



# REQUEST FOR PROPOSAL FY24-RFP-008

for

## Financial Audit Services

for

## DES MOINES AREA REGIONAL TRANSIT AUTHORITY

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<b>Contract Type:</b>	Firm Fixed Price
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<b>Number of Contracts:</b>	Single Award
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<b>Duration:</b>	Three (3) Years with Three (3) Optional One (1) Year Renewals
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<b>Funding Source:</b>	Operating Budget
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<b>Date Issued:</b>	January 30, 2024
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<b>Deadline for Questions Regarding this RFP:</b>	February 16, 2024
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<b>Answers to Questions Posted on Website:</b>	February 22, 2024
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<b>Proposals Due:</b>	February 29, 2024, 2:00 PM CT
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<b>Tentative Contract Award Date:</b>	April 2024
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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 PROPOSAL  
FY24-RFP-008  
Financial Audit Services

Sealed proposals are hereby requested by the DES MOINES AREA REGIONAL TRANSIT AUTHORITY, 620 Cherry St., Des Moines, Iowa to be received until 2:00 PM Central Time, on February 29, 2024, for Financial Audit Services.

Requests for clarification and/or questions concerning the issued document shall be directed to Michael Gulick in the DART Procurement Department at 515-218-7973 or e-mail [mgulick@ridedart.com](mailto:mgulick@ridedart.com). All submittal questions concerning this RFP are due on or before February 16, 2024. This will be the only notice rendered for this procurement. Proposal Documents can be obtained at DART Central Station, above address, during the hours of 8:00 AM and 5:00 PM, Monday through Friday or DART's e-procurement site <https://ridedart.bonfirehub.com/portal/?tab=openOpportunities>.

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

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# SECTION 1: PROPOSAL SUBMITTAL REQUIREMENTS



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

## 1.1. GENERAL REQUIREMENTS

The proposal shall:

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

## 1.2. GENERAL FORMAT

- Proposals shall be prepared on 8.5 x 11" format with 1" left margins and 1" top, bottom and right margins. Typing shall be single spaced and no smaller than font size 11.
- Use of 11 x 17" legal format fold out sheets for large tables, charts or diagrams is permissible, but should be limited.
- Promotional or Advertising information will not be accepted.
- **Proposals shall have a maximum page number of 20, not including the required forms.**

## 1.3. SUBMITTAL

Proposals must be submitted via DART's e-procurement system (Bonfire). Proposers must be registered in Bonfire prior to submission.

<https://ridedart.bonfirehub.com/portal/?tab=login>

If any questions regarding registration or submission, please contact the Issuing Officer at [mgulick@ridedart.com](mailto:mgulick@ridedart.com) or 515-218-7973.

If a proposal can't be submitted through DART's procurement portal, please contact the Issuing Officer immediately at [mgulick@ridedart.com](mailto:mgulick@ridedart.com) or 515-218-7973. All proposals must be received by the deadline. **Proposers are strongly encouraged to not wait until the due date to avoid any unforeseen issues.**

## 1.4. PROPOSAL REQUIREMENTS

### A. PROPOSAL LETTER

This letter must be completed and executed by an authorized representative of the Proposer. No other letter may replace or be included in addition to the Proposal Letter.

## SECTION 1: PROPOSAL SUBMITTAL REQUIREMENTS



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

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

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

### **B. FIRM AND STAFF QUALIFICATIONS**

The proposal shall include a general description of the consultant and his or her background as it relates to the requested services. Specific information shall be submitted and include:

- ***Executive summary and overview of the services being offered including detailed information on the services will be provided.***
- ***Information regarding previous experience with similar or related projects. It should contain a brief description of these projects and the consultant's role.***
- ***Information demonstrating the consultant's capabilities to perform all aspects of this service.***
- ***Information of the project team that will support this service including their role, experience, and resume.***
- ***This project occasionally requires assistance with little to no notice. Please include information on the availability, responsiveness, and capacity of the consultant for work on this project.***
- ***Three (3) references from government entities including client name, address, contact person, telephone number, email, project start and end date as well as a project description. References should be for similar or related projects that proposed key staff members for this project have worked.***
- ***If any work is to be subcontracted to another firm(s), the proposal must include the above firm and staff qualification information for each subcontractor, a description of the services the firm performs as well as related projects and references.***

### **C. PROFESSIONAL SERVICES CONTRACT TERMS AND CONDITIONS**

The Proposal must indicate acceptance of the terms and conditions in the Contract Provisions (Section 6, including Exhibits A and B) on Attachment 8 Acceptance of Contract Provisions. If a Proposal takes exception to a provision, it must complete Attachment 9 Requested Contract Provisions Exceptions stating the reason for the exception and the specific contract language it proposes to include in place of the provision. Exceptions that materially change these terms and conditions or the requirements of the RFP, may be deemed non-responsive by DART, in its sole discretion,

## **SECTION 1: PROPOSAL SUBMITTAL REQUIREMENTS**



resulting in possible disqualification of the Proposal. DART reserves the right to either award a contract without further negotiation with the successful Proposer or to negotiate contract terms with the selected Proposer if the best interest of DART would be served. It is not DART's intent to make substantial changes to the outlined Contract Provisions.

### **D. FORMS**

Compliance with these forms is mandatory for contract award:

ATTACHMENT 1 – Acknowledgement of Addenda

ATTACHMENT 2 – Proposal Form

ATTACHMENT 3 – Contractor's Statement on Subcontractors

ATTACHMENT 4 – Non-Collusion Affidavit

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

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

ATTACHMENT 7 – Pricing Form

ATTACHMENT 8 - Acceptance of Contract Provisions

ATTACHMENT 9 – Requested Contract Provisions Exceptions (only if requesting)

ATTACHMENT 10 – Certifications of Restrictions on Lobbying

ATTACHMENT 11 – Disclosure of Lobbying Activities

## **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 twelve (12) 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 accounts for its activities in a single governmental enterprise. The agency utilizes the accrual basis of accounting under which revenues are recognized when earned and expenses when incurred.

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. The agency's services include Fixed Route, Mobility Services, and Caravan vanpool offerings. Each of these three service divisions report separate financial statements monthly to the Board of Commissioners (DART Commissioners).

