

Staff Report

To: Board of Directors
From: Jordan Hess, Colin Woodrow, Allison Segal
Date: April 10, 2026

Agenda Item: 3.3 Conditional Approval of the Construction Manager at Risk Contract Amendment for Construction of the New Facility

Attachments:

- 3.3.1 Contract Amendment #1 to the Construction Manager at Risk contract with Quality Construction
- 3.3.1a Exhibit A – Construction Manager at Risk Contract with Quality Construction for Preconstruction Activities
- 3.3.1b Exhibit B – Quality Construction Guaranteed Maximum Price Summary Letter
- 3.3.1c Exhibit C – Quality Construction Guaranteed Maximum Price Itemized List
- 3.3.1d Exhibit D – Monthly Reporting Requirements

Recommendation:

Conditionally approve and authorize the CEO & General Manger to sign Amendment #1 to the Construction Manager at Risk contract with Quality Construction in the amount of \$46,395,810, contingent upon the release of funds under FTA grant D2023-LWNO-042.

Discussion:

On July 25, 2024, the MUTD board of directors approved a contract with for a Construction Manager at Risk with Quality Construction of Missoula, Montana. This contract was for pre-construction activities and the parties agreed to amend the contract to include the guaranteed maximum price and any necessary provisions for construction activities.

In February 2026, Quality Construction developed and furnished a guaranteed maximum price and a list of requested amendments to the July 2024 contract.

Also in February 2026, MUTD hired Baker Tilly to conduct a construction and contract risk analysis and to provide contract negotiation assistance. Baker Tilly provided a report outlining potential risks within the original contract, They also advised MUTD on additional contract elements needed and on suggested contract additions provided by Quality Construction.

In mid-March 2026, the Missoula City Attorney's Office drafted a contract amendment with feedback from MUTD staff and Baker Tilly, and a draft was presented to Quality Construction. After several revisions, the parties agreed on terms for a contract amendment to be executed upon release of federal funds.

The Office of the Secretary of Transportation at the U.S. Department of Transportation is still reviewing MUTD's outstanding Low and No Emission Bus grant. Time is of the essence for this contract amendment, and staff recommend the board approve the contract amendment and authorize the CEO & General Manager to execute the amendment upon on the release of funds under FTA grant D2023-LWNO-042. The CEO & General Manager will not sign the contract unless and until the funds are released.

Financial Impact and Funding Source:

This amendment includes Quality Construction's proposed guaranteed maximum price of \$46,395,810. This is slightly under 60% cost estimates and is within the project budget. This project is funded in accordance with the pro forma, sources and uses, and draft plan of finance previously presented to the board.

AMENDMENT TO MOUNTAIN LINE CONTRACT: RFP# 24-04

Maintenance Operations and Administrative Building (MOAB) Project *Additional Stipulated Terms*

THIS AMENDMENT to the July 23, 2024 Contract is entered into on the date fully executed below by and between the **MISSOULA URBAN TRANSPORTATION DISTRICT**, 1221 Shakespeare St, Missoula MT 59802, hereinafter referred to as “MUTD”, and **QUALITY CONSTRUCTION CO.**, 2800 S Reserve St, Missoula, MT 59801 hereinafter referred to as “Contractor.” MUTD and Contractor shall collectively be known as “the parties”.

RECITALS

1. On July 23, 2024, the above parties entered into an agreement (the “Contract”, attached here as Exhibit A) whereby the Contractor agreed to perform work described in two (2) phases. Phase 1 is described in paragraph 1.5.6 of the Contract as “Pre-Construction Services”, which includes (but is not limited to) design functions, bidding, and producing a Guaranteed Maximum Price (“GMP”) document. For Pre-Construction Services MUTD agreed to pay the amount of Twenty-Seven Thousand Dollars **(\$27,000.00)**.
2. Phase 2 is described in paragraph 1.5.7 of the Contract as “Construction Phase Services”, which includes (but is not limited to) developing and maintaining site logistics, maintaining on-site staff for construction management, and construction tasks.
3. Paragraph 1.6 of the Contract specifies that once Pre-Construction Services are complete, and once the GMP is produced and accepted, an amendment will be made for Construction Phase services and work.
4. Contractor produced a GMP document and furnished it to MUTD on February 27, 2026, outlining a GMP of \$46,395,810. That figure was accepted by MUTD on _____.
5. The parties now intend to amend the Contract pursuant to paragraph 1.6 of the Contract as laid out below.
6. The Contract and this Amendment shall be referred to collectively as “the Contract Documents.”
7. Provisions of the Contract that are not amended herein remain in full force and effect.

AMENDMENTS

Now therefore, in consideration of the mutual covenants and agreements contained here, the receipt and sufficiency of the same being acknowledged, the parties agree as follows:

1. PAYMENT

a. COMPENSATION FOR CONSTRUCTION PHASE SERVICES:

- i. MUTD shall pay the Contractor the contract sum in current funds for the Contractor's performance of the contract after execution of this amendment. The contract sum is the cost of work as outlined in the Guaranteed Maximum Price (GMP) document, attached here as Exhibit B, plus the Construction Manager's fee.
- ii. The Construction Manager's fee shall be: \$1,263,700.
- iii. If the cost of the work is increased or decreased by change orders, construction change directive, or other modification to the contract or amendment, the Construction Manager's fee shall be adjusting by applying the percentage rate established in the GMP document to the amount of the increase or decrease in the cost of work.
- iv. The adjustment to the Construction Manager's fee shall be included in any change order and shall represent full compensation for the Construction Manager's services related to the changed work unless otherwise agreed in writing.
- v. If the Construction Manager's fee is stipulated as a percentage of the cost of work, the fee shall be increased or decreased proportionally to reflect the net change in the cost of work resulting from the change order.

b. GUARANTEED MAXIMUM PRICE

- i. The Contractor guarantees that the contract sum shall not exceed the Guaranteed Maximum Price ("GMP") set forth below, subject to additions and deductions by change order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by MUTD.
- ii. The GMP is an amount that the contract sum shall not exceed. The contract sum consists of the Construction Manager's fee plus the cost of work as that term is defined in subsection (c) herein.
- iii. The contract sum is guaranteed by the Contractor not to exceed \$46,395,810, subject to additions and deductions by change order as provided in the Contract Documents.
- iv. Attached as Exhibit C is an itemized statement of the GMP organized by trade categories, including allowances, the Contractor's contingency, alternates, the Construction Manager's fee, and other items that comprise the GMP.

c. COST OF THE WORK FOR CONSTRUCTION PHASE

- i. Costs to be Reimbursed:
 1. The cost of the work shall include only items set for in this section.
 2. Where, pursuant to the Contract Documents, any cost is subject to MUTD's approval, the Contractor shall obtain such approval in writing prior to incurring the cost.

3. Costs shall be at rates not higher than the standard rates paid at the place of the project, except with prior approval of MUTD.
- ii. Labor Costs
 1. Wages or salaries of construction workers directly employed by the Contractor to perform the construction work at the site, or, with MUTD's prior approval, at off-site workshops/
 2. Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site and performing work, with MUTD's prior approval.
 3. Wages or salaries of the Contractor's supervisory and administrative personnel when performing work and stationed at a location other than the site, but only for that portion of time required for the work. Contractor shall provide notice to MUTD of off-site personnel prior to said personnel performing any work, and MUTD shall retain the right to approve the activities of the noticed off-site personnel prior to MUTD incurring costs for those employees or for their labor contributing to the GMP total. If MUTD approves such personnel, it shall do so in writing.
 4. Wages and salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or while traveling in expediting the production or transportation of materials or equipment required for the work, but only for that portion of their time required for the work.
 5. Costs paid or incurred by the Contractor, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included the cost of work (1)(b)(ii)(1) through (4).
 6. Wages or salaries of all Construction Manager's personnel listed on Cost Plus Equipment and Labor Utilization Sheet, whether on site or off site, directly related to the project and at rates outlined in Cost Plus Equipment and Labor Utilization Sheet included in Exhibit B.
 7. If agreed rates for labor costs are provided in the Contract Documents, the rates shall remain unchanged throughout the duration of the Contract Documents, unless the parties execute a modification.
 - iii. Subcontract Costs
 1. Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts and the Contract Documents.
 - iv. Costs of Materials and Equipment Incorporated in the Completed Construction

1. Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated in the completed construction.
 2. Costs of materials described in the preceding section in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become MUTD's property at the completion of the work, or at MUTD's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to MUTD as a deduction from the cost of work.
- v. Costs of Other Materials and Equipment, Temporary Facilities and Related Items
1. Costs of transportation, storage, installation, dismantling, maintenance, and removal and materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed, shall be based on the cost or value of the item at the time it is first used on the project site less the value of the item when it is no longer used at the project site. Costs for items not fully consumed by the Contractor shall mean fair market value.
 2. Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery equipment and hand tools. Rates and quantities of equipment owned by the Contractor, or a related party as defined in section (1)(c)(ix)-(x) shall be subject to MUTD's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.
 - a. If Contractor intends to incur rental charges pursuant to this subsection, Contractor shall provide to MUTD purchase price estimates for equipment used in the project to serve as comparable value to any rent-versus-buy analysis.
 3. Costs of removal of debris from the site of the work and its proper and legal disposal.
 4. Costs of the Construction Manager's site office, including general office equipment and supplies.
 - a. Contractor home-office overhead, permanent office equipment, and general corporate expenses are excluded from this subsection.
 5. Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to MUTD's prior approval.
 - a. Ownership of materials referred to in this subsection shall be the property of MUTD upon payment.
- vi. Miscellaneous Costs

1. Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to the Contract Documents.
 2. Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with MUTD's prior approval.
 3. Costs for insurance through a captive insurer owned or controlled by the Contractor, with MUTD's prior approval.
 4. Sales, use, or similar taxes, imposed by a governmental authority, that are related to the work and for which the Contractor is liable.
 5. Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Contractor is required by the Contract Documents to pay.
 6. Fees of laboratories for tests required by the Contract Documents, except those related to defective or non-conforming work for which reimbursement is excluded, or by other provisions of the Contract Documents.
 7. Royalties and license fees paid for the use of a particular design, process or product, required by the Contract Documents.
 8. Costs for communication services, electronic equipment, and software, directly related to the work and located at the site, with MUTD's prior approval.
 9. Costs of document reproductions and delivery charges.
 10. Deposits lost for causes other than the Contractor's negligence and failure to fulfill a specific responsibility in the Contract Documents.
 11. That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of the duties connected with the work.
- vii. Other Costs and Emergencies
1. Other costs incurred in the performance of the work, with MUTD's prior approval.
 2. Costs incurred in taking action to prevent threatened damage, injury or loss, in case of an emergency affecting the safety of persons and property.
- viii. Related Party Transactions
- ix. For purposes of this section, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Contractor; (2) any entity in which any stockholder in, or management employee of, the Contractor holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business of affairs of the Contractor; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Contractor.
 - x. If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify MUTD of the specific nature of the contemplated transaction, including the identity of the

related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If MUTD, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the work, equipment, goods or service from the related party, as a Subcontractor according to the terms of the Contract Documents. If MUTD fails to authorize the transaction in writing, the Contractor shall procure the work, equipment, goods or service from some person or entity other than a related party.

d. COSTS NOT TO BE REIMBURSED:

- i. The cost of work shall not include the items listed below:
 1. Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided otherwise.
 2. Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless MUTD has provided prior approval.
 3. Expenses of the Contractor's principal office other than the site office.
 4. Overhead and general expenses, except as may be expressly provided otherwise.
 5. The Contractor's capital expenses, including interest on the Contractor's capital employed for the work.
 6. Except as provided otherwise, costs due to the negligence of or failure to fulfill a specific responsibility of the Contract Documents, by the Contractor, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.
 7. Any cost beyond the GMP that is not otherwise accounted for by a change order executed by the process described herein. Contractor shall not convert work to a time-and-materials basis without providing notice to MUTD and obtaining approval.
 8. Any cost not specifically and expressly described in this section.
 9. Costs, other than costs included in change orders approved by MUTD, that would cause the Guaranteed Maximum Price to be exceeded; and
 10. Costs for services incurred during the Preconstruction Phase.
 11. Labor burden cap:
 - a. For the purposes of this subsection, "labor burden" shall mean costs for indirect or staff positions not governed by prevailing wage laws.
 - b. The costs include but are not limited to:
 - i. Taxes
 - ii. Insurance

- iii. Company benefits per policy:
 - 1. Sick leave
 - 2. Medical/health benefits
 - 3. Holidays
 - 4. Vacations
 - 5. 401(k)/retirement contributions
 - 6. Training costs
 - 7. Bonuses
 - c. Notwithstanding anything to the contrary in the Contract Documents, Contractor shall not be entitled to reimbursement for labor burden costs in excess of forty-eight percent (48%) of the base wages paid to labor performing the work. Any labor burden costs incurred in excess of such percentage shall be deemed included within the Construction Manager's fee or overhead and shall not be reimbursable as cost of the work.
 - d. Labor burden shall be calculated as a percentage of actual base wages paid, exclusive of overtime premiums unless otherwise approved in writing by MUTD. Contractor shall apply the labor burden percentage consistently across all labor classifications
 - e. All requests for reimbursement of labor burden costs shall be supported by documentation reasonably sufficient to substantiate such costs, including by not limited to
 - i. Payroll records and wage rates;
 - ii. Evidence of payroll taxes and insurances costs;
 - iii. Benefit plan contributions; and
 - iv. Such other records as MUTD may reasonably request.
 - f. MUTD shall have the right to review and audit such documentation and may disallow any labor burden amounts that are not properly supported or that exceed the maximum allowable percentage.
- e. **CONTINGENCY**
- i. The GMP includes a Contractor's Contingency in the amount identified in Exhibit B. The Contingency is included within the cost of work and shall be used solely for the purpose of covering unforeseen costs reasonably incurred in the performance of the work that are properly chargeable to the cost of work but were not included in the original trade contracts, subcontracts or estimates.
 - ii. The Contractor shall not expend or commit an portion of the Contingency without the prior written approval of MUTD. The Contractor shall submit a written request describing the proposed use of the Contingency funds, including:

1. A description of the circumstances giving rise to the proposed expenditure.
 2. The scope of work affected.
 3. The amount requested from the Contingency.
 4. Supporting documentation reasonably necessary for MUTD to evaluate the request.
- iii. Approval by MUD shall be documented and shall specify the authorized amount to be drawn from the Contingency.
- iv. The Contingency shall not be used for:
1. Costs arising from Contractor error, omission or negligence.
 2. Costs resulting from failure to coordinate the work.
 3. Costs attributable to scope gaps that should reasonably have been foreseen during preconstruction or bidding.
 4. Costs otherwise the responsibility of the Contractor pursuant to the Contract Documents.
- v. Contractor shall maintain a written log of all approved uses of the Contingency, including the date, amount description of the event and remaining balance. The log shall be submitted with each application for payment. Use of the Contingency shall not increase the GMP.
- vi. Contractor's contingency log shall contain, at a minimum, the following information:
1. Date of MUTD approval
 2. Description of event or condition
 3. Subcontractor or scope of work affected
 4. Amount approved for use
 5. Amount actually expended (if different)
 6. Remaining contingency balance
- vii. Any portion of the Contingency not expended at final completion shall remain part of the GMP savings and shall be returned to MUTD.

f. SCHEDULE

- i. Prior to beginning work, Contractor shall develop and furnish to MUTD a schedule outlining the anticipated dates and completion of the various phases of the project.
- ii. Contractor shall update the schedule each month and furnish it to MUTD along with each application for payment. The schedule shall reflect the actual progress of the work and identify any delays or changes affecting the critical path. Contractor shall take all reasonable steps necessary to recover lost time and maintain the furnished schedule.
- iii. The furnished schedule should include, at a minimum:
 1. Identification of all major work activities and milestones
 2. Procurement and fabrication activities for long-lead materials
 3. Identification of the critical path of the project
 4. A demonstration of the completion of the work within the contract time.

