Contract Documents. In addition, Contractor shall warrant that the documentation provided completely and accurately reflects the operation and maintenance of the Services, including any equipment and software, and provide DART with all information necessary to maintain the Services. During the Term, Contractor shall, at no cost to DART, furnish such materials, labor, equipment, software, documentation, services and incidentals as are necessary to maintain the Services in accordance with this warranty.

c. Software Warranty To the extent any software ("Software") is included as a part of the Services provided by Contractor, Contractor warrants that during the Term, DART shall be entitled to: (1) receive Software maintenance updates, together with any related correcting or supplemental documentation, as available to licensees of that licensed Software, (2) notify Contractor of any defects identified which cause the product not to perform in accordance with the related specifications set forth in the Statement of Work, and (3) receive any corrections to any defects, whether reported by DART or other licensees, in the Software. During the Term, Contractor warrants that the Software and any media on which the Software is delivered shall not contain any viruses, trojan horses, time bombs or other Software programming material that shall interfere with the normal operation of the Software or any other programs, computers or information assets of DART, either in permitting unauthorized access, or disabling, erasing, harming or otherwise altering any such programs, computers or information assets.

d. Repair or Replacement During the Term, and within one (1) week from Contractor's receipt of notice from DART, Contractor shall repair or replace, at DART's option, any defective Services or components of the Services that are

## ATTACHMENT 2 DART STANDARD TERMS AND CONDITIONS



defective in workmanship or material, with the cost included in the Contract Price. To the extent the defect is due to a defective component part, DART will ship each defective component to the Contractor, who shall return a new or repaired component within one (1) week of receipt of the defective component. If the Contractor determines that a returned component is not defective, DART shall receive the original component back in working order within thirty (30) calendar days of the Contractor originally receiving the returned component. All components received back at DART from the Contractor will be tested in accordance with the original Acceptance Test Procedures, if applicable, and returned to the Contractor if defective, accompanied by a certification. The Contractor shall pay all shipping and freight charges to DART, and any duties associated with the repair or replacement of defective components. Returned or replaced spare components shall be packaged, organized and labeled in the same manner as the original supply of spare components.

16. **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.

17. **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.

18. **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

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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 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.

19. **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,

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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.

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

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

### 22. **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 Performance Schedule or in 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



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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.

**23. 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.

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.

**24. 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: [NAME]  
[DART Title]  
620 Cherry St.

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Des Moines, IA 50309  
Phone: (515) ###-####  
Email:

For Contractor: [NAME]  
[TITLE]  
[ADDRESS]  
[CITY, ST ZIP]  
Phone:  
Email:

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

For DART: [NAME]  
[DART Title]  
620 Cherry Street  
Des Moines, Iowa 50309  
Phone: (515) ###-####  
Email:

For Contractor: [NAME]  
[TITLE]  
[ADDRESS]  
[CITY,ST ZIP]  
Phone:  
Email:

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.

25. **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.

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### 26. 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 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.

27. **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

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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.
- 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.

28. **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.

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

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30. **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.

31. **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.

32. **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.

33. **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.

34. **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.]

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DART STANDARD TERMS AND CONDITIONS**



**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: \_\_\_\_\_

**ATTACHMENT 2  
DART STANDARD TERMS AND CONDITIONS**



**EXHIBIT A  
STATEMENT OF WORK**

**ATTACHMENT 2  
DART STANDARD TERMS AND CONDITIONS**



**EXHIBIT B  
PERFORMANCE SCHEDULE**



**ATTACHMENT 2  
DART STANDARD TERMS AND CONDITIONS**



**EXHIBIT C**

**CONTRACT PRICE**

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DART STANDARD TERMS AND CONDITIONS**



**EXHIBIT D  
PAYMENT SCHEDULE**

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**EXHIBIT E  
DELIVERABLES**



**EXHIBIT F**

**DART DATA PRIVACY AND SECURITY ("DDPS")**

- 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

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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, 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:
  - b. Keep and maintain all Personal Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized access or disclosure;
  - c. 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