### **2.2. PROJECT DESCRIPTION**

Des Moines Area Regional Transit Authority is seeking response from qualified independent certified public accountants, licensed in the State of Iowa, to express an opinion on the fair presentation of basic financial statements in conformity with accounting principles generally accepted in the United States of America (generally accepted accounting principles) based upon the audit of the basic financial statements of DART. The auditor shall also be responsible for performing certain limited procedures involving supplementary information required by the Governmental Accounting Standards Board (GASB). Length of project will span review of fiscal years 2024, 2025, and 2026 with an option to extend the agreement to include 2027 and 2028 should both parties agree to the modification.

### **2.3. TASK DESCRIPTIONS**

For each fiscal year included in the Agreement, the Auditor shall provide auditing services as described in this section. In addition, the Auditor will attend meetings with DART staff and the Board of Commissioners (DART Commissioners) as required; participate in meetings involving ongoing audits outside of the items described below; and upon termination or expiration of the contract, share work papers with the successor Auditor in order for the successor Auditor to plan the future audits. The Auditor agrees to not charge additional fees to DART for these services. The Agency also expects the Auditor to keep the Agency informed and educated on any accounting pronouncements that might impact DART.

The Audit Firm is expected to complete the following tasks.

- A. Financial audit – The Independent Auditor shall audit all funds and account groups of DART in accordance with the following standards as applicable to governmental transit entities:

**REQUEST FOR PROPOSAL:  
FY24-RFP-008 FINANCIAL AUDIT SERVICES**

## SECTION 2: SCOPE OF WORK



- i. Generally accepted accounting standards as promulgated by the American Institute of Certified Public Accountants (AICPA),
  - ii. Criteria for financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States,
  - iii. Provisions of the U.S. Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*,
  - iv. Pronouncements of the Governmental Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB),
  - v. Provisions of the Single Audit Act of 1984,
  - vi. AICPA Guides, and
  - vii. Provisions of the Code of Iowa.
- B. The Auditor shall plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. This process includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements in addition to assessing the accounting principles used and significant estimates made by management. The process will culminate with the Auditor's opinion on the financial statements prepared by DART. The Auditor's opinion shall be expressed in the report and include his/her reasons for qualifying the opinion, disclaiming an opinion, or rendering an adverse opinion.
- C. The Auditor shall hold preparation meetings with finance department leaders in advance of the audit as well as entrance and exit meetings with DART's executive leadership and finance department leaders. Additionally, the Auditor will hold meetings with members of the Audit Committee of the DART Commission and with DART leadership during the audit work to ascertain any concerns or answer any questions that may arise. During the work of the audit, the Auditor will provide regular status updates as to the items outstanding to be completed. The Auditor will present the draft audit report at a regularly scheduled DART Executive Committee meeting and then a final audit report to the full DART Commission at a regularly scheduled Commission meeting, not later than December of each year. Meetings may be held in person or by video teleconference at the agreement of both parties.
- D. The Independent Auditor also shall express an opinion as to the fair presentation of the combining, individual fund and individual account group financial statements in conformity with auditing standards generally accepted in the United States of America. The Auditor is required to provide an "in-relation-to" report on the supporting schedules and statistical tables based upon the audit of the financial statements.
- E. In accordance with Statement of Auditing Standard No. 114 (*The Auditor's Communication with Those Charged with Governance*), the Auditor will issue a communication memorandum covering the results of the audit. The memorandum will cover such topics as the Auditor's responsibilities under generally accepted

## SECTION 2: SCOPE OF WORK



- auditing standards, an overview of the planned scope and timing of the audit, and significant audit findings (if any) uncovered during the audit. DART agrees to provide a representation letter to support its reporting responsibilities to the Auditor. The Auditor agrees to discuss all findings and recommendations with the appropriate management personnel prior to inclusion in the memorandum.
- F. In accordance with 49 U.S.C. §5335, DART is required to report information to the National Transit Database (NTD) using uniform categories and a uniform system of accounts in order to accumulate public transportation financial, operating, and asset condition information. The Auditor shall issue the *Independent Auditor Statement for Federal Funding Allocation (IAS-FFA) Data*. In this issuance, the Auditor must apply the procedures that the Federal Transit Administration (FTA) has specified that the Agency perform in completing the *Federal Funding Allocation Statistics Form* (a document included in the Agency's annual NTD Report). The Auditor shall additionally issue, if applicable, the *Independent Auditor Statement for Financial Data (IAS-FD)*, if there is a change to the Agency's accounting system that warrants issuance of a report.
- G. The Auditor will assist DART with compliance with *GASB 68 Accounting and Financial Reporting for Pensions*. This assistance will include the identification and quantification of pension deferred outflow of resources and deferred inflows of resources, pension expense, and net pension liability. Auditor will prepare all audited and unaudited schedules, and audited footnotes to the schedules as required.
- H. As guided by the AICPA Auditing Standards Board Statement on Auditing Standard No. 68, the Auditor should exercise due professional care in:
- i. Understanding the type of engagement and
  - ii. Requiring that, if during the audit the Auditor becomes aware that DART is subject to audit requirements which may not be encompassed in the terms of the engagement, he or she communicates to management and the audit committee or others with equivalent authority and responsibility that the audit may not satisfy the requirements.
- I. The Auditor will assist management in the preparation of the audited financial statements for each fiscal year ending June 30, 20XX. This will include, but not be limited to, assisting management with the compilation of the final audited financial statements and all required supplementary information.
- J. Upon successful adoption of an Annual Comprehensive Financial Report (ACFR), as outlined in Section 2.4.B below, the Auditor will assist management in the preparation of the audited ACFR for each fiscal year thereafter.
- K. The Auditor shall provide DART with twenty-five (25) bound print copies of the financial statements, Auditor's report, and management letter and one electronic copy in PDF format at the conclusion of the annual audit. Additionally, the Auditor shall provide DART with five (5) bound print copies of the National Transit Database Report of the Federal Transit Administration and one electronic copy in PDF format at the conclusion of the NTD review.



