



Request for Proposals

Bend Area Transit Security Camera System

An American Recovery & Reinvestment Act (ARRA) project
funded through the Federal Transit Administration

Proposal Due: July 29, 2010, 3:00 PM Pacific Time

Send to:
City of Bend
710 NW Wall Street, 2nd Floor
PO Box 431
Bend, Oregon 97709
Attention: Gwen Chapman
6 Copies Required

CITY OF BEND REQUEST FOR PROPOSALS

Introduction

The City of Bend requests proposals for turn-key security camera systems for both transit bus and fixed facility applications that will include system design, system testing, equipment, software, installation, warranties, product support, and training. Detailed information regarding the services to be provided can be found in Exhibit A – Scope of Work. This project is an American Recovery & Reinvestment Act (ARRA) project funded through the Federal Transit Administration; federal requirements and reporting tasks apply.

Background

The City of Bend, Bend Area Transit (BAT) currently operate 13 fixed route vehicles, which range from 27' heavy duty buses to 24' medium duty buses and 13 paratransit vehicles ranging from extended top vans to 24' buses. Bend Area Transit's has 7 fixed routes that operate service 6 days per week, 12 hours of service Monday through Friday, 10 hours on Saturdays. Bend Dial-a-Ride, BAT's paratransit program, is in operation seven days a week, 7.5 hours on Sundays. The fixed routes all cycle through "Hawthorne Station", our primary passenger transfer location, where a new intermodal station is being established on the adjacent property. BAT also operates out of a new Transit Facility ½ mile from Hawthorne Station, which supports all operational and maintenance functions. The Transit Facility has a lobby open to the public for customer service 7:30am-4:30pm Monday – Friday.

Issuing Office

The Purchasing Manager is the issuing officer for this Request for Proposal (RFP) and the point of contact for the City for all process and contract questions as well as protests.

Issuing Officer: City of Bend Gwen Chapman, Purchasing Manager 710 NW Wall Street, 2 nd Floor PO Box 431 Bend, Oregon 97709 Phone: (541)385-6677 E-mail: gchapman@ci.bend.or.us	Technical Questions: City of Bend Heather Ornelas, Transit Manager 1250 NE Bear Creek Rd. Bend, OR 97701 Phone: (541) 317-3023 E-mail: hornelas@ci.bend.or.us
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Anticipated RFP Schedule

The City anticipates the following general timeline for this RFP. The anticipated schedule may be changed as needed.

Issuance of RFP documents	June 29, 2010
Deadline for Proposal Submission	July 29, 2010
Evaluation of Proposals	July 30, 2010
Notice of Intent to Award	August 2, 2010
Commencement of Contract	August 9, 2010

Submission Date and Location

Each proposer must provide 6 copies of the proposal; one copy should be marked "Original". The outside of the sealed envelope or box should be marked "**BAT Security Camera Project**" and delivered to the address listed below. The proposals must be physically received by the City by 3:00pm on July 29, 2010.

Submission Location

<i>If by mail:</i> City of Bend Gwen Chapman, Purchasing Manager PO Box 431 Bend, Oregon 97709	<i>If delivered:</i> City of Bend Gwen Chapman, Purchasing Manager 710 NW Wall Street, 2 nd Floor Bend, Oregon 97701
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Telephone, facsimile, or electronically transmitted proposals will not be accepted. Proposals received after the specified date and time will not be given further consideration.

Solicitation Documents and Changes (Addenda)

All solicitation documents may be viewed or printed on line from Central Oregon Builders Exchange at www.plansonfile.com (click on Public Works Projects) or at 1902 NE 4th Street, Bend, Oregon. Please contact Central Oregon Builders Exchange at 541-389-0123 or admin@plansonfile.com with any technical problems viewing solicitation documents.

Any clarifications or revisions will be addressed and issued in addenda; City must receive requests for changes in writing five days prior to the deadline for submitting proposals.

Proposers should register with the Central Oregon Builders Exchange (COBE) as a document holder to receive addenda. Viewers are responsible for checking the COBE web site for the issuance of any addenda prior to submitting a proposal. If the proposer does not register with the plan center, the proposer will still be held responsible for all

addenda/changes to the documents and may be considered non-responsive if their proposal does not reflect those addenda/changes. For proposal results, please go on-line with the above.

Protests

Any complaints or perceived inequities related to this RFP shall be in writing and directed to the Issuing Office at the address listed in the RFP. Protests related to the solicitation shall be received no later than five working days after issuance of RFP. Protests of the award must be made within five days after notification of the selected proposer.

Rejection of Proposals

The City of Bend may reject any proposal not in compliance with all prescribed public proposal procedures and requirements, and may reject for good cause any or all proposals in accordance to ORS279B.100.

Modification / Withdrawal

Unless otherwise specified, modification of the Proposal will not be permitted; however a proposer may withdraw his or her Proposal at any time prior to the scheduled closing time for receipt of Proposals; any proposer may withdraw his or her Proposal, either personally or by written request to the Issuing Office. Withdrawal of Proposal shall not disqualify the proposer from submitting another Proposal provided the time for receipt of Proposals has not expired.

Duration of Proposals

Unless otherwise specified, proposals must remain valid for at least 60 days. Proposals must be signed by an official authorized to bind the proposer.

Public Record

All proposals submitted are the property of the City of Bend and are public records. Except for information marked "Proprietary," all documents received by the City are subject to public disclosure after the City selects a contractor. The City will attempt to maintain the confidentiality of materials marked "Proprietary" to the extent possible under Oregon public records law.

Incurring Costs

The City of Bend is not liable for any cost incurred by contractors prior to issuance of a contract.