5. All information included, but not limited to, the items listed on pages 78-79 of the FTA Project and Construction Management Guidelines following the heading “Progress reports – typically submitted monthly by the contractor – should generally include the following information:”, attached here as Exhibit D

g. BUYOUT SAVINGS

- i. Buyout savings means the difference between the amount included in the GMP for a particular trade or scope of work, as reflected in the Schedule of Values or GMP cost breakdown and the actual amount of the executed subcontract or purchase order for that scope of work.
- ii. Buyout savings shall not increase the Construction Manager’s fee and shall not be transferred to the Contingency or otherwise expended by the Contractor without the prior written approval of MUTD.
- iii. Buyout savings shall be captured progressively throughout the project in a dedicated Schedule of Values (SOV) line item titled “Buyout Savings Holdback”, as the identified savings opportunities are bought out or executed.
- iv. Each instance of savings shall be formally documented and validated through the Change Order process to ensure transparency, auditability, and confirmation of fair and reasonable pricing in accordance with FTA requirements.
- v. The Contractor shall maintain a Buyout Savings Log keeping, at a minimum, the following information for each trade or scope of work:
 1. The budgeted amount included in the GMP.
 2. The executed subcontract or purchase order amount.
 3. The resulting buyout variance (savings or overrun).
 4. The cumulative buyout status for the project.
- vi. The Buyout Savings log shall be updated as each trade is bought out and shall be provided to MUTD with each application for payment.
- vii. Upon request, the Contractor shall provide MUTD with copies of executed subcontracts, bid tabulations, or other documentation reasonably necessary to verify trade buyout amounts and the calculation of buyout savings.
- viii. Buyout savings shall be reflected in the accounting of the cost of work and the GMP and shall be retained until final completion of the project.
- ix. Subject to the terms of this subsection, buyout savings realized on the project shall be shared between MUTD and Contractor as follows:
 1. MUTD: 80%
 2. Contractor: 20%
- x. No interim distribution of buyout savings shall be made unless otherwise expressly agreed in writing by MUTD.
- xi. Upon final completion, and as a condition precedent to final payment, MUTD shall perform a full reconciliation of all identified buyout items. Such reconciliation shall account for and incorporate:
 1. Any increases or decreases in costs associated with the buyout items;

2. All approved changes in the work, including additive and deductive change orders;
 3. Any scope changes, allowances, or clarifications affecting the cost of the work; and
 4. Any offsets, back-charges, or other cost adjustments incurred during project execution.
- xii. The reconciliation shall not be limited to initially identified buyout savings but shall include the net effect of all subsequently approved changes and cost adjustments related to such work.
 - xiii. Upon completion of the reconciliation in subsection (1)(g)(ix) above, MUTD shall determine the net buyout savings, if any.
 - xiv. Contractor's share of the buyout savings shall be calculated based on the net reconciled amount and shall be reflected as an adjustment to the contract sum.
 - xv. Any adjustment to the contract sum resulting from the reconciliation of buyout savings shall be implemented by a deductive change order issued by MUTD.
 - xvi. Contractor shall provide such documentation and MUTD may reasonably require to substantiate the costs of the work, including subcontract agreements, change orders, invoices, and other supporting data necessary for the reconciliation of buyout savings.

h. METHOD OF PAYMENT:

- i. Based upon applications for payment submitted to the architect by the Contractor, and certificates of payment issued by the architect, MUTD shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.
- ii. The period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows:
 1. Ending on the 25th day of the month.
- iii. Provided an application for payment is received by the architect not later than the 10th day of a month, MUTD shall make payment of the amount certified to the Contractor not later than the 30th day of each month. If an application for payment is received by the architect after the application date fixed above, payment of the amount certified shall be made by MUTD not later than twenty (20) days after the architect receives the application for payment.
- iv. If the Contractor's application for payment is received by MUTD after the application date fixed above, the Contractor's Work covered by it shall be included by the Contractor in the next application for payment submitted to MUTD.
- v. With each application for payment, Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by MUTD to demonstrate that payments already made by the Contractor on account of the cost of the work equal or exceed progress payments already received by the Contractor, plus payrolls

for the period covered by the present application for payment, less that portion of the progress payments attributable to the Construction Manager's fee.

- vi. The Contractor shall submit to MUTD a schedule of values prior to submitting the first Application for Payment. Each subsequent application for payment shall be based upon the most recent schedule of values submitted by the Contractor in accordance with the Contract Agreement Documents. The schedule of values shall allocate the entire Contract Agreement Sum among the various portions of the Contractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require. This schedule, unless objected to by the Contractor, shall be used as a basis for reviewing the Contractor's applications for payment.
- vii. The allocation of the GMP under this section shall not constitute a separate guaranteed maximum price for the cost of the work of each individual line item in the schedule of values.
- viii. When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the architect.
- ix. Applications for payment shall show the percentage of completion of each portion of the work as of the end of the period covered by the application for payment. The percentage of completion of each portion shall be the lesser of (1) the percentage of that portion of the work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the work and for which the Contractor has made payments or intends to make payments prior to the next application for payment, by (b) the share of the GMP allocated to that portion of the work in the schedule of values.
- x. Applications for payment submitted by the Contractor shall indicate the percentage of completion of each portion of the Contractor's Work as of the end of the period covered by the application for payment.
- xi. Subject to the provisions of the Contract Agreement Documents, the amount of each progress payment shall be computed as set forth in the sections below.
 1. Take that portion of the Contract Agreement Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Contractor's Work by the share of the total Contract Agreement Sum allocated to that portion of the Contractor's Work in the schedule of values, less 5% retainage as applicable, from payments to the Contractor. Pending final determination of cost to MUTD of changes in the Work that have been properly authorized by MUTD, amounts not in dispute shall be included to the same extent provided in the Contract, even though the Contract Agreement Sum has not yet been adjusted;
 2. Add that portion of the Contract Agreement Sum properly allocable to materials and equipment delivered and suitably stored at the site

- by the Contractor for subsequent incorporation in the Contractor's Work or, if approved by MUTD, suitably stored off the site at a location agreed upon in writing, less the same percentage retainage required by the Contract to be applied to such materials and equipment in the Contractor's application for payment;
3. The Construction Manager's fee at the rate described in (1)(a)(iii) above.
 4. Subtract the aggregate of previous payments made by MUTD; and
 5. Subtract amounts, if any for work that remains uncorrected.
 6. Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the work has been performed by others the Contractor intends to pay.
 7. The shortfall, if any, indicated by the Contractor in the documentation required to substantiate prior applications for payment, or resulting from error subsequently discovery by MUTD or MUTD's auditors in such documentation.
 8. Retainage held pursuant to subsection (k) below.
- xii. Upon the partial or entire disapproval by MUTD of the Contractor's application for payment, MUTD shall provide written notice to the Contractor. When the basis for the disapproval has been remedied, the Contractor shall be paid the amounts withheld.
 - xiii. If a periodic or final payment from MUTD to Contractor is delayed by more than thirty (30) days from the date the payment is required to be made, MUTD shall pay to Contractor interest, beginning on the day following the date when the payment is due, at the rate of 1.5% per month or a pro rata fraction of that amount on the unpaid balance.
 - xiv. If Contractor receives interest from MUTD for a delayed payment by MUTD, Contractor shall ensure that any interest accrued on a delayed payment is distributed by Contractor to subcontractors on a pro rata basis.
 - xv. Interest shall accrue as described in subsections (ix) and (x) above only on undisputed amounts owed.
 - xvi. In the case of a delayed payment as described in subsections (ix) and (x) above, acceptance of the final payment releases any claim for interest on the payment.
 - xvii. FTA Compliance: Contractor acknowledges that the project is funded in whole or in part by the Federal Transit Administration ("FTA") and that MUTD is required to comply with all applicable FTA requirements, regulations, and guidance, including but not limited to reporting, certification, and documentation obligations.
 1. Submission by Contractor of all required FTA-related documents shall be a condition precedent to Contractor's entitlement to payment under any application for payment.
 2. If Contractor fails to provide such required documentation in a timely manner, MUTD may withhold, adjust, or reject, in whole or in part, any payment otherwise due to Contractor until such documentation is provided and accepted by MUTD.

3. Any withholding of payment by MUTD pursuant to this subsection shall not constitute a breach of the agreement and shall be deemed a proper withholding under the Contract Documents.
4. Contractor shall not be entitled to interest, late payment penalties, or other compensation for any amounts withheld by MUTD due to Contractor's failure to comply with FTA documentation requirements.
5. Owner shall have no obligation to release withheld amounts until the first regular payment cycle not less than one (1) full application payment period after Contractor has furnished all required documentation in a form acceptable to MUTD.
6. MUTD's right to withhold payment under this subsection shall be in addition to, and not in limitation of, any other rights or remedies available to MUTD under the Contract Documents or applicable law.
7. Contractor shall include in all subcontracts provisions requiring subcontractors and suppliers to provide documentation necessary to support MUTD's compliance with FTA requirements, and Contractor shall be responsible for coordinating such documentation to MUTD.

xviii. Lien Waivers

1. As a condition precedent to MUTD's review and processing of each application for payment, Contractor shall submit conditional waivers and releases of lien (or claims, where liens are not applicable) for the immediately preceding payment period. Such waivers shall be:
 - a. Executed by the Contractor;
 - b. Executed by all subcontractors and suppliers performing the work or furnishing materials included in the prior application for payment, to the extent of payments previously received or to be received.
2. All conditional waivers and releases shall be in a form reasonably acceptable to MUTD and consistent with applicable law.
3. The waivers shall be conditioned only upon receipt of payment for the amounts indicated and shall correspond to the amounts included in the prior application for payment.
4. MUTD and the architect shall have no obligation to review, certify or process an application for payment unless and until the required conditional waivers and releases for the preceding payment period have been submitted in accordance with this subsection.
5. Any delay in payment resulting from Contractor's failure to provide such waivers shall not constitute a breach of this agreement and shall not entitle Contractor to interest, damages or other compensation.
6. Contractor shall be responsible for collecting and submitting all required waivers from its subcontractors and suppliers and shall

ensure that such parties execute and deliver waivers in a timely manner consistent with the requirements of this subsection.

i. PREVAILING WAGE

- i. Contractor shall comply with all applicable prevailing wage laws, statutes and regulations governing the project, including those previously referenced in the Contract.
- ii. Contractor shall include in all subcontracts, purchase orders, and other agreements for performance of the work provisions requiring subcontractors and suppliers of any tier to comply with all applicable prevailing wage requirements.
- iii. Such provisions shall, at a minimum:
 1. Require payment of not less than the applicable prevailing wage rates;
 2. Require compliance with all applicable labor classifications, fringe benefit obligations, and reporting requirements; and
 3. Incorporate by reference all applicable statutes, regulations, and contractual document requirements relating to prevailing wages.
- iv. Contractor shall be responsible for ensuring that such provisions are binding upon subcontractors of all tiers.
- v. Contractor shall actively monitor and enforce compliance with prevailing wage requirements by all subcontractors and suppliers performing the work. Such obligations shall include:
 1. Obtaining and reviewing certified payroll reports from subcontractors at regular intervals;
 2. Verifying proper worker classifications and wage rates;
 3. Maintaining records sufficient to demonstrate compliance; and
 4. Promptly addressing and correcting any identified deficiencies or violations.
- vi. Contractor shall be responsible for any failure of its subcontractors or suppliers to comply with prevailing wage requirements. Contractor shall, at its own cost, take all actions necessary to correct underpayments, resolve claims, investigations or audits, and bring subcontractors into compliance.
- vii. If MUTD reasonable determines that Contractor or any subcontractors has failed to comply with prevailing wage requirements, MUTD may:
 1. Withhold payment in an amount reasonably necessary to ensure compliance;
 2. Require Contractor to provide additional documentation or proof of compliance; and
 3. Pursue any other remedies available under the Contract Documents or applicable law
- viii. Contractor shall maintain and make available for inspection all records relating to prevailing wage compliance, including certified payrolls and related documentation, in accordance with the Contract Documents. MUTD shall have the right to review and audit such records upon reasonable notice and in accordance with subsection (4) of this Amendment.

- ix. The obligations of Contractor under this subsection shall survive completion of the work, final payment, and termination of the contract.

j. DOCUMENTATION OF COSTS

- i. The Contractor shall not bill, request, or calculate payment based on any percentage of the GMP, any cost category, or any portion of the contract sum. All applications for payment shall be based solely on actually costs incurred for work performed or materials purchased in accordance with the Contract Documents and the approved Schedule of Values.
- ii. Each application for payment, including requests for progress payments, retainage releases, or reimbursement of allowances or contingency, shall be accompanied by documentation sufficient to support all costs claimed.
- iii. MUTD shall have the right to review, audit and verify all supporting documentation prior to approving payment.

k. RETAINAGE

- i. For each progress payment made prior to substantial completion of the work, MUTD may withhold 5% of the amount otherwise due as retainage.
- ii. Prior to release of retainage, the Contractor shall provide MUTD:
 - 1. A signed Application for Payment
 - 2. Any applicable Contractor conditional lien waivers
 - 3. Any applicable subcontractor conditional lien waivers
 - 4. A contractor payment affidavit
 - 5. A Updated schedule of values
- iii. Upon MUTD's determination that the work has reached substantial completion, MUTD may release retainage then held, less an amount reasonably sufficient to complete the work and correct deficiencies.
- iv. Retainage must be released upon the final acceptance of each portion of work for which a separate price is stated in the Contract Documents.

l. SUBSTANTIAL COMPLETION

- i. When the Contractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Contract, the Contractor shall, make prompt application for payment for such Work. Within 30 days following substantially completed Work, agreed upon by both parties in writing, MUTD shall, to the full extent allowed in the Contract, make payment to the Contractor, deducting any portion of the funds for the Contractor's Work withheld in accordance with the completion agreement to cover costs of items to be completed or corrected by the Contractor. Such payment to the Contractor shall be the entire unpaid balance of the Contract Agreement Sum if a full release of retainage is allowed under the Contract Documents for the Contractor's Work prior to the completion of the entire Project. If the Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Contractor, will reduce the retainage on the Contractor's substantially completed Work to the same percentage of

retainage as that on the Contractor's Work determined by the completion agreement.

m. FINAL PAYMENT

- i. Final payment, constituting the entire unpaid balance of the Contract Agreement Sum, shall be made by MUTD to the Contractor when the Contractor's Work is fully performed in accordance with the requirements of the Contract Documents. If, for any cause which is not the fault of the Contractor, a certificate for payment is not issued or the Contractor does not receive timely payment within seven days, final payment to the Contractor shall be made upon demand.
- ii. Acceptance of final payment by the Contractor shall constitute a waiver of claims by the Contractor, except those previously made in writing and identified by the Contractor as unsettled at the time of final application for payment.