## SECTION 2: SCOPE OF WORK



### 2.4. ADDITIONAL SERVICES

DART requests that the following additional services be quoted separately from the base bid for annual audit services:

- A. The Auditor will be consulted occasionally throughout the year as an information source. The Auditor may be asked to provide guidance on the implementation of GASB requirements and/or specifics of Federal and State regulations as they may affect local governmental accounting.
- B. Assist management in the preparation and review of an annual ACFR. The Finance Team desires to submit the ACFR to the Government Finance Officers Association award program for Achievement for Excellence in Financial Reporting.
- C. Cybersecurity and Information Technology Audit services. Provide separate pricing for each of the following cybersecurity and information technology audit services. Proposers may propose on one or more of the listed line items in this section. DART may exercise none, one, or more than one of these line items. Lack of a proposal for any cybersecurity and information technology line item will not render your proposal non-responsive. Proposers will be conducting agreed upon procedures for this portion of their audit engagement. The Auditor will follow SSAE No. 16, *Reporting on Controls at a Service Organization*, for this portion of their engagement. The Auditor will also follow the applicable standards provided by the National Institute of Standards and Technology (NIST). Provide separate pricing for each of the following:
  - i. Perform a network vulnerability assessment and penetration testing of DART's IT network. Provide recommendation for resolving issues discovered during this assessment. This review will be performed in accordance with NIST Special Publication 800-115, *Technical Guide to Information Security Testing and Assessment*.
  - ii. Perform vulnerability and penetration testing to determine DART's compliance with Payment Card Industry Data Security Standards (PCI DSS). Provide recommendations for resolving issues discovered during this assessment. This review will be conducted in accordance with *NIST Special Publication 800-53, Security and Privacy Controls for Federal Information Systems and Organizations*.
  - iii. Perform a review of DART's compliance with applicable portions of the Family Educational Rights and Privacy Act (FERPA), Graham-Leach-Bliley Act (GLBA), Health Information Protection and Portability Act (HIPPA), Health Information for Technology for Economic and Clinical Health Act (HITECH), and other applicable federal and state privacy laws. Provide recommendations for resolving issues discovered during this assessment. This review will be conducted in accordance with *NIST Special Publication 800-53, Security and Privacy Controls for Federal Information Systems and Organizations*.
  - iv. Perform a review of DART's cybersecurity event recovery process. Provide recommendations for resolving issues discovered during this assessment. This

## SECTION 2: SCOPE OF WORK



review will be conducted in accordance with *NIST Special Publication 800-184, Guide for Cybersecurity Event Recovery*.

- v. Perform a review of DART's procedures for Business Continuity Management and Disaster Recovery Planning. Provide recommendations for resolving issues discovered during this assessment. This review will be conducted in accordance with *NIST Special Publication 800-34, Contingency Planning Guide for Federal Information Systems*.
- vi. Perform a review of DART's IT governance and provide recommendations to address issues discovered during this assessment. This review will be conducted in accordance with *NIST Special Publication 800-39, Managing Information Security Risk: Organization, Mission, and Information System View*.
- vii. Perform a review of DART's methods and processes used for Enterprise Risk Management as it applies to DART's information technology framework and resources (ERM). Provide recommendations to address issues discovered during this assessment. This review will be conducted in accordance with *NIST Special Publication 800-37, Guide for Applying the Risk Management Framework to Federal Information Systems: A Security Life Cycle Approach*.

### 2.5. PROJECT SCHEDULE

DART anticipates that the recurring project should be completed prior to October 15<sup>th</sup> of each contract year. Onsite fieldwork is desired to take place during late August to late September. The Iowa State Fair will be a blackout period during which DART staff are unavailable for onsite field work.

The Consultant shall submit a Project Schedule for DART's approval within fifteen (15) days of the issuance of the Notice to Proceed. The Project Schedule shall be updated and submitted to DART monthly thereafter until the project is complete. Sufficient information shall be shown on the Project Schedule to enable proper control and monitoring of the Auditor's work.

### 2.6. PROJECT ACCEPTANCE

The Auditor agrees to execute a written Agreement with DART for Financial Audit Services. The proposed terms and conditions are outlined in Section 6 Contract Provisions. Any requests for exceptions to the proposed terms and conditions shall be submitted with your proposal. DART agrees to execute an Audit Engagement Letter addressing the terms of engagement as required by AICPA Statement for Attestation Engagements Number 18. The Audit Engagement Letter will be prepared by the Auditor and signed by both parties. The Audit Engagement Letter will be attached as an exhibit to the Agreement and become part of the Contract Documents.

## **SECTION 3: PROPOSAL EVALUATION AND AWARD PROCEDURE**



### **3.1. GENERAL GUIDANCE**

DART reserves the right to accept or reject any or all proposals and may select and negotiate with one or more proposers concurrently should they both be deemed equal, and enter into a Contract with such proposer who is determined, by DART, to provide the services which are in the best interest of DART. DART may agree to such terms and conditions as it may determine to be in its interest.

DART's evaluation committee reserves the right to request additional information from proposers, to negotiate terms and conditions of the contract, request oral presentations, inspect proposer's facilities, and/or ask proposers to appear before the evaluation committee to answer questions or clarify points of their proposal.

### **3.2. EVALUATION CRITERIA**

The evaluation criteria for this procurement are:

- A. Demonstrated Firm and Staff Qualifications from Section 1 B. (40 points)
- B. Demonstrated ability to provide the required services from Section 2 Scope of Work. (20 points)
- C. Availability to provide the required service schedule from Section 2.5. (10 points)
- D. The evaluation of the price and price structure. (30 points)

All Respondents will be notified after the Selection Committee has selected the most qualified proposer.

Award of this RFP shall be on the basis of the above-outlined evaluation criteria and awarded to the Proposer whose proposal is judged as providing the best value in meeting the interest of DART and the objectives of the project, in DART's sole determination.

## **SECTION 4: INSTRUCTIONS TO PROPOSERS**



### **4.1. INTERPRETATION OF RFP DOCUMENTS**

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

### **4.2. ADDENDUM TO RFP**

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

### **4.3. TYPE OF CONTRACT**

DART intends to award a firm, fixed price contract. The services of the Firm will be based on the Scope of Work as outlined in Section 2 (Scope of Work).