## ATTACHMENT 2 DART STANDARD TERMS AND CONDITIONS



benefit of anyone other than DART, in each case without DART's prior written consent; and

- d. 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, 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

## ATTACHMENT 2 DART STANDARD TERMS AND CONDITIONS



- 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 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) 283-5050, and (ii) by

## ATTACHMENT 2 DART STANDARD TERMS AND CONDITIONS



email, including a read receipt requested, to [it@ridedart.com](mailto:it@ridedart.com), with a carbon copy to DART's Chief Executive Officer ("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.
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



## ATTACHMENT 2 DART STANDARD TERMS AND CONDITIONS



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 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.

**ATTACHMENT 2  
DART STANDARD TERMS AND CONDITIONS**



**APPENDIX A-1**

**FEDERAL CLAUSES**



**APPENDIX A-1**

**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 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 Master Agreement [dated \_\_\_\_\_] 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 so 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.**

## ATTACHMENT 3 FEDERAL CLAUSES



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 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

## ATTACHMENT 3 FEDERAL CLAUSES



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.

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. SPECIAL EQUAL EMPLOYMENT OPPORTUNITY (EEO) PROVISION FOR CONSTRUCTION CONTRACTS.**

During the performance of this Contract, Contractor agrees as follows:

- (1) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion,

## **ATTACHMENT 3 FEDERAL CLAUSES**



sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of

## **ATTACHMENT 3 FEDERAL CLAUSES**



September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

### **8. 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:



## **ATTACHMENT 3 FEDERAL CLAUSES**



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.

### **9. BUY AMERICA.**

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

The bidder or offeror must submit to DART the appropriate Buy America certification with its bid or offer. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

### **10. PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES.**

Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

### **11. 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 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,

**ATTACHMENT 3  
FEDERAL CLAUSES**



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

**12. 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).

## ATTACHMENT 3 FEDERAL CLAUSES



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

### 13. CARGO PREFERENCE (USE OF UNITED STATES-FLAG VESSELS).

Contractor agrees:

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

### 14. FLY AMERICA REQUIREMENTS.

- a. Definitions. As used in this clause--  
"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.  
  
"United States" means the 50 States, the District of Columbia, and outlying areas.  
  
"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]:

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(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.

**15. PREVAILING WAGE AND ANTI-KICKBACK.**

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

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any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

### **16. CONTRACT WORK HOURS AND SAFETY STANDARDS.**

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

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

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

Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this Contract.

### **17. BONDING REQUIREMENTS.**

#### **Bid Guarantee**

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Bidders shall furnish a bid guaranty in the form of a bid bond, or certified treasurer's or cashier's check issued by a responsible bank or trust company, made payable to DART. The amount of such guaranty shall be equal to **\$\$\$\$** or **X%** of the total bid price.

In submitting this bid, it is understood and agreed by bidder that DART reserves the right to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [90] days subsequent to the opening of bids, without the written consent of DART.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [90] days after the bid opening without the written consent of DART, or refuse or be unable to enter into this Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guaranty to the extent DART'S damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security thereof.

It is further understood and agreed that to the extent the defaulting bidder's bid guaranty shall prove inadequate to fully recompense DART for the damages occasioned by default, then the undersigned bidder agrees to indemnify DART and pay over to DART the difference between the bid guarantee and DART'S total damages so as to make DART whole.

The undersigned understands that any material alteration of any of the above or any of the material contained herein, other than that requested will render the bid unresponsive.

### **Performance Guarantee**

A Performance Guarantee in the amount of **100%** of the Contract value is required by DART to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Agreement. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to DART within ten (10) business days from Contract execution. DART requires all Performance Bonds to be provided by a fully qualified surety company acceptable to DART and listed as a company currently authorized under 31 C.F.R. part 22 as possessing a Certificate of Authority as described hereunder. DART may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. DART may secure additional protection by directing the Contractor to increase the amount of the existing bond or to obtain an additional bond.