2. CHANGE ORDERS

- a. MUTD may make changes in the Work by issuing Modifications to the Contract Documents. Upon receipt of such a Modification issued subsequent to the execution of this Amendment, MUTD shall promptly notify the Contractor of the Modification. Unless otherwise directed by MUTD, the Contractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Contract Documents.
- b. The Contractor may be ordered in writing by MUTD, without invalidating this Contract or this Amendment, to make changes in the Work within the general scope of the Contract Documents consisting of additions, deletions or other revisions, including those required by Modifications to the Contract Documents issued subsequent to the execution of this Amendment, the contract agreement sum and the contract agreement time being adjusted accordingly. The Contractor, prior to the commencement of such changed or revised Work, shall submit promptly to MUTD written copies of a claim for adjustment to the contract agreement sum and contract agreement time for such revised Work in a manner consistent with requirements of the Contract and Amendment documents.
- c. The Contractor shall provide written notice to MUTD within seven (7) days after the Contractor first recognizes, or reasonably should have recognized, the occurrence of an event that may give rise to a change in the Contract Sum or Contract Time. The notice shall include a description of the event, the work affected, and a preliminary estimate of the potential cost or schedule impact, if known. Failure to provide such notice within the time specified may constitute a waiver of the Contractor's right to an adjustment to the Contract Sum or Contract Time to the extent that MUTD is materially prejudiced by the delay in notice.
- d. Within fourteen (14) days after providing notice, or within such other period as MUTD may reasonably approve, the Contractor shall submit a written change order proposal including:
 - i. A detailed description of the proposed change in work.

- ii. A breakdown of costs, including labor, materials, equipment, subcontractor costs, and applicable overhead and profit.
 - iii. Supporting documentation reasonably required by MUTD.
 - iv. Any adjustment to the Contract Time, including supporting schedule information.
- e. If the Contractor cannot reasonably determine the cost or time impact within the fourteen (14) day period, the Contractor shall submit:
 - i. A preliminary estimate
 - ii. A statement explaining why the full proposal cannot yet be provided.
 - iii. The Contractor shall then submit the final Change Order proposal within fourteen (14) days after the necessary information becomes available.
- f. Contractor shall create and maintain a Change Order log outlining requested, pending and completed Change Orders and shall submit a copy of the log monthly to MUTD.
- g. A claim which will affect or become part of a claim which MUTD is required to make under the Contract Documents within a specified time period or in a specified manner shall be made in sufficient time to permit MUTD to satisfy the requirements of the Contract Documents. Such claims shall be received by MUTD not less than two working days preceding the time by which MUTD's claim must be made. Failure of the Contractor to make such a timely claim shall bind the Contractor to the same consequences as those to which MUTD is bound.
- h. If a change order is approved under this subsection, the Contractor is authorized to direct the affected Subcontractor to proceed with the changed work described in the change order on a time-and-material basis. The total amount payable for such work, including all subcontractor costs, contractor mark-ups, overhead, and profit shall not exceed the sum of \$5,000 ("not to exceed", or "NTE" amount) without prior written approval of MUTD.
- i. The Contractor shall ensure that each Subcontractor performing the changed work is bound to a corresponding written authorization that establishes a specific NTE amount for that Subcontractor's portion of the work. The Contractor shall not authorize or permit any Subcontractor to exceed its assigned NTE amount without the prior written consent of MUTD.
- j. The Contractor's markup for overhead and profit on the Subcontractor's changed work shall not exceed the percentage permitted under the Contract Documents and shall be included in the NTE amount.
- k. The Contractor and Subcontractor shall maintain complete and itemized records of all labor, materials, equipment, and other costs incurred in performing the changed work. Such records shall be made available to MUTD upon request.
- l. The final adjustment to the contract sum shall be based on the actual, verified cost of the changed work plus allowable markup, but in no event shall the total adjustment exceed the NTE amount unless authorized by written change order executed by MUTD.

3. DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

- a. The date of commencement of the work shall be:
 - i. The date of execution of this Amendment

- b. Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for substantial completion of the work. The Contract Time shall be measured from the date of the commencement of the work.
- c. Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve substantial completion of the work :
 - i. September 29, 2028.
- d. Subject to adjustments to the time limits as provided in the Contract Documents, if portions of the work are to be completed prior to substantial completion of the entire work, the parties may amend the Contract Documents by written agreement to specify which portions of the work must meet earlier deadlines and when those deadlines shall be.

4. AUDIT

- a. Maintenance of Records
 - i. Contractor shall keep and maintain full, complete, and accurate books, documents and other evidence (“the records”) sufficient to substantiate all costs incurred in connection with the work, including but not limited to:
 - 1. Payroll records
 - 2. Subcontract agreements
 - 3. Invoices
 - 4. Equipment logs
 - 5. Cost reports
 - ii. Such records shall be maintained in accordance with generally accepted accounting principles and in a manner reasonable acceptable to MUTD
- b. Retention of Records
 - i. Contractor shall retain the records for a period of not less than five (5) years after the date of final payment, or for such longer period as may be required by applicable law of the Contract Documents.
- c. MUTD’s Right to Audit
 - i. MUTD and its authorized representatives shall have the right, upon not less than five (5) business days prior written notice, to inspect, review and audit Contractor’s records relating to the project. Such audit rights shall include:
 - 1. Access to Contractor’s offices or other locations where the records are stored.
 - 2. The right to make copies or extracts of the records
- d. Adjustment of Payments
 - i. If any audit reveals that Contractor has been overpaid or has billed amounts not in accordance with the Contract Documents, Contractor shall promptly reimburse MUTD for such amounts, together with any reasonable costs incurred by MUTD in conducting the audit.
- e. Survival
 - i. The obligations of Contractor under this section shall survive the final payment and termination of the Contract Documents.

5. INSURANCE AND BONDS

a. Insurance:

- i. The Contractor shall purchase and maintain insurance of the following types of coverage and limits of liability as will protect the Contractor from claims that may arise out of, or result from, the Contractor's operations and completed operations under the Contract Agreement:
- ii. Contractor and its agents or contracted representatives shall maintain Commercial General Liability(CGL) insurance with a combined single limit of at least \$1,000,000.00 per incident and \$2,000,000.00 aggregate or the equivalent without limitation for premises-operations.
- iii. Contractor, its agents or contracted representatives shall also maintain Worker's Compensation as follows:
 1. Worker's Compensation:
 2. State - statutory
 3. Applicable Federal - statutory
 4. Employer's Liability - \$500,000
- iv. Contractor, its agents or contracted representatives shall maintain Automobile coverage as follows:
 1. Business automobile liability (including owned, non-owned, and hired vehicles)
 2. Bodily injury and property damage: \$500,000
- v. Contractor, its agents or contracted representatives shall maintain umbrella/excess liability insurance providing coverage in excess of the primary commercial general liability, automobile liability, and employer's liability policies. Such umbrella coverage shall:
 1. Be written on an occurrence basis to the extent commercially available;
 2. Provide limits of liability not less than five million dollars (\$5,000,000) per occurrence and in the aggregate.
- vi. The umbrella/excess liability coverage shall apply to the same additional insureds as required under the primary policies, and shall be no more restrictive in coverage than the underlying insurance, except as specifically approved in writing by MUTD.
- vii. Before Contractor and its subcontractors shall start the Work, Contractor and its subcontractors shall provide to MUTD: (i) endorsements to the liability policies naming MUTD, General Contractor, Agent and Manager as additional insured; (ii) endorsements to such policies by which the insurance carriers agree to give MUTD ,General Contractor and Manager thirty (30) days' prior written notice of cancellation or any change in such policies; and (iii) certificates of insurance or copies of such insurance policies.
- viii. The Contractor and MUTD and their representatives shall be considered a part of the public insofar as the Contractor's public liability insurance is concerned and the policy shall be so endorsed.
- ix. The Contractor, by executing this Contract Agreement, shall indemnify and hold MUTD and MUTD's Representative harmless from liability addressed by said policies, including Worker's Compensation claims from contractor

forces and down line subcontractors or other contracted representatives. With the exception of the Worker's Compensation policy, Contractor shall cause MUTD to be listed as an additional insured with respect to the above referenced policies.

- x. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Contractor's Work until the date of final payment and termination of any coverage required to be maintained after final payment to the Contractor, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Prime Contract.
- xi. Certificates of insurance acceptable to MUTD shall be filed with MUTD prior to commencement of the Contractor's Work, including waivers of subrogation as discussed in subsection (xvii) below. These certificates and the insurance policies required by this subsection shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to MUTD. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Article 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Contractor with reasonable promptness according to the Contractor's information and belief.
- xii. The Contractor shall cause the commercial liability coverage required by the Contract Agreement Documents to include: (1) the Contractor, and MUTD as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) MUTD as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.
- xiii. MUTD shall furnish to the Contractor satisfactory evidence of insurance required of MUTD under the Prime Contract.
- xiv. MUTD shall promptly, upon request of the Contractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Contract Agreement. All bonds must remain in effect throughout the life of this agreement and until Final Completion of the project.
- xv. If the required property insurance is not in effect for the full value of the Contractor's Work, then the Contractor shall purchase insurance for the value of the Contractor's Work, and the Contractor shall be reimbursed for the cost of the insurance by an adjustment in the Contract Agreement Sum.
- xvi. Property insurance for the Contractor's materials and equipment required for the Contractor's Work, stored off site or in transit and not covered by

the Project property insurance, shall be paid for through the application for payment process.

xvii. Waiver of Subrogation:

1. Contractor waives all rights against MUTD for damages caused by fire or other causes of loss to the extent covered by property insurance applicable to the work, except in such rights as the Contractor may have to the proceeds of such insurance.
2. Contractor shall require its insurers relevant to this project to waive all rights of subrogation against MUTD. Such waivers of subrogation shall be effected by endorsement to the applicable insurance policies and shall apply to both ongoing and completed operations.
3. Contractor shall require all subcontractors and others performing portions of the work to provide similar waivers of subrogation in favor of MUTD, and shall require that such waivers be included in their respective insurance policies by endorsement.
4. The waivers of subrogation set forth in this subsection shall not be construed to limit the Contractor's indemnification obligations or other liabilities under the Contract Documents, but shall operate solely to prevent recovery by insurers against MUTD.

xviii. Contractor's Commercial General Liability, Automobile Liability, and Umbrella or Excess Liability insurance required by the Contract Documents shall be endorsed to provide that such insurance is primary with respect to any insurance maintained by MUTD.

xix. Contractor's insurance shall be endorsed to provide that Contractor's insurance shall not seek contribution from any insurance maintained by MUTD. Any insurance maintained by MUTD shall be excess of, and shall not contribute with, Contractor's insurance required under the Contract Documents.

1. Contractor shall require all subcontractors to maintain insurance meeting the requirements of this subsection. However, subcontractors shall not be required to carry umbrella or excess liability insurance set forth in the prior section. The contractor shall remain fully responsible for any losses, claims, or damages, or other that would have been covered by such other umbrella or excess insurance.

b. Bonds

- i. Bonds shall be one hundred percent (100%) of the contract amount. Letters of credit shall be one hundred percent (100%) of the contract amount via irrevocable standby letter. Prior to implementation MUTD shall approve such instrument.
- ii. Contractor shall furnish Performance and Payment bonds in the amount of one hundred percent (100%) of the contract sum, using forms substantially similar to AIA A312 Performance Bond. Contractor shall require the surety to agree that its obligations are coordinated with the dispute resolution procedures set forth in this Amendment.

- iii. Consistent with 2 CFR 200.304, where construction bonds must be obtained to protect Federal interest, bonds must be obtained from companies holding certificates of authority as acceptable sureties under Department of Treasury regulations.
- iv. MUTD shall provide written notice to the surety upon the assertion of any claim involving alleged Contractor default, contemporaneously with submission of such claim to the initial decision maker pursuant to subsection 7 of this Amendment.
- v. The surety shall have the right, but not the obligation, to participate in the consideration of the claim by the initial decision maker, mediation proceedings, and any meeting of principals.
- vi. Compliance with the dispute resolution procedures as set forth in subsection 7 of this Amendment, including all claims to the initial decision maker, participating in meetings of principals, and mediation, shall not be construed to:
 - 1. Waive any rights under the bonds;
 - 2. Delay or prejudice MUTD’s right to declare a Contractor default, or;
 - 3. Impair the surety’s obligation under the bonds.
- vii. Notwithstanding the dispute resolution procedures, MUTD may declare a Contractor default and, if appropriate, terminate the Contract in accordance with the Contract Documents and the bond where MUTD reasonable determines that:
 - 1. Contractor has materially failed to perform; and
 - 2. Immediate action is required to protect the project.
- viii. The parties acknowledge that the conditions precedent to the surety’s obligations under the bonds and the conditions precedent to litigation under subsection 7 of this Amendment are independent but may proceed concurrently. Satisfaction of dispute resolution procedures shall not be a condition precedent to invoking the surety’s obligations under the bonds.
- ix. To the extent the surety is provided notice and a reasonable opportunity to participate, the surety shall be bound by factual determinations of the initial decision maker that are not timely challenged through mediation or litigation.

Bond table for informational purposes only

Bond type	Bond amount	Bond delivery date	Bond form
Performance Bond	_____	_____	_____
Payment Bond	_____	_____	_____

6. REPORTING REQUIREMENTS

- a. In addition to pay applications and supporting documentation, Contractor shall furnish to MUTD all documents necessary to comply with Federal Transit Administration (FTA) requirements, supplemented by any additional reporting MUTD determines necessary for effective project oversight and cost monitoring. The required documents and frequency of production of those documents are outlined in the FTA Project and Construction Management Guidelines attached here as Exhibit D.