### **4.4. RIGHTS OF DART IN REQUEST FOR PROPOSAL PROCESS**

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

- Disqualify any Proposer in accordance with Instruction to Proposers
- Reject any or all of the Proposals, at its discretion
- Remedy errors in the RFP
- Cancel the entire RFP
- Issue subsequent RFP
- Appoint a Selection Committee to review Proposals
- Visit Proposers' facilities as a part of the evaluation process
- Seek the assistance of outside technical experts to review Proposals
- Approve or disapprove the use of particular Subcontractors and Suppliers
- Establish a short list of Proposers eligible for discussions after review of written Proposals
- Solicit best and final offers (BAFO) from all or some of the Proposers
- Negotiate with any, all or none of the Proposers
- Accept other than the lowest priced Proposal
- Disqualify the Proposal(s) upon evidence of collusion with intent to defraud or other illegal practices on the part of the Proposer(s)
- Waive any informalities or irregularities in any Proposal, to the extent permitted by law.

## SECTION 4: INSTRUCTIONS TO PROPOSERS



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

### 4.5. DART PROTEST PROCEDURES

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

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

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

The Procurement Manager shall redact from any submission under the protest process information which has been identified as proprietary, and which, in his/her judgment, is protected from disclosure under the Iowa Freedom of Information Act prior to furnishing such submission to any other party, unless the person furnishing the

## SECTION 4: INSTRUCTIONS TO PROPOSERS



information consents, in writing, to distribution of the information to other interested parties.

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

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

The decision document will contain four parts:

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

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

A Protestor may not commence litigation prior to exhausting all administrative remedies. Failure to exhaust all administrative remedies shall constitute an absolute waiver of the protestor's right, if any, to commence litigation.

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

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

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

### 4.6. PRICES, TERMS AND PAYMENT

Firm prices shall be proposed and must include all ancillary costs as well as the following:

## **SECTION 4: INSTRUCTIONS TO PROPOSERS**



- Taxes: DART does not pay federal excise and sales taxes or state excise and use taxes on direct purchases.
- Mistakes: Proposers are expected to examine the conditions, scope of work, proposal prices, extensions, specifications and all instructions pertaining to the request for proposal. Failure to do so will be at the Proposers risk.
- Invoicing and Payment: Charges rendered from the potential contractor to DART shall be due and payable on terms of Net 30 days after proper and complete billing is received from DART.

### **4.7. DURATION OF OFFER**

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

### **4.8. TAX EXEMPTION**

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

### **4.9. LATE PROPOSALS OR WITHDRAWAL OF PROPOSALS**

Any proposal received at the DART offices designated in the solicitation after the time specified for receipt of proposals will not be considered and will be returned to the proposer unopened.

A proposal may be withdrawn in person by the proposer or their authorized representative, provided their identity is made known and a receipt is signed for the proposal, and only if the withdrawal is made prior to the time specified for receipt of proposals.

### **4.10. QUALIFICATIONS FOR AWARD**

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

The Proposer affirms and declares:

- The proposer has the capacity to do business within the State of Iowa.
- The proposer has the capability to assure completion of the required services within the time specified under this contract.
- The proposer presently has the necessary facilities, financial resources and licenses to complete the contract in a satisfactory manner and within the required time.



## **SECTION 4: INSTRUCTIONS TO PROPOSERS**



- The proposer is of lawful age and that no other person, firm or corporation has any interest in this proposal or the contract proposed to be entered into.
- The proposer is not in arrears to the Des Moines Area Regional Transit Authority upon debt or contract and is not defaulting as surety or otherwise, upon any obligation to the Des Moines Area Regional Transit Authority.
- No member, officer, or employee of DART during his tenure or for two years thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.
- To be “qualified” by DART, the proposer must have all State and Local licenses as legally required that are necessary to perform and complete the work as called for herein.
- The proposer is not on the Comptroller General's list of ineligible consultants.

### **4.11. WITHHOLDING AWARD**

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

### **4.12. PROPOSAL ACCEPTANCE, REJECTION AND/OR POSTPONEMENT**

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

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

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

### **4.13. DEBARMENT AND SUSPENSION**

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



## **SECTION 4: INSTRUCTIONS TO PROPOSERS**



Debarment, Suspension, And Other Ineligibility And Voluntary Exclusions shall be submitted by the proposer to DART for each listed subcontractor prior to contract award.

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

### **4.14. DBE PARTICIPATION**

The Contractor, Sub-recipient, or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this (contract or agreement). The requirements of 49 CFR Part 26 and the recipient's U.S. DOT-approved Disadvantaged Business Enterprise (DBE) program are incorporated in this (contract or agreement) by reference. In connection with the performance of this contract, the contractor will cooperate with DART in meeting its DBE goal and shall have the maximum practical opportunity to compete for subcontract work under this contract. The current DART annual DBE goal is 0.53 percent. It is the policy of DART that DBE's shall have the maximum practicable opportunity to participate in DART contracts. In order to insure that a fair proportion of the purchases and contracts are placed with DBE's, the bidder agrees to take affirmative action to the greatest extent practicable including good faith effort to identify qualified DBE firms for supplies and services to this bid, if applicable. Failure by the Contractor, sub-recipient, or subcontractor to carry out these requirements is a material breach of the contract, agreement or Purchase Order, which may result in the termination of this (contract or agreement) or such other remedy as DART deems appropriate.

**DART has not set a specific DBE goal for this RFP.**

### **4.15. EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS**

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

### **4.16. COLLUSION**

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

## **SECTION 4: INSTRUCTIONS TO PROPOSERS**



### **4.17. LEGAL REQUIREMENTS**

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

### **4.18. EXCEPTIONS**

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

**SECTION 5:  
ATTACHMENTS**



**ATTACHMENTS**

ATTACHMENT 1 – Acknowledgement of Addenda

ATTACHMENT 2 – Proposal Form

ATTACHMENT 3 – Contractor's Statement on Sub-Contractors

ATTACHMENT 4 – Non-Collusion Affidavit

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

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

ATTACHMENT 7 – Pricing Form

ATTACHMENT 8 - Acceptance of Contract Provisions

ATTACHMENT 9 – Requested Contract Provisions Exceptions (only if requesting)