If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish with its bid, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide a statement from the banking institution certifying that an Irrevocable Stand-

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By Letter of Credit for the action will be provided if the Contract is awarded to the Bidder. The Irrevocable Stand-By Letter of Credit will only be accepted by DART if:

1. A bank in good standing issues it. DART will not accept a Letter of Credit from an entity other than a bank.
2. It is in writing and signed by the issuing bank.
3. It conspicuously states that it is an irrevocable, non-transferable, "standby" Letter of Credit.
4. DART is identified as the Beneficiary.
5. It is in an amount equal to **100%** of the Contract value. This amount must be in U.S. dollars.
6. The effective date of the Letter of Credit is the same as the effective date of the Contract.
7. The expiration date of the Letter of Credit coincides with the term of this Contract.
8. It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the DART and the Contractor the work stipulated herein.

The issuing bank's obligation to pay will arise upon the presentation of the original Letter of Credit and a certificate and draft (similar to the attached forms contained in Sections X and Y) to the issuing bank's representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.

**Payment Bonds**

A Labor and Materials Payment Bond equal to the full value of the contract must be furnished by Contractor to DART as security for payment by Contractor and Subcontractors for labor, materials, and rental of equipment. The bond may be issued by a fully qualified surety company acceptable to DART and listed as a company currently authorized under 31 C.F.R. part 223 as possessing a Certificate of Authority as described thereunder.

**Sample Bond Certifications**

**Performance Guarantee Certification**

The undersigned hereby certifies that the Bidder shall provide a Performance Guarantee in accordance with the Specifications.

Designate below which form of Performance Guarantee shall be provided:

\_\_\_\_\_ Performance Bond  
 \_\_\_\_\_ Irrevocable Stand-By-Letter of Credit

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BIDDER'S NAME: \_\_\_\_\_  
AUTHORIZED SIGNATURE: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

**Performance Bond**

KNOW ALL MEN BY THESE PRESENTS: that

\_\_\_\_\_  
*(Insert full name and address and legal title of Contractor)* as Principal, hereinafter called Contractor, and

\_\_\_\_\_  
*(Insert full name and address or legal title of Surety)* as Surety, hereinafter called Surety, are held and firmly bound unto DART as Obligee, hereinafter called Authority, in the amount of \_\_\_\_\_ Dollars (\$) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated \_\_\_\_\_, 20\_\_\_\_, entered into a contract with DART for Contract No. \_\_\_\_\_, which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the DART.

Whenever Contractor shall be, and is declared by DART to be in default under the Contract, DART having performed DART'S obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

1. Complete the Contract in accordance with it terms and conditions, or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if DART elects, upon determination by DART and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and the Authority, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this



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paragraph, shall mean the total amount payable by DART to Contractor under the Contract and any amendments thereto, less the amount properly paid by DART to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than DART or the heirs, executors, administrators or successors of the DART.

Signed and sealed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WITNESS \_\_\_\_\_ PRINCIPAL \_\_\_\_\_ (Title)  
\_\_\_\_\_

WITNESS \_\_\_\_\_ SURETY \_\_\_\_\_ (SEAL)  
\_\_\_\_\_ (Title)

**Attach hereto proof of authority of officers or agents to sign bond.**

**Irrevocable Stand-By Letter Of Credit Certificate**

The undersigned states that he/she is \_\_\_\_\_ of the \_\_\_\_\_ (Title) \_\_\_\_\_ (The "Beneficiary") and hereby \_\_\_\_\_ (Name of Beneficiary)

Certifies on behalf of the Beneficiary to \_\_\_\_\_ (the "Bank"), with \_\_\_\_\_ (Name of Issuing Bank)

Reference to Irrevocable Standby Letter of Credit No. \_\_\_\_\_ Issued by the Bank (the "Letter of Credit"), that:

- 1. The undersigned is duly authorized to execute and deliver this certificate on behalf of the Beneficiary.
- 2. The Beneficiary is making a drawing under the Letter of Credit.
- 3. An Event of Default has occurred under Contract No. \_\_\_\_\_.
- 4. The amount of the draft presented with this certificate does not exceed the total maximum amount drawable today under the Letter of Credit as provided therein.