7. DISPUTE RESOLUTION

- a. Any claim between MUTD and the Contractor shall be resolved in accordance with this subsection.
- b. The architect will serve as the initial decision maker for claims arising from or relating to the Contractor's construction phase services.
 - i. Sequential steps of dispute resolution: each sub-section below shall be considered a condition precedent in proceeding to the next step of dispute resolution.
 1. Initial Decision Maker
 - a. Claims, disputes or other matters in controversy arising out of or related to the contract documents shall be referred initially to the initial decision maker for a decision on the merits.
 - b. Claims by either party must be initiated within twenty-one (21) days after occurrence of the event giving rise to such claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the claim, whichever is later.
 - c. The initial decision maker shall review claims within ten (10) days of receipt, and take one or more of the following actions: (1) request additional supporting data; (2) reject the claim in whole or in part; (3) approve the claim; (4) suggest a compromise; or (3) advise the parties that the initial decision maker is unable to resolve the claim if it involves an aesthetic effect.
 - d. The initial decision maker shall render a final written decision within thirty (30) days of receipt of the claim or of receipt of additional supporting data, unless this time is extended by agreement of the parties. Failure to render a decision within such time shall be deemed a denial of the claim.
 - e. The initial decision maker's decision shall be final and binding but subject to mediation and litigation.
 2. Meeting of Principals
 - a. If a claim remains unresolved following the initial decision maker's decision, or if no decision is rendered within the

time required, either party may, within thirty (30) days of such decision or deemed denial, submit a written request for a meeting of principals.

- b. MUTD and Contractor shall cause senior representatives, each having full authority to resolve the claim, to meet within thirty (30) days of the request.
- c. The parties shall engage in good-faith negotiations to resolve the claim. If the claim is not resolved within fifteen (15) days after such meeting, the requirement of this subsection shall be deemed satisfied.

3. Mediation

- a. Claims not resolved by steps 1 and 2 set forth above shall be subject to mediation.
- b. A request for mediation shall be filed in writing with the other party within thirty (30) days after the conclusion of the meeting of principals described in subsection 2 above, or within thirty (30) days after the initial decision maker's decision if no meeting is requested.
- c. The mediation shall be conducted within sixty (60) days of the request, unless otherwise agreed by the parties. The parties shall share the mediator's fee and any filing fees equally.
- d. The mediation shall be conducted in accordance with the laws of the State of Montana and any other procedures mutually agreed to by the parties.

4. Litigation

- a. If the claim is not resolved through mediation, either party may proceed to litigation in a court of competent jurisdiction.
- b. A demand for litigation shall be made within the time limits required by applicable law, but in any event not later than thirty (30) days after termination of the mediation, unless otherwise agreed in writing by the parties.
- c. Compliance with subsections 1 through 3 above shall be conditions precedent to the initiation of litigation.

5. Continuation of Work

- a. Pending final resolution of a claim, the Contractor shall proceed diligently with performance of the work, and MUTD shall continue to make payments in accordance with the Contract Documents.

8. TERMINATION

- a. This subsection supplements but does not replace subsection 2.20 of the Contract.
- b. **PROCEDURES**
 - i. MUTD may terminate the Contract for cause, convenience, or as otherwise provided in the Contract Documents by providing written notice to the

Contractor. Such notice shall specify the effective date of termination and the reasons, if applicable.

- ii. Upon receipt of a termination notice, the Contractor shall, regardless of the reason for the termination:
 1. Immediately cease all work on the date specified in the notice, except as necessary to protect the work in progress, materials, equipment, and the site.
 2. Secure the site and any materials, equipment or tools owned or paid for by MUTD.
 3. Promptly assemble and deliver to MUTD all project documents, records, and deliverables.
 4. Provide access and cooperation to MUTD or its representatives for review and retrieval of stored materials or project records.
 5. Segregate, identify, and deliver all materials, tools, equipment and work-in-progress purchased with funds provided by MUTD.
 6. Contractor shall use reasonable efforts to mitigate additional costs or losses to MUTD during the termination and handover process.

c. FINAL INVOICE

- i. Within thirty (30) days following the effective date of termination, the Contractor shall submit to MUTD:
 1. A final invoice detailing all work performed and costs incurred through the effective date of termination.
 2. Supporting documentation for all costs claimed, including but not limited to:
 - a. Subcontractor invoices and payment affidavits.
 - b. Material invoice and proof of delivery or storage
 - c. Labor records and payroll information
 - d. Documentation of approved allowances, contingency expenditures, or other reimbursable costs.
 - e. Any other documentation reasonably requested by MUTD to verify the final invoice.
 3. MUTD shall have the right to review, audit, and request clarification regarding the final invoice and supporting documentation. Payment of the final invoice shall be made in accordance with the Contract Documents, less any amounts properly withheld for incomplete deliverables, defects, or claims against the Contractor.
 4. All documents, deliverables, materials, and information delivered under the subsection shall become property of MUTD upon submission. The Contractor shall retain no copies except as required for statutory or contractual recordkeeping and shall provide MUTD with reasonable assistance to transfer knowledge and responsibilities to any successor contractor.
- ii. The obligations of the Contractor under this subsection, including the delivery of documents, final invoice, and supporting documents shall survive termination of the Contract.

9. SUCCESSORS AND ASSIGNS

- a. MUTD and the Contractor, respectively, bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as otherwise provided, neither party to the Contract Documents shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract Documents.

10. SCOPE OF THE AGREEMENT

- a. The Contract Documents represent the entire and integrated agreement between MUTD and the Contractor and supersede all prior negotiations or agreements, either written or oral. The Contract Documents may be amended only by written instrument signed by both MUTD and the Contractor.

WITNESS, the parties here have executed this instrument the day and year first above written.

CONTRACTOR:

MUTD:

Quality Construction Co.

Flint Olsen, Project Manager

Jordan Hess, CEO

APPROVED AS TO FORM:

Patrick Lowney, City Attorney



CONTRACT: RFP# 24-04

FOR

**SUBJECT: CONSTRUCTION MANAGER
AT RISK**

Between:

Missoula Urban Transportation District (MUTD)

1221 Shakespeare St
Missoula, MT 59802
Phone: 406-543-8386
Fax: 406-543-8387

And the Contractor:

Quality Construction Company

2800 S. Reserve St
Missoula MT 59801
Phone: 406-728-0080
Fax: 406-542-3639

Date: 07/19/2024

SECTION I SPECIAL PROVISIONS

1.1 Definitions

"Missoula Urban Transportation District" or "MUTD" shall mean the Missoula Urban Transportation District, authorized by the Montana Procurement Act or other law to enter into Contracts.

The "Contract Administrator" assigned to administer this Contract for MUTD is Frank Kuhl, Procurement and Contracts Specialist.

"Contractor" or "CMAR" shall mean:

Quality Construction Company located at 2800 S. Reserve St Missoula MT, 59801

The authorized representative for Quality Construction Company is Flint Olsen, Project Director, who is responsible for the performance obligation of the Contractor under this Contract.

1.2 Contract Term

The term for this Contract shall begin with the execution of this Contract and shall continue until the successful completion of the work as outlined in section 1.5 of this contract and in section 2 of RFP #24-04.

1.3 Incorporation of Documents

In addition to the terms and conditions contained in Section 1.4 of this Contract, the following documents are hereby incorporated by reference into this Contract:

1. MUTD's Solicitation # 24-04 entitled "Request for Proposals for Construction Manager at Risk" and dated April 17, 2024.
2. Contractor's Solicitation Response dated May 28, 2024.

1.4 Precedence of Terms

In the event of an inconsistency between the Request for Proposals, the Contract Terms and Conditions, other included documents, and the state procurement law, the inconsistency shall be resolved by the following order of precedence:

1. Federal Transit Administration Master Agreement (dated November 2, 2022, and amendments thereto) and [FTA Circular 4220.1F](#), dated November 1, 2008, as amended
2. The Montana Procurement Act, as amended
3. This executed Contract: RFP #24-04
4. Request for Proposal (RFP) #24-04, including addenda
5. Contractor's Solicitation Response dated May 28, 2024

1.5 Scope of Services

1.5.1 General

The Construction Manager at Risk (CMAR) will team with MUTD’s Project Manager and Architect/Engineer (Wendel Architects) to successfully design and construct the proposed new Missoula Urban Transportation District Maintenance, Operations, and Administration Facility, to be located at West Broadway/Whippoorwill Dr. Missoula, Montana.

1.5.2 Project Description

MUTD is undertaking the design and construction of a new Maintenance Operations and Administrative Building (MOAB) located at West Broadway/Whippoorwill Drive in Missoula, Montana. The project is proposed to be constructed on a 10 to 20-acre parcel that will allow for substantial growth of the MUTD fleet and facility needs for the foreseeable future. The tract MUTD is currently considering is 18.5 acres.

The MOAB will include administrative, operations, and maintenance functions.

The new facility will include the following spaces as generally allocated with the plan:

- Administrative – 3,000 SF
- Operations – 7,000 SF
- Maintenance – 15,000 SF
- Service – 4,000 SF
- Bus Storage – 30,000 SF

The total facility will be approximately 60,000 SF. These quantities are estimates only and will change throughout the design process.

In addition to the building, the project will be designed ultimately for approximately eighty-four (84) bus parking spaces with approximately thirty (30) being built in this initial phase. Employee and visitor parking will equal approximately 206 spaces with 127 spaces initially built. Parking for the buses, including all circulation space, is anticipated to be concrete while employee parking will be typical asphalt.

The project includes grading of the site, possible borrow or fill material, facilities, and all equipment needed for both conditioning of the space and mission specific to transit operations and maintenance.

1.5.3 Project Schedule (Subject to Change)

Project Schedule

Concept Design:	March 2024 – July 2024
Schematic Design:	July 2024 – October 2024
Design Development:	October 2024 – January 2025
Final Construction Documents:	February 2025 – July 2025

Guaranteed Maximum Price:	August 2025
Construction Start:	October 2025
Project Completion:	September 2027
<i>CMAR Services</i>	
Pre-Construction Services	August 2024 – July 2025
Prepare and Negotiate GMP	Likely prior to 100% construction documents
Award GMP	August 2025
Construction Services	October 2025 – September 2027
Occupancy	November 2027
Warranty Period Services	1 year following occupancy

1.5.4 Overview

The CMAR’s work is to be authorized in two phases. The first phase will be for Pre-Construction Services, only. With satisfactory performance MUTD may authorize the second phase for Construction Services.

Pre-Construction Services shall be provided by the CMAR starting with Schematic Design and continuing through Construction Document design phases, MUTD plan approval, bidding, and development of a Guaranteed Maximum Price. CMAR services shall be provided in a timely, thorough, and efficient manner to enable the Pre-Construction Services of the Project to proceed in accordance with key milestones identified in the Agreement for Construction.

The Project Architect of Record, Wendel, is responsible for the overall design of the Work as defined in the General Conditions of the Construction Contract. The Architect/Engineer will lead the design process from concept through permitting and will continue to coordinate design implementation in the construction and change process during Construction Administration Services.

Upon selection, the CMAR will meet with MUTD, MUTD’s Project Manager, and the Architect/Engineer to fully understand the Program, scope, design documents and all other pertinent aspects of the project.

The CMAR shall conduct all pre-construction meetings. The CMAR shall prepare and distribute the meeting agenda at least three business days prior to the meeting. Within three (3) business days following the meeting, the CMAR shall prepare and distribute meeting minutes to all attendees.

The CMAR shall conduct weekly (or more frequently when deemed appropriate by the Owner, Architect, and/or Project Manager) Progress Meetings with all trade’s contractors. The meeting agenda shall include, but not necessarily be limited to: construction progress relative to the approved construction schedule, upcoming

construction activities, the status of pertinent submittals, RFIs and Change Proposals and the results of construction safety and quality inspections performed by the CMAR, MUTD, the Architect/Engineer, and MUTD's Project Manager. The progress meetings shall be open to the Architect/Engineer, MUTD, and MUTD's Project Manager attendance. Within three (3) business days following each meeting, the CMAR shall prepare and distribute meeting minutes to the attendees, the Architect/Engineer, and MUTD's Project Manager.

The CMAR shall also conduct biweekly MUTD Meetings (MUTD/Architect/Contractor Meeting "OAC"), one of which will include the review of the CMAR's Monthly Pay Applications. Meeting attendees shall include appropriate representation from MUTD's Project Manager, the Architect/Engineer, CMAR, and trades contractors. Meeting agenda items shall include, but not necessarily be limited to: construction progress relative to the approved construction schedule, upcoming construction activities and pre-installation meetings, the status of pertinent Submittals, RFIs and Change Proposals and the results of construction safety and quality inspections by the CMAR, the Architect/Engineer, MUTD, and MUTD's Project Manager. Within three (3) business days following each MUTD meeting, the CMAR shall prepare and distribute meeting minutes to all attendees.

The CMAR shall conduct Pre-Installation Meetings prior to commencing construction activities that involve multiple trade contractors and/or involve the installation of building systems (roof, stone veneer, fire alarm, etc.). Within thirty (30) days after award of the construction contract, the CMAR shall prepare a complete list of all required pre-installation meetings and review with the Architect/Engineer, MUTD, and MUTD's Project Manager. The listing and schedule for upcoming meetings will be reviewed at each progress meeting. The pre-installation meeting shall include representation from the CMAR, applicable trades contractors, MUTD's Project Manager, and when specifically requested, the Architect/Engineer. The agenda for each pre-construction meeting shall include but should not necessarily be limited to: a discussion of the requirements of the contract documents, status of applicable submittals and shop drawings, manufacturer's installation requirements, mock-ups, construction schedule constraints, weather constraints and follow up inspection procedures for quality assurance. Within three (3) business days following each meeting, the CMAR shall prepare and distribute meeting minutes to the attendees, the Architect/Engineer, and designated MUTD's Project Manager.

The CMAR shall attend, along with mechanical, electrical, and building automation trades contractors, scheduled MUTD commissioning meetings.

1.5.5 CMAR Team Description:

In general, the CMAR shall provide project leadership and partner with MUTD, MUTD's Project Manager, and the Architect/Engineer to work collaboratively during the design, construction, and warranty periods to serve the needs of the project.

The CMAR shall provide and maintain an experienced, professional team of individuals tailored to the size and complexity of this project, and who is capable of successfully managing the scope of services defined in this RFP.

The CMAR for this project will be selected, in part, based on the individuals the CMAR has proposed for key roles during the preconstruction and construction phases. Upon selection, the CMAR shall agree to not reassign any of those individuals to other projects without written approval from MUTD. Requests by the CMAR to substitute any key personnel must be received by MUTD in writing and shall include the reason for substitution and background information on the proposed personnel consistent with the requirements set forth in this RFP.