ATTACHMENT 10 - Certification of Restrictions on Lobbying

ATTACHMENT 11 - Disclosure of Lobbying Activities

**SECTION 5:  
ATTACHMENTS**



**ATTACHMENT 1**

**ACKNOWLEDGEMENT OF ADDENDA**

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

(Give number and date of each)

Addendum Number \_\_\_\_\_ Dated \_\_\_\_\_

Addendum Number \_\_\_\_\_ Dated \_\_\_\_\_

Addendum Number \_\_\_\_\_ Dated \_\_\_\_\_

Addendum Number \_\_\_\_\_ Dated \_\_\_\_\_

Addendum Number \_\_\_\_\_ Dated \_\_\_\_\_

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**SECTION 5:  
ATTACHMENTS**



**ATTACHMENT 2  
PROPOSAL FORM**

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

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

Contractor's Name: \_\_\_\_\_

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

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

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

Annual Gross Receipts of the Firm:

\_\_\_\_\_

Telephone #: \_\_\_\_\_ E-Mail: \_\_\_\_\_

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

\_\_\_\_\_

Person to Contact after Award: \_\_\_\_\_

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

Print Authorized Name: \_\_\_\_\_

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

Authorized Signature (Written): \_\_\_\_\_

**SECTION 5:  
ATTACHMENTS**



**ATTACHMENT 3**

**CONTRACTOR'S STATEMENT ON SUB-CONTRACTORS**

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

Authorized Signee: \_\_\_\_\_

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

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

For (Company): \_\_\_\_\_

OR

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

Name of Company: \_\_\_\_\_

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

Contact Person: \_\_\_\_\_

Telephone #: \_\_\_\_\_

E-mail: \_\_\_\_\_

Name of Company: \_\_\_\_\_

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

Contact Person: \_\_\_\_\_

Telephone #: \_\_\_\_\_

E-mail: \_\_\_\_\_

**SECTION 5:  
ATTACHMENTS**



**ATTACHMENT 4  
NON-COLLUSION AFFIDAVIT**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

\_\_\_\_\_, being first duly sworn, on  
Name

his/her oath says he is \_\_\_\_\_ of \_\_\_\_\_  
Title Name of Firm

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

(SIGN HERE): \_\_\_\_\_

County \_\_\_\_\_ In and for the State of  
\_\_\_\_\_

Subscribed and Sworn to before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**SECTION 5:  
ATTACHMENTS**



**ATTACHMENT 5  
CERTIFICATION OF CONTRACTOR REGARDING DEBARMENT,  
SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

The undersigned, an authorized official of the Proposer stated below, certifies to the best of its knowledge and belief, that it and its principals:

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

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

THE UNDERSIGNED CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Name of Proposer \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Signature of Authorized Official \_\_\_\_\_

Title of Official \_\_\_\_\_

Telephone \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Notary Public Name (Printed)

\_\_\_\_\_  
Notary Public Signature County of

\_\_\_\_\_  
Expiration Date



**SECTION 5:  
ATTACHMENTS**



**ATTACHMENT 6  
CERTIFICATION OF LOWER-TIER PARTICIPANTS (SUBCONTRACTORS) REGARDING  
DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION**

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

The Undersigned Lower-Tier Participant (Subcontractor), certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31. U.S.C. Sections 3801 et seq. are applicable thereto.

Name of Proposer \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Signature of Authorized Official \_\_\_\_\_

Title of Official \_\_\_\_\_

Telephone \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Notary Public Name (Printed)

\_\_\_\_\_  
Notary Public Signature County of

\_\_\_\_\_  
Expiration Date

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

**SECTION 5:  
ATTACHMENTS**



**ATTACHMENT 7  
PRICING PROPOSAL**

Fiscal Year Ended for Section 2.3 Tasks A. through K.	All-Inclusive Firm Fixed Price
June 30, 2024	
June 30, 2025	
June 30, 2026	
June 30, 2027 <i>(optional renewal)</i>	
June 30, 2028 <i>(optional renewal)</i>	
June 30, 2029 <i>(optional renewal)</i>	
<b>Additional Services for Section 2.4</b>	
2.4 A. Perform Implementation of GASB Requirements	
2.4.B Preparation of ACFR	
2.4 C Perform a Cybersecurity and Information Technology Review:	
i. Network Vulnerability Assessment and Penetration Testing	
ii. PCI-DSS Vulnerability Assessment and Penetration Testing	
iii. Federal and State Privacy Law Assessment	
iv. Review of Cybersecurity Event Recovery Process	
v. Review of Business Continuity Management and Disaster of Recovery Planning	
vi. Review of Governance of IT	
vii. Review of ERM as it applies to IT	

Position	Daily Rate
Partner	
Audit Manager	
Senior Accountant/Staff Auditor	
Associate	

Proposer Firm: \_\_\_\_\_

Name of person authorized to bind the firm: \_\_\_\_\_

Title: \_\_\_\_\_ Phone: \_\_\_\_\_ e-mail: \_\_\_\_\_

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

**SECTION 5:  
ATTACHMENTS**



**ATTACHMENT 8**

**ACCEPTANCE OF CONTRACT PROVISIONS  
FROM SECTION 6 INCLUDING EXHIBITS A AND B**

The undersigned, an authorized official of the Proposer stated below, certifies (check box):

acceptance of all contract provisions from Section 6 including Exhibit A and Exhibit B.

or

request exceptions to contract provisions and have completed Attachment 9 Requested Contract Provisions Exceptions.