**IN WITNESS WHEREOF**, this certificate is executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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(NAME OF BENEFICIARY)

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

Its: \_\_\_\_\_

**Bank Draft**

**FOR VALUE RECEIVED**

Pay on presentment to \_\_\_\_\_ the sum of \_\_\_\_\_  
(Name of Beneficiary) Dollars (\$)

Charge the Account of \_\_\_\_\_ Irrevocably Standby Letter  
of  
(Name of Issuing Bank)

Credit No. \_\_\_\_\_ Dated: 20\_\_\_\_\_.

To \_\_\_\_\_  
(Name of Issuing Bank)

**NAME OF BENEFICIARY**

By \_\_\_\_\_

Its \_\_\_\_\_

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

**19. CONTRACT WORK HOURS AND SAFETY STANDARDS FOR AWARDS NOT INVOLVING CONSTRUCTION.**

Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of

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that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.

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

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

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

### **20. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS.**

Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

1. U.S. DOL Certification. Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.

2. Special Warranty. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.

3. Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

### **21. BUS TESTING.**

Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major

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change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, Contractor [Manufacturer] shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by DART.

### **22. CHARTER SERVICE.**

Contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(d);
2. FTA regulations, "Charter Service," 49 C.F.R. part 604;
3. Any other federal Charter Service regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

Contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

1. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
2. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
3. Any other appropriate remedy that may apply.

Contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

### **23. SCHOOL BUS OPERATIONS.**

Contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(f);
2. FTA regulations, "School Bus Operations," 49 C.F.R. part 605;
3. Any other Federal School Bus regulations; or

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4. Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

1. Bar Contractor from receiving Federal assistance for public transportation; or
2. Require Contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, Contractor may not use federally funded equipment, vehicles, or facilities.

Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

### **24. SAFE OPERATION OF MOTOR VEHICLES.**

#### **Seat Belt Use**

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

#### **Distracted Driving**

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

### **25. SUBSTANCE ABUSE REQUIREMENTS.**

#### **SUBSTANCE ABUSE TESTING**

Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. parts 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of the State of Iowa, or DART, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. Contractor agrees further to certify annually its compliance with parts 655 before March 1<sup>st</sup> and to submit the Management Information System (MIS) reports before March 1<sup>st</sup> to Cindy Nelson, Human Resources Specialist. To certify compliance, Contractor shall use the "Substance Abuse

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Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the *Federal Register*. ]

### **26. 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.

### **27. PATENT RIGHTS AND RIGHTS IN DATA.**

#### **Intellectual Property Rights**

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. Contractor shall grant DART intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions: Except for its own internal use, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

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- a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
  - b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
3. Unless prohibited by state law, upon request by the Federal Government, Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
5. Data developed by Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that Contractor identifies those data in writing at the time of delivery of the Contract work.
6. Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

### **28. RECYCLED PRODUCTS (RECOVERED MATERIALS).**

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

**29. CONFORMANCE WITH NATIONAL ITS ARCHITECTURE.**

Intelligent transportation system (ITS) property and services must comply with the National ITS Architecture and Standards to the extent required by 23 U.S.C. Section 517(d) and FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455 et seq., January 8, 2001, and later published policies or implementing directives FTA may issue. Contractor agrees to comply with such requirements.

**30. 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;
- i) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R., part 609.

**31. ASSIGNABILITY.**



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DART, on behalf of itself and the below listed transit agencies, is conducting this solicitation for the purpose of acquiring \_\_\_\_\_ . Order of equipment for each agency is contingent on available funding.

DART reserves the right to assign all or any portion of the vehicles awarded under this Contract including option quantities. This assignment, should it occur, shall be to the below listed agencies or others and will be honored by the Contractor. DART's right of assignment will remain in force over the Term or until completion of the Contract to include options, whichever occurs first.

### **32. 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 4220.1F, dated November 1, 2008 (last revised March 18, 2013) 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 Contract. Contractor 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.