1.5.6 Phase 1 – Pre-Construction Services – Design Phase

Pre-construction services will be provided throughout the entire design period and at each milestone, the CMAR is expected to review all drawings, plans, reports, calculations, and specifications for thoroughness based on the level of design provided. The CMAR is expected to attend all biweekly design meetings after thirty (30%) design and if warranted provide comments and/or suggestions to the plans for consideration by the owner and A&E. Based on the schedule provided for design, the CMAR shall provide a cost estimate of each phase milestone and deliverable including thirty percent, sixty percent and ninety percent (30%, 60% and 90%). At the completion of one hundred percent (100%) working drawings, the CMAR shall provide a firm fixed price (Guaranteed Maximum Price GMP) for all work associated with delivering the project as designed.

1. Advise MUTD and the Architect/Engineer regarding Project scope and execution, including site staging, logistics, and other site improvements, as well as any other elements of the Project with respect to concept, feasibility, building systems, equipment, constructability, cost, economies, labor, scheduling, and construction.
2. Prepare construction delivery, staging and site utilization plan.
3. Identify critical environmental, grading, and other issues that require management control. Plan for implementation of mitigation actions including unsuitable soils mitigations, site dewatering, cut and fill.
4. Identify and define site and utility construction plan and sequencing.
5. At the 30% design milestone the CMAR shall provide an overall Project Schedule that adequately identifies all remaining design and pre-construction phase activities, general construction phase activities and appropriate project close out activities.
6. Work with MUTD's Project Manager to update the Project Management Plan (PMP) (defined in 1.5.9.3 of this contract and 2.10(3) of RFP #24-04) and all subplans including, but not limited to: Quality Assurance/Quality Control (QA/QC) Plan and Safety and Security Management Plan (SSMP).

7. Develop 30% Schematic Design Documents independent cost estimate and schedule.
8. Develop 60% Design Development Documents independent cost estimate and schedule; Reconcile cost differences from Previous Estimate.
9. Develop GMP package to include pricing, assumptions and clarifications, logistics plan, schedule, and other relevant information; reconcile cost differences from Previous Estimate.
10. CMAR shall prepare a Pre-Construction Schedule for approval by MUTD that is consistent with MUTD's Project Manager master schedule, the Architect/Engineer's design schedule, and that includes all activities required for the performance of all Pre-Construction Services of CMAR. CMAR shall maintain and update MUTD approved Pre-Construction Schedule not less than monthly. Pre-Construction Schedule updates shall be consistent with the projected dates for delivery of the various phases of drawings and specifications, and the latest projected dates for MUTD's response times, estimate updates, and key milestones as identified in this document. CMAR's response times shall also be included and must not impair the Architect/Engineer or MUTD's ability to meet schedule milestones as defined by 1.5.6 of this contract and 2.7 of RFP #24-04.
11. CMAR shall generate a preliminary Construction Schedule at 30% Schematic Design. As design progresses thereafter, CMAR shall revise and maintain the preliminary Construction Schedule consistent with its developing perspective of the Project, the Construction Budget, and other Project requirements. The CMAR-provided, MUTD-approved Construction Schedule shall be provided as part of the GMP proposal.
12. Starting with the 30% Schematic Design Phase, institute a quality assurance and quality control program. The QA/QC Plan shall conform to the requirements in the General Conditions and be designed to advance the goal of achieving a quality Project that meets Project Drivers, schedule, and budget. The QA/QC Plan shall be revised as necessary and approved by MUTD prior to the start of each design phase.
13. Construction cost estimates will encompass CMAR's Direct Costs to perform the Work.
14. CMAR shall develop a minimum of four (4) separate itemized estimates of the construction cost at each design phase: Schematic Design, Design Development, and Construction Documents/GMP, with Unit Pricing and Contingencies. These cost estimates are prepared at the conclusion of each design phase, as identified in the Project Schedule. The cost estimates shall be presented in CSI master format, correlated to a building systems format, with separate line items for each trade to be bid, and shall in all respects be in the same format used by the Architect/Engineer and MUTD. The CMAR's format shall be approved by MUTD

- so that the Architect/Engineer, MUTD and CMAR estimates may be directly compared. Cost estimates shall identify all fees, allowances, contingencies and CMAR's General Condition's costs separately and shall contain all the elements required to be included in the GMP for Construction Services.
15. Analyze proposed building systems comparing initial cost and the operations and maintenance costs of base system to the initial costs and operation and maintenance costs of the alternate systems.
 16. The CMAR shall maintain a tracking log for design scope changes as they occur and provide cost impacts related to the most current approved milestone budget.
 17. After completion of the CMAR's estimate at each stage, the Architect/Engineer and MUTD cost estimates will be provided to CMAR. The CMAR shall review and reconcile each line item of the respective estimates and provide a detailed analysis of any deviations. An Independent Cost Estimator will be retained by the Architect/Engineer.
 18. CMAR shall collaborate with MUTD and the Architect/Engineer to reconcile discrepancies between CMAR, MUTD and the Architect/Engineer estimates, and shall assist the Architect/Engineer to incorporate alternates approved by MUTD as necessary to maintain the project budget. In the event the Architect/Engineer, MUTD, and CMAR are unable to agree that the work described in any bid package can be built for the budgeted amount, MUTD's determination shall govern for estimating purposes.
 19. The CMAR shall prepare a GMP proposal for the Construction Services at a time agreeable between MUTD and CMAR in the same format as construction cost estimates. In the event the GMP proposal for the Project is not within the construction budget or Project Schedule, CMAR shall provide, at no additional cost to MUTD, such further Pre-Construction Services of CMAR as may be necessary to adjust, reduce or re-sequence the scope of the Project as necessary to align the GMP proposal to MUTD's requirements.
 20. Review and advise MUTD and the Architect/Engineer regarding constructability concerns, conflicts, overlaps, and omissions in design documents, and other plans, applications, procurement, schedules, budgets, and bidding documents.
 21. Advise MUTD, MUTD's Project Manager and the Architect/Engineer regarding the construction feasibility, installation and construction costs of various designs, materials, building systems and equipment.
 22. Advise MUTD, MUTD's Project Manager and the Architect/Engineer regarding the availability of various materials and labor, the time requirements for installation and construction of various designs, systems and equipment, including cost of alternative designs or materials, preliminary budgets, and possible economies such as life cycle costing and value engineering.

23. Assist MUTD, MUTD's Project Manager, and the Architect/Engineer in investigating and reviewing various alternative approaches to design and construction of the Project, including without limitation, phased permitting and construction.
24. Identify issues, including without limitation, those raised by the CMAR's, MUTD Project Manager's and the Architect/Engineer's cost estimates, and recommend alternative solutions whenever design details affect budgets, construction feasibility or schedules previously proposed or established.
25. Identify and recommend actions designed to minimize adverse effects of labor or material shortages and price escalations.
26. Investigate and recommend a schedule for the purchase of all materials and equipment, including long-lead items, equipment requiring special testing or certification, and coordinate the schedule with the early preparation of Construction Documents by the Architect/Engineer. Procure cut sheets, also known as Material Safety Data Sheets and other relevant information for all the Architect/Engineer-specified materials and products. If any specified materials or products are known by CMAR to contain any hazardous or toxic materials as defined under any federal or state laws, rules, or regulations, CMAR shall suggest any known and feasible available alternative nonhazardous and nontoxic materials and products.
27. Provide a detailed variance report and written confirmation that the Work is within budget at each design milestone as identified in 3.2(A).
28. Provide Pre-Construction Services for all MUTD-furnished fixtures, furniture and equipment (FF&E), including maintenance shop equipment, bus wash equipment, fuel storage equipment, fare box equipment, and coordination with MUTD, MUTD's Project Manager and the Architect/Engineer to integrate design for FF&E with all disciplines. Coordination will include at a minimum, all backing for attachments, all structural requirements, and all building system connections.
29. Provide Pre-Construction Services for information services and low voltage systems, including but not limited to security systems, fire alarm, audiovisual, way finding, cable TV, paging, communications infrastructure, and distributed antenna system.
30. Actively participate as a member of the team to reach sustainability goals identified and established during the design phase of the project. MUTD is pursuing Gold USGBC LEED Certification for this project.
31. Develop detailed cost estimates for special systems comparison, as needed.
32. Provide value engineering options for consideration and participate in value management work sessions as needed.
33. The CMAR shall provide value analysis services and offer cost savings suggestions and best value recommendations to MUTD, MUTD's Project Manager,

and the Architect/Engineer. Value analysis shall include life cycle cost analyses as well as “first time” cost savings. This information shall be provided in a report to MUTD, MUTD’s Project Manager and the Architect/Engineer which will be due within thirty (30) days from the initial project review meeting.

34. Based on available design documentation, the CMAR shall develop a construction cost estimate which is to be submitted to MUTD, MUTD’s Project Manager and the Architect/Engineer with the Value Analysis report indicated above. Cost estimates shall provide sufficient detail for MUTD, MUTD’s Project Manager, and the Architect/Engineer to properly evaluate cost and will include a sufficient breakdown between labor and materials. The CMAR shall meet with MUTD, MUTD’s Project Manager, and the Architect/Engineer to resolve any difference between the CMAR’s cost estimate and the latest cost estimates prepared by the Architect/Engineer, if applicable. MUTD’s Project Manager will facilitate this meeting.
35. Develop material for public presentations and present to stakeholders.
36. Review Energy and Environmental Design Guidelines and prepare schedule and cost impacts.
37. Research different construction materials and report findings.
38. The CMAR shall thoroughly and continuously review the design documentation for clarity, completeness, constructability, and coordination.
39. The reviews shall be interdisciplinary and include both the construction drawings and specifications.
40. Issues identified during the review process shall be conveyed to the A/E in writing and copied to MUTD and MUTD’s Project Manager. The conveyance shall provide a thorough description of the issue along with recommendations for resolving the issue.
41. The CMAR shall maintain a running log of all issues noted during the review process and provide this information in the form of a report to MUTD at the time the design is considered complete.
42. Regularly attend meetings with MUTD, MUTD’s Project Manager, and the Architect/Engineer prior to construction and consult with MUTD, MUTD’s Project Manager, and the Architect/Engineer regarding site use, site improvements and selection of building materials, systems and equipment, and utilities.
43. Develop provisional and final CPM schedules indicating methods and sequencing of procurement, permitting, construction and closeout of project. Include time requirements for sequences and durations, milestone dates for receipt and approval of design documents, receipt of regulatory approvals and permits, preparation and processing of shop drawings and samples, delivery schedule of materials or equipment requiring long-lead time procurement, project procurement

schedule, and installation and construction completion. Include critical milestone dates for MUTD-procured and installed fixtures, furnishings, and equipment as well as MUTD-procured and contractor-installed fixtures, furnishings, and equipment (TBD). Provide periodic updates of project schedule for the Architect/Engineer's review and MUTD approval. Identify scheduling software to be used and/or if scheduling consultants will be utilized to perform this service on behalf of the CMAR.

44. Develop and implement procedures for schedule adherence.
45. Perform a "constructability" review of the design documents at each phase of design.
46. Perform a "maintainability" review of the design documents at each phase of design.
47. Perform budget review of design documents during and after each phase of design.
48. Provide financial and quality analysis of different construction methods in each major trade group for potential quality, cost and schedule enhancements.
49. Assist with final selection of systems and products by providing market intelligence to the Architect/Engineer.
50. Work with MUTD's Project Manager to update the Project Management Plan (PMP) (defined in 3.5(C)) and all subplans including, but not limited to, Quality Assurance/Quality Control (QA/QC) Plan and Safety and Security Management Plan (SSMP).

1.5.6.1.1 *Bidding*

1. Arrange and prepare subcontractor bid packages.
2. For all subcontracts, CMAR shall prepare all necessary bidding forms, information and related documents within a presentable and organized Bid Tab Analysis package identifying the scope of work for the review and approval of MUTD and the Architect/Engineer. CMAR shall assemble and provide MUTD with separate bound Bid Packages containing the design documents, related data and other documents, and bidding forms. The bidding documents shall require bidders to bid all alternates.
3. As soon as practicable during the performance of the Pre-Construction Services, CMAR shall: develop bidders' interest in the Project; prepare lists of potential Subcontractors and major suppliers for various portions of the Work, including Design Assist and Design Build scopes, and shall consult with the Architect/Engineer, MUTD's Project Manager and MUTD regarding such lists. CMAR shall obtain and provide MUTD with such background information on any potential Subcontractors and major suppliers as MUTD shall reasonably request.

MUTD and CMAR shall agree upon a final list of proposed, qualified Subcontractors and major suppliers, provided that MUTD and the Architect/Engineer shall have no duties or liabilities arising out of their participation in the preparation of any lists of proposed Subcontractors and major suppliers. Unless otherwise approved by MUTD, CMAR shall not obtain bids from or contract with any Subcontractor or major supplier who is not on the approved list for any portion of the Work. Use of any Subcontractor is subject to MUTD's approval.

4. Upon written authorization from MUTD, CMAR shall issue Bid Packages to the approved Subcontractor and major suppliers for such Bid Package and shall use good faith efforts to obtain not less than three (3) qualified bids for each trade or vendor category, including for Design Assist and Design Build Subcontractors. If it is difficult or infeasible for CMAR to obtain three (3) qualified bids for each trade or vendor category, the reasons therefore shall be documented by CMAR and approved by MUTD prior to receipt of bids.
5. CMAR shall establish bidding schedules in accordance with the procurement requirements set forth in the Pre-Construction Schedule; develop Subcontractors scopes of Work and Bid Packages and issue bidding documents to the pre-qualified, interested bidders. CMAR shall collaborate with MUTD and the Architect/Engineer regarding the evaluation and analysis of bids received to determine the best Subcontractors for each Bid Package that is best suited for the Project based on any best value criteria that have been established.
6. CMAR shall schedule and conduct pre-bid and pre-award conferences (in conjunction with the Architect/Engineer and MUTD's Project Manager), maintain written records of such conferences, record all bidders' contacts, questions and the responses provided thereto as they relate to the Project, and shall deliver such records to MUTD and the Architect/Engineer upon request. CMAR shall give MUTD not less than forty-eight (48) hours' notice prior to holding pre-bid or pre-award conferences, and MUTD shall have the right, but not the obligation, to attend any such conference.
7. At MUTD's request, CMAR shall rebid all or any portion of the Work.
8. Prequalify bidders for all packages.
9. Collect and maintain an updated bidder's list, to include: firm name, firm address, status as a DBE or non-DBE.
10. Develop risk identification procedures pertaining to project team organization, scope, cost, schedule, quality; develop risk evaluation plan for continued assessment; develop risk management plan.
11. Provide a provisional construction schedule (CPM) for issuance with bid packages.
12. Identify bidders and generate bidder documents.
13. Advertise and distribute bidding documents.

14. Monitor bidder activity.
15. Publicly open, review and analyze bids, in conjunction with MUTD, MUTD's Project Manager and the Architect/Engineer.
16. Update project schedule.
17. Conduct DBE outreach program to encourage participation by minority bidders.
18. Conduct SBE outreach program to encourage participation by small business bidders.
19. Develop dispute/conflict resolution plan for claims avoidance and claims resolution.