Name of Proposer \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Signature of Authorized Official \_\_\_\_\_

Title of Official \_\_\_\_\_

Telephone \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Notary Public Name (Printed)

\_\_\_\_\_  
Notary Public Signature County of

\_\_\_\_\_  
Expiration Date

**SECTION 5:  
ATTACHMENTS**



**ATTACHMENT 9**

**REQUESTED CONTRACT PROVISIONS EXCEPTIONS**

*Only complete if requesting exceptions to contract provisions from Section 6 including Exhibit A and Exhibit B (add rows as needed)*

Contract Provision Section 6 Number or Exhibit Section	Reason for Exception	Proposed Specific Contract Language to Replace Provision

**SECTION 5:  
ATTACHMENTS**



**ATTACHMENT 10**

**CERTIFICATION OF RESTRICTIONS ON LOBBYING**

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instruction as amended by government-wide guidance for new restrictions on lobbying 61 Fed. Reg. 1413 (1/19/96).
3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certificate is a prerequisite for making or entering into this transaction imposed by 31 USC 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

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

Company: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

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

**SECTION 5:  
ATTACHMENTS**



**ATTACHMENT 11**

**DISCLOSURE OF LOBBYING ACTIVITIES**

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

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

**SECTION 6:  
CONTRACT PROVISIONS**



**CONTRACT [DRAFT]**

**FOR (blank) SERVICES**

This CONTRACT FOR (blank) SERVICES (the "Contract") is made as of \_\_\_\_\_ (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 (blank) Services for DART (the "Services") in accordance with the terms of this Contract;
- B. DART desires to obtain goods and/or services provided by Contractor (collectively, "Services") according to the requirements set forth in the Request for Proposal (the "Solicitation") and as further described in this Contract;
- C. Contractor has submitted a bid or response in connection with the Solicitation (the "Response"), which DART has selected for the Project;
- D. Contractor represents and warrants to DART that Contractor is qualified and duly licensed to furnish the Services in Iowa;
- E. Contractor warrants that all representations made by Contractor in the Response remain valid, accurate, and binding; and
- F. Contractor desires to render the Services and meet the obligations set forth in the Contract Documents (defined below).

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

## SECTION 6: CONTRACT PROVISIONS



### AGREEMENT

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

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

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

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

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

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



## SECTION 6: CONTRACT PROVISIONS



**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 X]** attached hereto and made a part hereof.

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

**8. CONTRACT TERM.** Unless terminated earlier in accordance with the provisions of this Contract or extended by mutual agreement of the parties, the term of this Contract shall commence on the Effective Date and shall remain in effect for a period of three (3) years with two (2) individual one (1) year optional periods thereafter (the "Term").

**9. PAYMENT.**

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

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

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

## SECTION 6: CONTRACT PROVISIONS



overpayment to Contractor by DART discovered during the course of such an audit shall be immediately refunded to DART or may be set off against future amounts owed to Contractor by DART, at DART's sole option.

b. Time of Payment by DART. DART shall make full payment within net thirty (30) days after receipt and approval by DART of Contractor's invoice, unless otherwise stated in the Contract Documents.

c. Prohibited Costs. Notwithstanding any other provision in the Contract Documents to the contrary, the provisions of Federal Acquisition Regulations Subparts 31.201 through 31.205 regarding "allowable costs" are hereby specifically incorporated by this reference.

d. Receipt of Payment by Contractor as Release of DART. The acceptance by Contractor, its successors, or assigns of any progress payment or final payment due pursuant to the Contract Documents shall constitute a full and complete release of DART from any and all claims, demands, or causes of action whatsoever that Contractor, its successors, or assigns may have against DART in connection with the Services performed under the Contract Documents, through the date that the Services are rendered and for which such payment is made.

e. Subcontractor Payments and Documentation. Contractor shall not subcontract any of its obligations under this Contract except to the extent specifically authorized herein. In the event Contractor utilizes any subcontractors and/or suppliers (each a "Subcontractor") in accordance with this Contract, Contractor agrees to pay each Subcontractor for satisfactory performance of their applicable subcontract no later than ten (10) business days from the receipt of each payment Contractor receives from DART. Contractor agrees further to return any retainage payments to each Subcontractor within ten (10) business days after the Subcontractor's Work is satisfactorily completed. Any delay or postponement of payment from the above-referenced timeframe may occur only for good cause following written approval of DART. This clause applies to both Disadvantaged Business Enterprise (as such term is used in the Third-Party Contracting Requirements) ("DBE") and non-DBE Subcontractors.

If Contractor fails to pay a Subcontractor within ten (10) business days, Contractor must notify DART and the affected Subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

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

## **SECTION 6: CONTRACT PROVISIONS**



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.

### **10. CONTRACTOR'S OBLIGATIONS.**

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

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

Contractor's performance shall be considered acceptable when:

- i. Contractor's performance has been approved by DART;
- ii. All the other duties and obligations to be performed by Contractor under the Contract Documents have been satisfactorily met or performed, including the delivery to DART of any materials or documentation relating to the Services.

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

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

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

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

## SECTION 6: CONTRACT PROVISIONS



g. 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.

h. 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.

### 11. **SUBCONTRACTING.**

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

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

### 12. **DELAYS.**

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

b. Performance Delays Caused by Contractor. If Contractor delays the Services, DART will get appropriate credits to any invoices submitted by Contractor; and the parties will execute a written change order to credit DART for all reasonable charges incurred because of the delay. Delay charges may include costs incurred by DART for suspending and re-mobilizing the work; project management, and standby time calculated at then current rates; and preparing and implementing an alternative implementation plan. Contractor shall not deny

## SECTION 6: CONTRACT PROVISIONS



DART's right to an adjustment of time of performance and price based solely on DART's failure to timely assert its rights under this provision.

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

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

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

### 13. CHANGE ORDERS, AMENDMENTS OR OTHER MODIFICATIONS.

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

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

i. DART's authorized representative may, at any time, make changes within the general scope of this Contract by providing a written, detailed request

## SECTION 6: CONTRACT PROVISIONS



for the change. Upon receipt of DART's requested change order, Contractor shall provide DART's authorized representative a written, detailed proposal including updated price, schedule, and scope of work changes for work to be performed.

- ii. When approved by DART as an amendment or change order to this Contract and authorized in writing by DART and Contractor, Contractor shall provide such additional requirements as may become necessary.
- iii. Failure of the parties to agree to any written amendment or change order shall be resolved under the Dispute Resolution procedures set forth in this Contract.

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

**15. 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.

**16. PATENT, INTELLECTUAL PROPERTY, AND COPYRIGHT INFRINGEMENT AND INDEMNIFICATION (if applicable).**

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



## SECTION 6: CONTRACT PROVISIONS



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.

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

## SECTION 6: CONTRACT PROVISIONS



**18. USE OF “DES MOINES REGIONAL TRANSIT AUTHORITY” NAME IN CONTRACTOR ADVERTISING OR PUBLIC RELATIONS.** Contractor acknowledges and agrees that DART reserves the right to review and approve any advertising copy or other advertising material related in any manner to this Contract prior to any publication thereof. Contractor agrees that it will not allow any such copy or other material to be published in any advertisements or public relations programs until after such time as Contractor has submitted such copy to and received prior written approval thereof from DART. Contractor agrees that any published information relating to this Contract will be factual and will in no manner imply that DART endorses Contractor's firm, service, or product.