1.5.6.1.2 *Guaranteed Maximum Price (GMP)*

1. As part of Pre-Construction Services, CMAR shall provide a GMP for Construction Services for the Project. The basis for the GMP will be the one hundred percent (100%) Construction Documents or at an earlier phase of design, as agreed upon by MUTD and the CMAR. The GMP shall be developed from estimates of the cost of the Work, proposed prices from Subcontractors and suppliers, and the Stipulated Sums supplied by CMAR for Contractor's General Conditions and Contractor's General Requirements, insurance, Subcontractors Default Insurance, bonds, and CMAR Fee as previously accepted by MUTD or as subsequently adjusted with the approval of MUTD. The GMP shall be accompanied by evidence of subcontractors and supplier price proposals included in the proposed GMP and justification of any allowances included. Following MUTD's receipt of such GMP, Contractor shall promptly respond to questions by MUTD and shall submit revisions as required, until CMAR and MUTD agree on a mutually acceptable GMP. Upon acceptance by MUTD, the GMP shall be set forth in the Construction Services Task Order 2.
2. The GMP will include a "CMAR Construction Contingency," for use by the CMAR for Work that was not foreseen and should have been included in the estimated cost of the Work as included in the GMP. The contingency may be used for 1) scope gaps between trade contractors, 2) contract default by a trades contractor, 3) unforeseen field conditions (not to include unforeseen unsuitable materials, rock or other obstructions not assumed in estimated quantities included in the cost of the work), and 4) costs of corrective work not provided for elsewhere in the contract documents which may be charged against the CMAR's Contingency with approval by MUTD, which will not be unreasonably denied. The CMAR may draw upon the CMAR's Contingency with prior notification and approval by MUTD. CMAR will be required to furnish documentation evidencing expenditures charged to the CMAR's Contingency and the reasons therefore in such form and detail as MUTD may reasonably request from time to time. Any unused CMAR Construction Contingency shall be returned one hundred percent (100%) to MUTD at or near completion of the Project.

3. The GMP shall include CMAR's General Condition's costs for CMAR's staff costs, field offices, and administrative costs.
4. The GMP shall be in a format acceptable to MUTD and shall include, but not be limited to:
 - Cost proposal
 - Description of the Project
 - Stipulated subcontract amounts
 - Stipulated Contractor's general conditions
 - Rates for project personnel
 - Insurances and bonds
 - CMAR Construction Contingency
 - Allowances
 - Fee
 - Schedule
 - List of relevant documents
 - Any assumptions and clarifications
5. Reconcile schedule and cost with the Architect/Engineer, MUTD's Project Manager, and MUTD against pre-established budget and schedule.

1.5.7 Phase 2 – Construction Phase Services

1. The CMAR will participate in meetings and coordinate commissioning activities with subcontractors, MUTD, and design team during construction to ensure start-up and commissioning is completed and items on the commissioning log are closed out.
2. Develop and maintain site logistics plan or materials transport/storage, temporary site facilities, traffic operations, protection of existing utilities.
3. Maintain on-site staff for construction management.
4. Establish and maintain coordinating procedures.
5. Develop and maintain a detailed cost-loaded schedule (CPM) including delivery, approvals, inspection, testing, construction, and occupancy.
6. The Monthly Project Reports submitted with each pay request shall consist of the approved construction schedule (or latest approved revision) that has been updated to indicate actual progress at the time of the submittal. The "as of" date (data date) for the update shall be no earlier than one week before the pay request meeting. If there are construction activities whose actual progress is less than what is projected on the approved schedule, a narrative report must also be submitted which lists the delayed activities and, where necessary, indicates how these activities will be expedited to avoid delaying the overall substantial completion date.

A printed copy of the updated schedule and, if required, the narrative report must be submitted with each pay request. Review and approval of the Monthly Project Report is a prerequisite to the review and approval of the monthly pay request. Once approved, electronic record copies of the Monthly Project Report shall be provided to MUTD.

7. All CPM schedule activities shall be coded to allow for sorting by Phase, Trade and Building Location. The construction schedule shall include, but not necessarily be limited to, the following Schedule Activities as they apply to this project:
8. Submittal and approval of required shop and coordination drawings.
9. Ordering, fabrication and delivery of major materials and equipment.
10. Pre-installation meetings.
11. Construction tasks (maximum duration for any activity is 20 days).
12. Milestone start/completion dates for MUTD activities that are not-in-contract.
13. Check-out, start up and test/balance of major equipment.
14. Milestones related to commissioning activities.
15. Submittal and approval of O&M manuals.
16. Clean up and punch list.
17. Interim (i.e., pre-ceiling installation), Substantial Completion and Final Completion inspections.
18. MUTD occupancy.
19. The CMAR shall maintain at the site an adequate and competent staff approved by MUTD. Deletions and/or substitutions to the approved staff must be submitted in writing by the CMAR and approved in writing by MUTD. The CMAR staff shall manage the work of the trades contractors and coordinate the work with the activities and responsibilities of MUTD, MUTD's Representative, Architect/Engineer and CMAR so as to complete the project in accordance with MUTD's objectives for quality, cost and time.
20. The CMAR shall work jointly with the Architect/Engineer to establish procedures that provide for the efficient and timely processing of Submittals, Requests for Information (RFIs) and Change Proposals. The CMAR shall develop and maintain status logs for all Submittals, RFIs and Change Proposals which shall always be made available for review by MUTD, MUTD's Project Manager, and the Architect/Engineer.
21. The CMAR shall develop, implement, and maintain programs to ensure project Safety and Quality. The programs shall be available for MUTD and MUTD's Project Manager review and input. The CMAR shall designate on site staff members responsible for ongoing safety and quality control inspections.

22. Conduct and record job meetings.
23. Prepare and submit change order documentation for approval of the Architect/Engineer, MUTD, and MUTD's Project Manager.
24. Maintain a system for review and approval of shop drawings, samples, and product data, to ensure compliance with drawings and specifications.
25. Maintain records and submit formal progress and monthly reports to the Architect/Engineer, MUTD, and MUTD's Project Manager.
26. Manage and maintain quality control systems and ensure conformity to plans and specifications, including geotechnical testing as well as Special Inspections.
27. Develop a system and provide cost control through periodic progress payment reviews and verifications according to the approved schedule and contract amounts.
28. Develop and maintain as-built drawings for the duration of the Project.
29. Coordinate post-completion activities, including the assembly of guarantees, manuals, closeout documents, warranties, testing results, delivery of spare parts or materials, training, regulatory approvals, and MUTD's final acceptance.
30. Coordinate and monitor the resolution of remaining punch-list items to MUTD's satisfaction.
31. Coordinate furniture, furnishings and equipment deliveries and installation prior to final acceptance.
32. MUTD FF&E and Maintenance Equipment/CMAR Installed FF&E and Maintenance Equipment shall be coordinated by the Architect/Engineer to include scheduling, deliveries, material storage on-site, material handling, protection, installation, and all service supplies and connections required for a complete operational system. An itemized FF&E and Equipment list will be developed by the Architect/Engineer and accepted with the final GMP.
33. Work with MUTD's Project Manager to update the PMP (defined in 3.5(C)) and all subplans including, but not limited to the QA/QC Plan and SSMP.

1.5.8 Project Closeout/Warranty

1. Submit record drawings for approval of the Architect/Engineer, MUTD, and MUTD's Project Manager.
2. Assist in transition to occupancy.
3. Receive, record, and address all warranty issues.
4. Resolve all warranty issues to the satisfaction of MUTD.

1.5.9 Other Requirements

1. Buy America & Disadvantaged Business Enterprise (DBE) Compliance and Recordkeeping – CMAR will be responsible for ensuring that MUTD meets its DBE-related requirements and forms related to this project. The CMAR will complete DBE documentation review, confirmation, and make approval/acceptance recommendations to MUTD.

Construction is considered a “manufactured product” as defined in the Buy America regulations.

The CMAR will be responsible for all Buy America documentation review, confirmation, and make approval/acceptance recommendations to MUTD for all procurements. If the CMAR purchases items that do not meet Buy America requirements, MUTD will not reimburse the CMAR for those items. At project close-out, the CMAR will complete both a DBE and Buy America final report.

2. Audited Payroll / Davis-Bacon Act – The CMAR Firm shall ensure compliance with all federal, state, and local regulations, including the Davis-Bacon Act (Prevailing Wage); document all oversight for FTA review.
3. Completion of Project Management Plan (PMP) - The CMAR will be required to develop relevant sections of the required FTA Project Management Plan and subplans as follows through final FTA approval.
 - Organization and Staffing
 - Project Structure
 - Management Approach
 - Project Sponsor Management Capacity & Capability (MCC)
 - Project Controls
 - Document and Records Controls: document organizations, storage and management
 - Cost Control Procedures
 - Description of Estimating Methods/Assumptions
 - Final Cost Estimating Methodology Report
 - Procedures for Maintaining Costs through:
 - Schedule Delays
 - Contingency Management
 - Contracting Techniques
 - Cost Allocation
 - Grant Administration
 - **Schedule Control Procedures**
 - Description of Scheduling Methods/Assumptions
 - Procedures for Updating Project Schedule
 - Procedures for Keeping on Schedule

- **Risk Control Procedures**
 - Risk Identification
 - Risk Evaluation and Assessment Plan
 - Risk Control and Management Plan
 - Risk Register
 - Contingency Control and Management Plan
 - Insurance
 - Dispute and Conflict Resolution Plan (Claims Avoidance and Resolution)
- **Procurement and Contracts**
 - Procedures for Procurement
 - Procurement Plan and Schedule
 - Types of Contracts and Purchases
- **Labor Relations and Policy**
 - Wage Rates and Classifications
 - Wage and Hour Requirements
 - State and Local Regulations
- **Construction Plan**
 - Construction Contract Administration
 - Construction Management
 - Construction Inspection
 - Coordination with Third Parties
 - Site Logistics Plan
 - Processing Shop Drawings
 - Change Orders
 - Change Identification Process
 - Review and Approval Process
 - Documentation Procedures
 - Completion Plan
- **Closeout Management**
 - Testing Plan
 - Closeout Materials
 - Training for Staff

1.6 Contract Amount

In addition to the terms and provisions contained in this Contract, and in return for the services identified above and subject to the "Non-Appropriation of Funds" clause herein, MUTD certifies that sufficient funds are budgeted and appropriated and shall compensate the

Contractor for pre-construction services in the agreed upon amount of \$27,000,00. An amendment will be made to the contract for the construction phase services and work once the Guaranteed Maximum Price (GMP) has been agreed upon and the Commission has authorized. MUTD will hold a 5% retainage.

1.7 Method of Payment

Payment shall be made in accordance with the cost proposal to be developed by contractor, as described in section 3.2(j) of the RFP# 24-04.

1.8 Time of the Essence and Completion

Time shall be of the essence to this Contract, except where it is herein specifically provided to the contrary. Contractor shall meet schedule as laid out in section 2.4 of RFP# 24-04.

1.9 Key Personnel

Certain, skilled, experienced, professional and/or technical personnel are essential for successful accomplishment of the work to be performed under the contract. These are defined as "key personnel" and are those persons whose resumes were submitted as part of the technical bid/proposal for evaluation. During the period of performance, the Contractor shall make no substitutions of key personnel except in accordance with this clause and unless approved in writing by the Contract Administrator.

The Contractor shall assign to this Contract the following key personnel:

- Flint Olsen, Project Director
- Eric Samuli, Project Manager
- Brian Methner, Superintendent and Estimator
- Eric Reiber, Preconstruction Manager and Estimator
- Ethan Jones, Assistant Project Manager

The Contractor shall provide a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the Contract Administrator. Proposed substitutes should have comparable qualifications to those of the persons being replaced. The Contract Administrator will notify the Contractor within 15 calendar days after receipt of all required information of the decision on substitutions. This clause shall be modified to reflect any approved changes of key personnel.

The Contractor understands that during the first 30 days of the contract performance period, no personnel substitutions shall be permitted unless these substitutions are unavoidable because of sudden illness, death or termination of employment. In any of these events, the Contractor shall promptly notify MUTD's Contract Administrator and provide the information described in paragraph 1.9.2) below.

After the initial 30 day period, the Contractor must submit to the MUTD Contract Administrator all proposed substitutions, in writing, at least 30 days in advance and provide the information required by paragraph 1.9.2) below.

In the event that any of the identified key personnel cease to perform under the contract and the substitute is disapproved, the Contract may be immediately terminated in accordance with the Termination for Default clause of the Contract.

1.10 MUTD Contract Management

1. Contract Administrator – Matters relating to prices, terms and conditions, period of performance, quantities to be supplied, delivery schedule and financial adjustments shall be handled through the Contract Administrator. The Contract Administrator for this Contract will be Frank Kuhl, MUTD’s Procurement and Contract Specialist

Frank Kuhl
Procurement and Contracts Specialist
Missoula Urban Transportation District
1221 Shakespeare St, Missoula, MT 59802
fkuhl@mountainline.com
406-543-8386

2. Project Manager – The Project Manager will be Colin Woodrow, Director of Capital Projects, Planning, and Technology. The Project Manager will assist in monitoring the work under the contract.

Colin Woodrow
Director of Capital Projects, Planning, and Technology
Missoula Urban Transportation District
1221 Shakespeare St, Missoula MT 59802
cwoodrow@mountainline.com
406-544-6688

3. Contracting Officer – MUTD’s CEO and General Manager INSERT CEO/GM NAME/INFO, and Colin Woodrow, Director of Capital Projects, Planning, and Technology are the only individuals who can legally commit or obligate MUTD for the expenditure of federal/public funds. The technical administration of the contract shall not be construed to authorize the revision of the terms and conditions of the contract. Any such revision shall be authorized in writing only by the Contracting Officer.

GM Name
CEO/General Manager
Missoula Urban Transportation District
1221 Shakespeare St, Missoula MT 59802
GM Email
GM Phone

Colin Woodrow
Director of Capital Projects, Planning, and Technology
Missoula Urban Transportation District
1221 Shakespeare St, Missoula MT 59802
cwoodrow@mountainline.com
406-544-6688

1.11 Governing Law and Choice of Forum

This contract and any disputes hereunder shall be governed by the laws of the State of Montana. It is further agreed that all disputes and matters whatsoever arising under, in connection with or incident to this Contract, shall be litigated, if at all, in and before the Fourth Judicial District Court, Missoula County in the state of Montana or federal Court located in the District of Montana, and any appropriate appellate Court thereof, to the exclusion of the courts of any other state, territory, county, or other jurisdiction.