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

**20. TERMINATION.**

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

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

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

**21. 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



**SECTION 6:  
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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.

**22. 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]  
                                      [TITLE]  
                                      [ADDRESS]  
                                      [CITY, ST ZIP]  
                                      Phone:  
                                      Email:  
                                      *[to be updated upon contract execution]*

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

## SECTION 6: CONTRACT PROVISIONS



Phone:  
Email:  
*[to be updated upon contract execution]*

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

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

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

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

**23. 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.

### **24. 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,

## SECTION 6: CONTRACT PROVISIONS



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.

**25. CONTRACTOR'S LIABILITY INSURANCE.** Contractor acknowledges and agrees that DART will not provide any insurance for Contractor, and that Contractor shall be solely responsible for procuring and maintaining any and all insurance required under this Contract or as otherwise necessary to protect Contractor in its operations. At a minimum, Contractor shall maintain insurance of the types set forth below, including such insurance as will protect it from claims under Workers' Compensation Acts and other employee benefit acts; from claims for damages because of bodily injury, including death, to its employees and all others and from claims for damages to property; any or all of which

## SECTION 6: CONTRACT PROVISIONS



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.

**26. 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.

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

**28. 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

## SECTION 6: CONTRACT PROVISIONS



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.

**29. 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.

**30. 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.

**31. 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.

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

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

SIGNATURE PAGE ON THE FOLLOWING PAGE.]

**SECTION 6:  
CONTRACT PROVISIONS**



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

**CONTRACTOR:**

**DART:**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

**Exhibit A**  
**FEDERAL CLAUSES**

**1. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES**

DART and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to DART, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

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

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

Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on Contractor, to the extent the Federal Government deems appropriate. Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**3. ACCESS TO RECORDS AND REPORTS**

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

- b. Retention Period. Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of 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 version 30 dated November 2, 2022, 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**

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

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

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

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

and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **8. LOBBYING RESTRICTIONS**

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

## **9. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

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

Further, Contractor agrees:

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

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

## 10. FLY AMERICA REQUIREMENTS

- a. Definitions. As used in this clause--  
“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.

## **11. 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.

## **12. ENERGY CONSERVATION**

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

## **13. 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.

- 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.

#### **14. 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.

## **15. 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) 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;
- g) 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;
- h) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R., part 609.

## **16. 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.

## **17. VETERANS HIRING PREFERENCE**

Veterans Employment - Recipients and subrecipients of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

## **18. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICE OR EQUIPMENT**

- a) Recipients and subrecipients are prohibited from obligating or expending federal loan or grant funds to:
- 1) Procure or obtain;
  - 2) Extend or renew a contract to procure or obtain; or
  - 3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
    - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
    - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
    - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist



affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

c) See Public Law 115-232, section 889 for additional information.

d) See also § 200.471.

## **19. TRAFFICKING IN PERSONS**

The contractor agrees that it and its employees that participate in the Recipient's Award, may

not:

- (a) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect;
- (b) Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or
- (c) Use forced labor in the performance of the Recipient's Award or sub agreements thereunder.

## **20. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS**

(1) The contractor certifies that it:

- (a) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

If the contractor cannot so certify, the Recipient will refer the matter to FTA and not enter into any Third Party Agreement with the Third Party Participant without FTA's written approval.

(2) Flow-Down. The Recipient agrees to require the contractor to flow this requirement down to participants at all lower tiers, without regard to the value of any sub agreement.

## **21. SEVERABILITY**

The Contractor agrees that if any provision of this agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

## EXHIBIT B: DART DATA PRIVACY AND SECURITY STANDARDS



### DATA PRIVACY AND SECURITY

Entering into an agreement to become a Provider (hereinafter referred to as "Provider") for the Des Moines Area Regional Transit Authority (DART) involves the sharing of a significant amount of legally protected Personal Information such as Personally Identifiable Information (PII), Personal Health Information (PHI) and/or Personal Credit Information (PCI). The sharing of this information is necessary to enable the Provider to provide the services relevant to this 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. Therefore the Provider shall conform to the following standards of care and obligations with respect to the treatment of Personal Information.

**"Authorized Employees"** means the Provider's employees who have a need to know or otherwise access Personal Information to enable the Provider to perform their obligations under this Contract.

**"Authorized Persons"** means (i) Provider's Authorized employees; and (ii) Providers independent contractors, vendors, agents, outsourcers, and auditors (as specified in [Exhibit X] to this Contract) who have a need to know or otherwise access Personal Information to enable the Provider to perform their obligations under this Contract, and who are bound in writing by confidentiality obligations sufficient to protect Personal Information in accordance with the terms and conditions of this Contract.

**"Highly Sensitive Personal Information"** means (i) an individual's 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; or (iii) biometric or health data, (iv) birth date.

**"Personal Information"** means information provided to the Provider by or at the direction of DART or to which access was provided to the Provider at the Direction of DART, in the course of the Provider's performance under this Contract that: (i) identifies or can be used to identify an individual (including without limitation names, signatures, addresses, telephone numbers, e-mail addresses, and other unique identifiers); or (ii) can be used to authenticate an individual (including without 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); (iii) without limitation, all Highly Sensitive Personal Information. DART employees' business contact information is not by

## EXHIBIT B: DART DATA PRIVACY AND SECURITY STANDARDS



itself deemed to be Personal Information.

**"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 Provider 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 Provider or any Authorized Persons; or a breach or alleged breach of this Contract relating to such privacy practices.