1.12 Disallowed Costs Including Interest

The Contractor agrees to remit to MUTD, which in turn will remit to the Federal government, any excess payments made to the Contractor disallowed by the Federal government, as well as any interest required by Subsection 9.g. of the FTA Master Agreement. MUTD will exclude any project costs incurred by the Contractor before the date of the Notice to Proceed unless otherwise authorized by MUTD in writing. MUTD will also exclude any cost not included in the approved GMP, any ordinary governmental or non-project operating cost consistent with prohibitions of 49 USC §5323(h)(1) and any cost ineligible for FTA participation as required by Federal law, regulation or guidelines for Federal participation included the cost soliciting response. Payment does not constitute a final decision about whether a cost is eligible for reimbursement and does not constitute a waiver of any violation by the Contractor of the terms and conditions of the contract.

1.13 Default

Termination for Default, Breach or Cause. If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

SECTION II

GENERAL TERMS AND CONDITIONS

2.1 No Government Obligations to Third Parties

1) The Recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this

contract and shall not be subject to any obligations or liabilities to the Recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

2.2 Program Fraud and False or Fraudulent Statements and Related Acts

1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 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 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, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.

3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

2.3 Access to Records and Reports

The following access to records requirements applies to this Contract:

1) Where the purchaser is not a State but a local government and is an FTA Recipient or a subgrantee of FTA Recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.

2) Where the purchaser is a State and is an FTA Recipient or a subgrantee of FTA Recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance

through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

3) Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA Recipient or a subgrantee of FTA Recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4) Where a purchaser which is an FTA Recipient or a subgrantee of FTA Recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5) Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6) Contractor shall maintain all books, records, accounts and reports required under this contract for a period of 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 contractor agrees to maintain same until the Recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

2.4 Federal Changes

Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

2.5 Civil Rights (Title VI, EEO, ADA)

The following requirements apply to the underlying contract:

a) The Recipient agrees that it must comply with applicable federal civil rights laws, regulations, requirements, and guidance, and follow applicable federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or a federal program, including the Tribal Transit Program or the Indian Tribe Recipient, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service.

b) Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that it and each Third Party Participant, will: (1) Prohibit discrimination based on the basis

of race, color, religion, national origin, sex, disability, or age. (2) Prohibit the: (a) Exclusion from participation in employment or a business opportunity for reasons identified in 49 U.S.C. § 5332, (b) Denial of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332, or (c) Discrimination, including discrimination in employment or a business opportunity identified in 49 U.S.C. § 5332. (3) Follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance, and other applicable federal guidance that may be issued, but (b) FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its Underlying Agreement supported with federal assistance under the Tribal Transit Program.

c) Nondiscrimination. Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant, will: (1) Prohibit discrimination based on race, color, or national origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, and (3) Follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance, (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) All other applicable federal guidance that may be issued.

d) Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit, discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity" September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs, (c) Comply with federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12.a of this Master Agreement, (d) FTA Circular 4704.1, "Equal Employment Opportunity Program Guidelines for Grant Recipients," July 26, 1988, and (e) Follow other federal guidance pertaining to Equal Employment Opportunity laws, regulations, and requirements, and prohibitions against discrimination on the basis of disability, (2) Specifics. The Recipient agrees to, and assures that each Third Party Participant will: (a) Prohibited Discrimination. As provided by Executive Order No. 11246, as amended by any later Executive Order that amends or supersedes it, and as specified by U.S. Department of Labor regulations, ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their race, color, religion, national origin, disability, age, sexual orientation, gender identity, or status as a parent, (b) Affirmative Action. Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, recruitment, and employment, 2 Rates of pay and other forms of compensation, 3 Selection for training, including apprenticeship, and upgrading, and 4 Transfers, demotions, layoffs, and terminations, but (c) Indian Tribe. Recognize that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer," and (3) Equal Employment Opportunity Requirements for Construction Activities. Comply, when undertaking

“construction” as recognized by the U.S. Department of Labor (U.S. DOL), with: (a) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60, and (b) 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.

e) Disadvantaged Business Enterprise. To the extent authorized by applicable federal laws and regulations, the Recipient agrees to facilitate, and assures that each Third-Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as “Disadvantaged Business Enterprises” (DBEs), in the Underlying Agreement as follows: (1) Statutory and Regulatory Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of the FAST Act, 23 U.S.C. §101 note, (b) U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12.a of this Master Agreement. (2) DBE Program Requirements. A Recipient that receives planning, capital and/or operating assistance and that will award prime third party contracts exceeding \$250,000 in a federal fiscal year must have a DBE program meeting the requirements of 49 C.F.R. part 26, that is approved by FTA, and establish an annual DBE participation goal. (3) Special Requirements for a Transit Vehicle Manufacturer (TVM). The Recipient agrees that: (a) TVM Certification. Each TVM, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, and (b) Reporting TVM Awards. Within 30 days of any third party contract award for a vehicle purchase, the Recipient must submit to FTA the name of the TVM contractor and the total dollar value of the third party contract, and notify FTA that this information has been attached to FTA’s electronic award and management system, the Recipient must also submit subsequent notifications if options are exercised in subsequent years to ensure the TVM is still in good standing. (4) Assurance. As required by 49 C.F.R. § 26.13(a): (a) Recipient Assurance. The Recipient agrees and assures that: 1 It must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted contract, or in the administration of its DBE program or the requirements of 49 C.F.R. part 26, 2 It must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts, 3 Its DBE program, as required under 49 C.F.R. part 26 and as approved by U.S. DOT, is incorporated by reference and made part of the Underlying Agreement, and 4 Implementation of its DBE program approved by U.S. DOT is a legal obligation and failure to carry out its terms shall be treated as a violation of this Master Agreement. (b) Subrecipient/Third Party Contractor/Third Party Subcontractor Assurance. The Recipient agrees and assures that it will include the following assurance in each subagreement and third party contract it signs with a Subrecipient or Third Party Contractor and agrees to obtain the agreement of each of its subrecipients, Third Party Contractors, and Third Party Subcontractors to include the following assurance in every subagreement and third party contract it signs: 1 The subrecipient, each Third Party Contractor, and each Third Party Subcontractor must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted subagreement, third party contract, and third party

subcontract, as applicable, and the administration of its DBE program or the requirements of 49 C.F.R. part 26, 2 The subrecipient, each Third Party Contractor, and each Third Party Subcontractor must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted subagreements, third party contracts, and third party subcontracts, as applicable, 3 Failure by the Subrecipient and any of its Third Party Contractors or Third Party Subcontractors to carry out the requirements of this subparagraph 13.d(4)(b) is a material breach of this subagreement, third party contract, or third party subcontract, as applicable, and 4 The following remedies, or such other remedy as the Recipient deems appropriate, include, but are not limited to, withholding monthly progress payments; assessing sanctions; liquidated damages; and/or disqualifying the subrecipient, Third Party Contractor, or Third Party Subcontractor from future bidding as non-responsible. (5) Remedies. Upon notification to the Recipient of its failure to carry out its approved program, FTA or U.S. DOT may impose sanctions as provided for under 49 C.F.R. part 26, and, in appropriate cases, refer the matter for enforcement under either or both 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq.

f) Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332.

g) Nondiscrimination on the Basis of Age. The Recipient agrees to comply with federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act, 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of Programs, Projects, and related activities receiving federal assistance, (4) 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 (5) Federal transit law, specifically 49 U.S.C. § 5332.

h) Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following federal prohibitions against discrimination on the basis of disability: (1) Federal laws, including: (a) section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally assisted Programs, Projects, or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities: 1 For FTA Recipients generally, Titles I, II, and III of the ADA apply, but 2 For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of “employer,” (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable federal laws, regulations and requirements pertaining to access for seniors or

individuals with disabilities. (2) Federal regulations, including: (a) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. part 37, (b) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27, (c) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and 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, (d) U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39, (e) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35, (f) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36, (g) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194, and (j) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609, and (k) Other applicable federal civil rights and nondiscrimination guidance.

i) Drug or Alcohol Abuse. Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2.

j) Access to Services for Persons with Limited English Proficiency. The Recipient agrees to promote accessibility of public transportation services to persons with limited understanding of English by following: (1) Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 Fed. Reg. 74087, December 14, 2005.

k) Other Nondiscrimination Laws, Regulations, Requirements, and Guidance. The Recipient agrees to comply with other applicable federal nondiscrimination laws, regulations, and requirements, and follow federal guidance prohibiting discrimination. I. Remedies. Remedies for failure to comply with applicable federal Civil Rights laws, regulations, requirements, and guidance may be enforced as provided in those federal laws, regulations, or requirements.

2.6 Incorporation of FTA Terms

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in current FTA Circular 4220.1, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The

contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the Recipient to be in violation of FTA terms and conditions.

2.7 Energy Conservation

Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

2.8 Disadvantaged Business Enterprises (DBEs)

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs and with section 1101(b) of SAFETEA LU, 23 U.S.C. § 101.

The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this FTA-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as MUTD deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph. The successful proposer/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

2.9 Prompt Payment

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from MUTD. In addition, the contractor may hold 5% retainage from its subcontractors. The contractor must promptly notify MUTD whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of MUTD.

2.10 Contracts Involving Federal Privacy Act Requirements

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- 1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

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

2.11 Patent and Rights in Data

a) General. The Recipient agrees that: (1) Depending on the nature of the Project, the Federal Government may acquire patent rights when the Recipient or Third Party Participant produces a patented or patentable: (a) Invention, (b) Improvement, or (c) Discovery, (2) The Federal Government's rights arise when the patent or patentable information is: (a) Conceived under the Project, or (b) Reduced to practice under the Project, and (3) When a patent is issued or patented information becomes available as described in Patent Rights section A(2), the Recipient agrees to: (a) Notify FTA immediately, and (b) Provide a detailed report satisfactory to FTA,

b) Federal Rights. The Recipient agrees that: (1) Its rights and responsibilities, and the rights and responsibilities of each Third Party Participant, in that federally funded invention, improvement, or discovery will be determined as provided by applicable Federal laws, regulations, and guidance, including any waiver thereof, and (2) Unless the Federal Government determines otherwise in writing, irrespective of the Recipient's status or the status of any Third Party Participant as a large business, a small business, a State government, a State instrumentality, a local government, an Indian tribe, a nonprofit organization, an institution of higher education, or an individual, the Recipient agrees to transmit the Federal Government's patent rights to FTA as specified in: (a) 35 U.S.C. § 200 et seq., and (b) U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. part 401, and

c) License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19: (1) License fees and royalties for patents, patent applications, and inventions derived from the Project are program income, and (2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except: (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research-type project, and (b) As FTA determines otherwise in writing.

2.12 Rights in Data and Copyrights

a) Definition of "Subject Data" means recorded information: (1) Copyright. Whether or not copyrighted, and (2) Delivery. That is delivered or specified to be delivered under the Underlying Agreement,

b) Examples of "Subject Data." Examples of "subject data": (1) Include, but are not limited to: (a) Computer software, (b) Standards, (c) Specifications, (d) Engineering drawings and associated lists, (e) Process sheets, (f) Manuals, (g) Technical reports, (h) Catalog item identifications, and (i) Related information, but (2) Do not include: (a) Financial reports, (b) Cost analyses, or (c) Other similar information used for Project administration,

c) General Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the Recipient's Project supported by the Underlying Agreement: (1) Prohibitions. The Recipient may not: (a) Publish or reproduce any subject data in whole or in part,

or in any manner or form, or (b) Permit others to do so, but (2) Exceptions. The prohibitions of Rights in Data and Copyrights C(1) do not apply to: (a) Publications or reproductions for the Recipient's own internal use, (b) An institution of higher learning, (c) The portion of subject data that the Federal Government has previously released or approved for release to the public, or (d) The portion of data that has the Federal Government's prior written consent for release,

d) Federal Rights in Data and Copyrights. The Recipient agrees that: (1) License Rights. The Recipient must provide a license to its "subject data" to the Federal Government, which license is: (a) Royalty-free, (b) Nonexclusive, and (c) Irrevocable, (2) Uses. The Federal Government's license must permit the Federal Government to take the following actions provided those actions are taken for Federal Government purposes: (a) Reproduce the subject data, (b) Publish the subject data, (c) Otherwise use the subject data, and (d) Permit other entities or individuals to use the subject data, and

e) Special Federal Rights in Data for Research, Development, Demonstration, Deployment, and Special Studies Projects. In general, FTA's purpose in providing Federal funds for a research, development, demonstration, deployment, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to the Recipient and its Third-Party Participants, therefore, the Recipient agrees that: (1) Publicly Available Report. When the Project is completed, it must provide a Project report that FTA may publish or make available for publication on the Internet, (2) Other Reports. It must provide other reports pertaining to the Project that FTA may request, (3) Availability of Subject Data. FTA may make available to any FTA Recipient or any of its Third-Party Participants at any tier of the Project, either FTA's copyright license to the subject data or a copy of the subject data, except as the Federal Government determines otherwise in writing, (4) Identification of Information. It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA, (5) Incomplete Project. If the Project is not completed for any reason whatsoever, all data developed under the Project becomes "subject data" and must be delivered as the Federal Government may direct, but (6) Exception Rights in Data and Copyrights Section E does not apply to an adaptation of automatic data processing equipment or program that is both: (a) For the Recipient's use, and (b) Acquired with FTA capital program funding,

f) License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19: (1) License fees and royalties for copyrighted material or trademarks derived from Project are program income, and (2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except: (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research-type project, and (b) As FTA determines otherwise in writing,

g) Hold Harmless. Upon request by the Federal Government, the Recipient agrees that: (1) Violation by Recipient. (a) If it willfully or intentionally violates any: 1 Proprietary rights, 2 Copyrights, or 3 Right of privacy, and (b) Its violation occurs from any of the following uses of Project data: 1 Publication, 2 Translation, 3 Reproduction, 4 Delivery, 5 Use, or 6 Disposition, then (c) It will indemnify, save, and hold harmless against any liability, including costs and expenses of: 1 The Federal Government's officers acting within the scope of their official duties, 2 The Federal Government's employees acting within the scope of their official duties, and 3

Federal Government's agents acting within the scope of their official duties, but (2) Exceptions. The Recipient will not be required to indemnify the Federal Government for any liability described in Rights in Data and Copyrights section G(1) if: (a) Violation by Federal Officers, Employees or Agents. The violation is caused by the wrongful acts of Federal employees or agents, or (b) State law. If indemnification is prohibited or limited by applicable State law,

h) Restrictions on Access to Patent Rights. Nothing in this Rights in Data and Copyrights section pertaining to rights in data either: (1) Implies a license to the Federal Government under any patent, or (2) May be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent,

i) Data Developed Without Federal Funding or Support. The Recipient understands and agrees that in certain circumstances it may need to provide data developed without any Federal funding or support to FTA. Nevertheless: (1) Protections. Rights in Data and Copyrights Sections A, B, C, and D generally do not apply to data developed without Federal funding, even though that data may have been used in connection with the Project, and (2) Identification of Information. The Recipient understands and agrees that the Federal Government will not be able to protect data developed without Federal funding from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential," and

j) Requirements to Release Data. The Recipient understands and agrees that the Federal Government may be required to release Project data and information the Recipient submits to the Federal Government as required by: (1) The Freedom of Information Act, 5 U.S.C. § 552, (2) Another applicable Federal law requiring access to Project records, (3) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," specifically 49 C.F.R. § 19.36(d), or (4) Other applicable Federal regulations and guidance pertaining to access to Project records.