**1. Standards of Care.** The Provider agrees to abide by the following Standards of Care concerning the treatment of Personal Information:

- 1) Provider acknowledges and agrees that, in the course of their engagement by DART, Provider may receive or have access to Personal Information. Provider shall comply with the terms and conditions set forth in this Contract 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. Provider 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 Provider's own actions and omissions.
- 2) Personal Information is deemed to be the Confidential Information of DART and is not Confidential Information of the Service Provider. If the event of a conflict or inconsistency between this section and the confidentiality/compliance with laws sections of this Contract, the terms and conditions set forth in this Section shall govern.
- 3) In recognition of the foregoing, Provider agrees and covenants that it shall:
  - a) Keep and maintain all Personal Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized access or disclosure;
  - b) Use and disclose Personal Information solely and exclusively for the purposes for which the Personal information, or access to it, is provided pursuant to the terms and conditions of this Contract, and not use, sell, rent, transfer, distribute, or otherwise disclose or make available Personal Information for the Service Provider's own purposes or for the benefit of anyone other than DART, in each case without DART's prior written consent; and
  - c) Not, directly nor indirectly disclose Personal Information to any person other than the Provider's Authorized Employees/Authorized Persons including any unauthorized employees, independent contractors, subcontractors, agents, outsourcers, or auditors (an "Unauthorized Third Party"), without the express

**EXHIBIT B:  
DART DATA PRIVACY AND SECURITY STANDARDS**



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 Provider shall (i) use 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 Provider's own actions and omissions; and (iii) require the Unauthorized Third Party that has access to Personal Information to execute a written Contract agreeing to comply with the terms and conditions of this Contract relating to the treatment of Personal Information.

**2. Information Security Standards.** The Provider agrees to abide by the following Information Security Standards concerning the treatment of Personal Information:

- 1) Provider 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 Provider's obligations, Provider shall implement administrative, physical and technical safeguards to protect Personal Information that are no less rigorous than accepted industry practices including specifically the International Organization for Standardization's standards: ISO/IEC 27001:2005 – Information Security Management Systems – Requirements and ISO-IEC 27002:2005 – Code of Practice for Information Security Management, the Information Technology Library (ITIL) standards, the Control Objectives for Information and related Technology (COBIT) standards, or other applicable industry standards for information security; 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 Contract.
- 3) If, in the course of its engagement by DART, Provider has access to or will collect, access, use, store, process, dispose of or disclose credit, debit or other payment cardholder information, Service Provider 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 Provider's sole cost and expense.
- 4) At a minimum, Provider and its Authorized Persons' safeguards for the protection of Personal Information shall include: (i) limiting access of Personal Information to Authorized Employees/Authorized Persons; (ii) securing business facilities, data centers, paper files, servers, back-up systems and computing equipment,

## EXHIBIT B: DART DATA PRIVACY AND SECURITY STANDARDS



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 Provider 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 Provider's employees.

- 5) During the term of each Authorized Employee's employment by the Provider, Provider shall at all times cause such Authorized Employees to abide strictly by Provider's obligations under this Contract and Provider's standard policies and procedures, a copy of which have been provided to DART. Provider further agrees that it shall maintain a disciplinary process to address any unauthorized access, use or disclosure of Personal Information by any of Provider's officers, partners, principals, employees, agents or sub-contractors. Upon DART's written request, Provider shall promptly identify for DART in writing all Authorized Employees as of the date of such request.
- 6) Upon DART's written request, Provider shall provide DART with a network diagram that outlines Provider's information technology network infrastructure and all equipment used in relation to fulfilling of its obligations under this Contract, including, without limitation: (i) connectivity to DART and all third parties who may access Provider'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.
- 7) **Data Security Incident.** The Provider agrees to abide by the following standards governing Data Security Incidents:
  - a. In the event a Data Security Event occurs, the Provider shall:
    - i. Provide DART with the name and contact information for an employee of Provider 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 obligations associated with a Data Security Incident.

**EXHIBIT B:  
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- ii. Notify DART of a Data Security Incident as soon as practicable, but no later than twenty-four (24) hours after the Provider becomes aware of it.
  - iii. Notify DART of any Data Security incidents by telephone at the following number: (515) 283-5020/e-mailing DART with a read receipt at [it@ridedart.com](mailto:it@ridedart.com) and with a copy by e-mail to Provider's primary business contact within DART.
- b. Immediately following Provider's notification to DART of a Data Security Incident, the parties shall coordinate with each other to investigate the Data Security Incident. Provider 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 Provider'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.
- c. Provider shall take reasonable steps to immediately remedy any Data Security Incident and prevent any further Data Security Incidents at Provider's expense in accordance with applicable privacy rights, laws, regulations and standards. Service Provider shall reimburse DART for actual costs incurred by DART in responding to, and mitigating damages caused by, any Data Security Incident, including all costs of notice and/or remediation
- d. Provider agrees that it shall not inform any third party of any Security Breach 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, Provider agrees that DART shall have the sole right to determine: (i) whether notice of a Security Breach 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.
- e. Provider 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. In the event of any Data Security Incident, the Provider shall promptly use its best efforts to prevent a recurrence of any such Security Breach.
- 8) **Oversight of Security Compliance.** Upon DART's written request, to confirm Provider's compliance with this Contract, as well as any applicable laws, regulations and industry standards, Provider grants DART or, upon DART's election,

**EXHIBIT B:  
DART DATA PRIVACY AND SECURITY STANDARDS**



a third party on DART's behalf, permission to perform an assessment, audit, examination or review of all controls in Provider's physical and/or technical environment in relation to all Personal Information being handled and/or services being provided to DART pursuant to this Contract. Provider 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 this Contract. In addition, upon DART's written request, Provider shall provide DART with the results of any audit by or on behalf of Provider performed that assesses the effectiveness of Provider's information security program as relevant to the security and confidentiality of Personal Information shared during the course of this Contract.

- 9) **Return or Destruction of Personal Information.** At any time during the term of this Contract at the DART's written request or upon the termination or expiration of this Contract for any reason, Provider 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. Provider shall comply with all reasonable directions provided by DART with respect to the return or disposal of Personal Information.
- 10) **Equitable Relief.** Provider acknowledges that any breach of its covenants or obligations set forth in this Section or the Provider's standard policies and procedures 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 Contract to the contrary.
- 11) **Material Breach.** Provider's failure to comply with any of the provisions of this Section is a material breach of this Contract. In such event, Customer may terminate the Contract in accordance with the procedures outlined in Section 10 of this Contract.
- 12) **Provider's Liability Insurance.** Cyber liability insurance which 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 Two Million Dollars (\$2,000,000) per occurrence.