2.13 Bus Testing

NOT APPLICABLE

2.14 Pre-Award and Post-Delivery Audit Requirements

NOT APPLICABLE

2.15 Cargo Preference

Contractor shall: (a) use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, material or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels; (b) furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Recipient (through contractor in the case of a subcontractor's bill-of-lading.); (c) include these requirements in all subcontracts issued

pursuant to this contract when the subcontract involves the transport of equipment, material or commodities by ocean vessel.

2.16 Fly America

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

2.17 Seismic Safety

Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

2.18 Davis-Bacon and Copeland Anti-Kickback Act

1) Minimum Wages – (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records

accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. (ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed. (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification. (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof. (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside, in a separate account, assets for the meeting of obligations under the plan or program. (v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under

the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met: (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination. (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

2) Withholding – The Recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the grantee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3) Payrolls and Basic Records – (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project).

Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Recipient for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following: (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete; (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3; (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract. (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section. (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code. (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may

be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4) Apprentices and Trainees – (i) Apprentices – Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved. (ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage

determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved. (iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

5) Compliance with Copeland Act requirements – The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6) Subcontracts – The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7) Contract Termination: Debarment – A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8) Compliance with Davis-Bacon and Related Act Requirements – All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9) Disputes concerning labor standards – Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10) Certification of Eligibility – (i) By entering into this contract, contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (iii) The penalty for making false statements is prescribed in 18 USC 1001.

2.19 Bonding

1) A performance bond on the part of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

2) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows: (1) 50% of the contract price if the contract price is not more than \$1 million; (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or (3) \$2.5 million if the contract price is more than \$5 million.

3) A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

1) Performance Bonds

a) The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).

b) The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

2) Payment Bonds

a) The penal amount of the payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than \$1 million.

(ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(iii) Two and one half million if the contract price is more than \$5 million.

b) If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

a) The following situations may warrant a performance bond:

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.

d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:
 - (i) Fifty percent of the contract price if the contract price is not more than \$1 million;
 - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (iii) Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The (Recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient).

Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The (Recipient) shall determine the amount of the patent indemnity to protect the (Recipient).

Warranty of the Work and Maintenance Bonds

1) The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise

specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2) The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

2.20 Termination Provisions

a) Termination for Convenience. The Recipient may terminate this contract, in whole or in part, at any time by written notice to Contractor when it is in the Recipient'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 the Recipient. If contractor is in possession of any of the Recipient's property, contractor shall account for same, and dispose of it as the Recipient directs.

b) Termination for Default, Breach or Cause. If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the Recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the Recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the Recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

c) Opportunity to Cure (General Provision). The Recipient in its sole discretion may, in the case of a termination for breach or default, allow Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions if contractor fails to remedy to the Recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the Recipient setting forth the nature of said breach or default, the Recipient shall have the right to terminate the Contract

without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the Recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.

d) Waiver of Remedies for any Breach. In the event that the Recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the Recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e) Termination for Convenience (Professional or Transit Service Contracts). The Recipient, by written notice, may terminate this contract, in whole or in part, when it is in the Recipient's interest. If the contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

2.21 Recycled Products

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

2.22 Government-Wide Debarment and Suspension

The Recipient agrees to the following: (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," <https://www.sam.gov>, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel.

2.23 Buy America

Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in

the US for 15 passenger vans and 15 passenger wagons produced by Chrysler Corp., software, microcomputer equipment and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 60% domestic content. A bidder or offeror shall submit appropriate Buy America certification to the Recipient with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

2.24 Breaches and Dispute Resolution

a) Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the Recipient's authorized representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the Recipient's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Recipient's CEO shall be binding upon Contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729.

b) Performance During Dispute. Unless otherwise directed by the Recipient, Contractor shall continue performance under this contract while matters in dispute are being resolved. Claims for Damages – Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

c) Remedies. Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Recipient and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State. Rights and Remedies - 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 the Recipient or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, 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.

2.25 Lobbying

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the

name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the Recipient.

2.26 Clean Air

1) Contractor shall comply with all applicable standards, orders or regulations pursuant to Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7606, and other requirements of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7671q. Contractor shall report each violation to the Recipient and understands and agrees that the Recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

2) Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

2.27 Clean Water

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 – 1377. Contractor shall report each violation to the Recipient and understands and agrees that the Recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

2.28 Contract Work Hours and Safety Standards Act

1) Overtime requirements – No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

2) Violation; liability for unpaid wages; liquidated damages – In the event of any violation of the clause set forth in para. (1) of this section, Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in para. (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.

3) Withholding for unpaid wages and liquidated damages - the Recipient shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or

subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in para. (2) of this section.

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

2.29 Full and Open Competition

In accordance with 49 U.S.C. § 5325(a) all procurement transactions shall be conducted in a manner that provides full and open competition.

2.30 Prohibition Against Exclusionary or Discriminatory Specifications

Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

2.31 Conformance with ITS National Architecture

Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 and as amended by MAP-21 23 U.S.C. § 517(d), note and follow the provisions of FTA Notice, “FTA National Architecture Policy on Transit Projects,” 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

2.32 Access Requirements for Persons with Disabilities

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

2.33 Notification of Federal Participation

To the extent required by law, in the announcement of any third-party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

2.34 Interest of Members or Delegates to Congress

No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

2.35 Ineligible Contractors and Subcontractors

Any name appearing upon the Comptroller General's list of ineligible contractors for federally assisted contracts shall be ineligible to act as a subcontractor for Contractor pursuant to this contract. If Contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the Recipient shall cancel, terminate or suspend this contract.

2.36 Compliance with Federal Regulations

Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the Recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the Recipient and FTA, as 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.

2.37 Real Property

Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by FAST Act, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

2.38 Access to Services for Persons with Limited English Proficiency

To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

2.39 Environmental Justice

Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low- Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance.

2.40 Environmental Protections

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

2.41 Geographic Information and Related Spatial Data

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

2.42 Geographic Restrictions

All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposes to be amended in 2 CFR Part 1201).

2.43 Organizational Conflicts of Interest

The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third-Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

2.44 Federal Single Audit Requirements for State Administered Federally Aid Funded Projects Only

Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non Profit Organizations" (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non Federal entities that expend Federal awards from a single source may provide

a program specific audit, as defined in the Circular. Non Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B-- Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO). Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

2.45 Veterans Preference

Veterans Preference. As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients: (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and (2) Will not 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.

2.46 Safe Operation of Motor Vehicles

The 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 the Contractor or AGENCY.

The 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 agreement.

2.47 Catalog of Federal Domestic Assistance (CFDA) Identification Number

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

2.48 CFDA number for the Federal Transportation Administration

Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and



Right from the Start

PO Box 4746
Missoula, MT 59806
Telephone (406) 728-0080
Fax (406) 542-3639

March 11, 2026

Mr. Colin Woodrow
Mountain Line (MUTD)
1221 Shakespeare Street
Missoula, MT 59802

RE: Mountain Line MOAB
GMP Proposal Summary

Dear Colin,

This letter will serve as a summary of our GMP proposal from February 27, 2026. In accordance with our Contract Agreement, Quality Construction Company is presenting the following Guaranteed Maximum Price (GMP) for the Mountain Line MOAB project.

Cost of work	\$41,113,514.00
Solar / PV systems	\$135,896.00
All-Risk Insurance	\$79,900.00
General conditions	\$1,402,800.00
CM contingency	\$2,400,000.00
CM fee	\$1,263,700.00
Total GMP	\$46,395,810.00

These costs compare to our 60% estimate, plus your sources and uses budgets for solar and All-Risk insurance:

Construction estimate	\$40,782,500.00
MUTD Solar / PV budget	\$320,000.00
MUTD All-Risk insurance budget	\$387,457.00
General conditions	\$1,261,000.00
CM contingency	\$2,500,000.00
CM fee	\$1,247,218.00
60% Construction Estimate	\$46,498,175.00

March 11, 2026
Mountain Line MOAB
GMP Proposal Summary
Page 2

We have attached a preliminary schedule of values breakdown, a summary of our bid solicitation efforts, and our proposed subcontractor team. Our proposal is inclusive of the qualifications, clarifications, exclusions, and contract documents noted in our February 27th package.

If this proposal is acceptable, we will execute a Contract Amendment to initiate the work. Please feel free to contact me at any time regarding this proposal. We appreciate the opportunity to quote this project, and we look forward to working with you.

Sincerely,
Quality Construction Company

A handwritten signature in blue ink, appearing to read "Eric Reiber", with a long horizontal flourish extending to the right.

Eric Reiber

Quality Construction Company
2601 Mountain Line MOAB

GMP Estimate Tabulation / Preliminary Schedule of Values

2/27/2026

Scope of Work	Quantity		
General Conditions	28.0	months	\$ 1,402,800.00
Electronic equipment and software	0.55%		\$ 255,177.00
Safety and first aid	0.50%		\$ 231,980.00
Bid Package 1A - Final cleaning	1.0	lump sum	\$ 106,000.00
Bid Package 2A - Excavation, utilities, site concrete	1.0	lump sum	\$ 3,699,427.00
Bid Package 2B - Asphalt paving	1.0	lump sum	\$ 609,981.00
Bid Package 2C - Geothermal wells	1.0	lump sum	\$ 466,637.00
Bid Package 2D - Fencing and gates	1.0	lump sum	\$ 1,290,245.00
Bid Package 2E - Landscaping	1.0	lump sum	\$ 413,787.00
Bid Package 2F - Site amenities and miscellaneous site work	1.0	lump sum	\$ 201,000.00
Bid Package 3A - Concrete foundations, concrete slabs, misc underground work	1.0	lump sum	\$ 2,804,000.00
Bid Package 4A - Masonry and stone veneer	1.0	lump sum	\$ 1,967,061.00
Bid Package 5A - Steel fabrication	1.0	lump sum	Use BP 5C
Bid Package 5B - Steel erection and installation	1.0	lump sum	Use BP 5C
Bid Package 5C - Combined fabrication and erection	1.0	lump sum	\$ 2,537,687.00
Bid Package 6A - Rough and finish carpentry, cabinetry and countertops, misc work	1.0	lump sum	\$ 787,000.00
Bid Package 7A - Insulation	1.0	lump sum	\$ 67,130.00
Bid Package 7B - Roofing	1.0	lump sum	\$ 1,293,085.00
Bid Package 7C - Exterior siding, soffits, and finishes	1.0	lump sum	\$ 1,767,000.00
Bid Package 8A - Doors, frames, and hardware	1.0	lump sum	\$ 660,000.00
Bid Package 8B - Overhead and sectional doors	1.0	lump sum	\$ 520,788.00
Bid Package 8C - Storefront assemblies, windows, and glazing	1.0	lump sum	\$ 593,360.00
Bid Package 9A - Metal stud framing	1.0	lump sum	Use BP 9C
Bid Package 9B - drywall and drywall finishes	1.0	lump sum	Use BP 9C
Bid Package 9C - Combined metal stud framing and drywall	1.0	lump sum	\$ 533,149.00
Bid Package 9D - Suspended ceilings	1.0	lump sum	\$ 128,000.00
Bid Package 9E - Flooring and tile	1.0	lump sum	\$ 249,832.00
Bid Package 9F - Painting and finishes	1.0	lump sum	\$ 442,282.00
Bid Package 9G - Special finishes	1.0	lump sum	\$ 71,000.00
Bid Package 10A - Building specialties	1.0	lump sum	\$ 953,000.00
Bid Package 11A - Process systems and equipment	1.0	lump sum	\$ 1,994,000.00
Bid Package 14A - Electric traction elevators	1.0	lump sum	\$ 155,400.00
Bid Package 21A - Fire suppression systems	1.0	lump sum	\$ 495,000.00
Bid Package 22/23A - Mechanical	1.0	lump sum	\$ 5,930,000.00
Bid Package 26A - Electrical, communications, and electronic safety and security	1.0	lump sum	\$ 7,988,768.00
Bid Package 26B - Solar / PV systems	1.0	lump sum	\$ 135,896.00
CM work items	1.0	lump sum	\$ 796,481.00
CM performance and payment bond	1.0	lump sum	\$ 301,600.00
1% GRT - CM portion	1.0	lump sum	\$ 168,900.00

All-Risk insurance premium	1.0	lump sum	\$ 79,900.00
Subcontractor liability insurance	0.32%		\$ 147,600.00
Closeout procedures and documentation	0.10%		\$ 46,396.00
General Contractor's insurance expense	0.95%		\$ 440,761.00
Construction Manager's contingency	1.0	lump sum	\$ 2,400,000.00

Cost of Construction Work \$ 45,132,110.00

CM Fee 2.80% \$ 1,263,700.00

Total GMP Contract Amount \$ 46,395,810.00

** Quantities listed as a percentage will be billed as a percentage of the GMP

Exhibit D

Per FTA's Project and Construction Management Guidelines January 2025, monthly reports submitted by the contractor should generally include the following information:

- Milestone summary schedule and payment status.
- Current approved submittal and RFI schedules and status.
- Fiscal summary for the contract and major subcontracts, including award amount, executed change orders, current commitment, payment dates, percentage expended, actual expenditures versus baseline cash flow,
- Potential change orders with descriptions of their status and estimated cost and time impacts.
- Executed change orders, including their status, settled cost and time impacts, and any outstanding issues.
- Claims status with a description, status, and details of outstanding issues. FTA Project and Construction
- A one-month look-ahead schedule and narrative.
- Systems design status by major milestone when applicable.
- Facilities construction status by major milestone when applicable.
- Major equipment procurement status.
- Systems procurement and installation status by major milestone.
- Integrated testing status by major milestone.
- Submittals/deliverables status in accordance with contract terms, at least by major milestone.
- QA/QC status, including test schedule status, nonconformance status and actions taken; and scheduled and
- Environmental mitigation status reporting compliance and noncompliance, completed mitigation efforts, public complaints, noncompliance issues raised by regulatory and oversight agencies, and hazardous material status.
- Construction safety status, including reportable accidents, training, and other pertinent safety information.
- Construction security status noting any breaches, particularly those resulting in employee injuries, significant losses due to theft, or crimes against the site or surrounding area.
- Photos illustrating recent progress.
- Disadvantaged business enterprise (DBE) status by subcontractor, including payment time and amount, amount paid to date, original subcontract value, and change orders.
- Permit application report detailing the status and expiration dates of permits obtained by the sponsor and
- Coordination with other contracts, including meetings and written communications.
- Utility work status by major utilities.
- ROW access needs and status.
- Status of other activities (e.g., significant events, public outreach, etc.)