Selection Process

The City reserves the right to select the consultant on the basis of the proposals or to conduct interviews with the highest qualified proposers following evaluation and scoring of the proposals, whichever is determined to best serve the needs of the City. The City reserves the right to seek clarifications of any or all proposals.

Proposal Evaluation Criteria and Scoring

The evaluation will be based on the technical and administrative capabilities in relation to the needs of the project/task. The criteria listed below will be used to evaluate the proposers. If interviews are conducted, there will be an additional 100 points available.

- Project Understanding and Approach Max. Points: 200 Score _____

Evaluate the proposer's project understanding and approach to accomplish the objectives and tasks set forth in the Scope of Work. Consider methodologies proposed to accomplish the work, including the types of information or data required. Review the proposed schedule for compliance with stated milestone dates and/or suggested schedule enhancements or deviations.

- Project Team, Experience and Quality of Service Max. Points: 200 Score _____

Evaluate the proposer's equipment, qualifications, experience, skills and commitment to perform the work. Evaluate the firm's recent projects experience, specifically for this type of work, level of complexity, and comparable size with the proposed project. Consider the quality of the firm's completed projects and the quality of service the firm provided on previous projects based on references.

- Cost Max. Points: 200 Score _____

The proposal that accomplishes the stated objectives and tasks at the lowest cost will receive the highest points for this criterion.

TOTAL SCORE _____

Proposal Contents

Proposals are to include, but not necessarily be limited to, the content listed below. The volume, or size of the proposal, should be consistent with the relative size of the project. Concise proposals without needless duplication are encouraged.

1. **Letter of transmittal.** Letter must be signed by person authorized to bind the firm. Place a signed copy of Oregon Statutory (ORS) Certifications, Exhibit D, immediately behind the letter of transmittal.
2. **Project Description and Approach.** Provide a detailed explanation of the goods and services to be provided. Include details regarding how the goods and services will be provided. A project schedule should be included in this section.
3. **Project Team.** List the experience and qualifications of staff who will be working on the project. Describe the applicable skills and accomplishments of the project manager. Confirm availability and commitment of named key staff to the project. Describe how project management, coordination and communications with the City will be accomplished. Do not include persons who will not be working on the project.
4. **Related Experience.** Provide project descriptions for up to five recent projects similar in nature to the proposed project, including completion dates, measures that indicate quality and successful project completion, and a client reference name and phone number. Indicate the involvement of proposed key staff on those or similar projects.

Provide any background information on the size, capability and location of the firm that may be beneficial. Confirm that the proposed equipment will meet Buy America requirements.

5. **Video Presentation.** The proposer shall include with its proposal a video presentation that introduces the proposer and addresses how the proposed system meets Transit's major and/or significant requirements. The video should be not more than 20 minutes in length and include daytime and nighttime segments to illustrate system operation and frame rates as well as audio/video quality available with the proposed equipment.
6. **Specifications.** Include completed specifications worksheet provided in Exhibit B.
7. **Federal Certifications.** Include completed Buy American Certification (section 2) and Lobbying Certification (section 9) from Exhibit C, Federal Transit Administration Contract Clauses.

8. **Cost Proposal.** Provide a cost proposal to perform the scope of work. Include detail of costs for main components, installation and warranties to meet the requirements in the scope of work – Exhibit A. Include, as a separate option, pricing for eight additional back-up drives. Clearly describe any deviation from the listed scope of work that would significantly affect costs. The format for the cost proposal is to be selected by the proposer.

The proposer is encouraged to offer pricing for two options.

Option 1: Bridge equipment and all other components required per vehicle for future expansion to allow wireless data download. Transit has long range plans for a single (bus yard) station.

Option 2: Hardware per vehicle and software to allow auto vehicle location (AVL) and viewing of system map with active vehicles within dispatch by flat panel screen or computer monitor. The AVL information must also be in a format that can be viewed by riders on the BAT website via an internet connection. The pricing for option 2 will not include per vehicle pricing for cell connections to transmit the data, but the proposed equipment must be compatible with local service options.

EXHIBIT A SCOPE OF WORK

Project Objectives

The City of Bend requests proposals for turn-key security camera systems for both transit bus and fixed facility applications that will include system design, system testing, equipment, software, installation, warranties, product support, and training.

The primary objective for this project is locating a contractor with quantifiable experience in transit camera technology and understanding of transit related security issues, and equipment. A successful proposer will show in their presentation and proposal what effective strategies exist to reduce crime and vandalism in the transit environment. The system must also allow for system expansion and upgrade as the agency grows, receives additional funding, and technology advances.

Other objectives include a cost-effective system design, equipment selection based image and sound quality, user friendly technology, and a maintenance and repair program designed to limit out of service time and maintenance costs.

Project Information

1. In the interest of public and employee safety and security, **the Transit Division is seeking to obtain proposals from qualified Contractors for the provision of digital video and audio recording systems (DVRs) for Bend Area Transit fixed route vehicles, the Transit Facility, Hawthorne Station, and the Intermodal Center.** This system(s) shall monitor and record events that occur in the interior and exterior of these transit vehicles at all times the vehicles are powered-on and the other facilities 24 hours per day, 7 days a week when triggered by motion sensors.
2. The system shall be a turn-key system. That is, it shall include all equipment, wiring, mounting pieces, cabling and software for the installation of digital recording units, digital video cameras and audio recording devices in the designated vehicles and facilities. The system shall further include all end information system components, including wiring, cabling, hardware and software, required for the system's installation and retrieval, viewing and permanent storage of recorded images and sound. The system shall also include training, maintenance, troubleshooting and end user support. It is therefore the intent of Transit to secure a total system that is configured for Transit's needs in accordance with the specifications, terms, and conditions set forth in this Request for Proposal (RFP). **Note: While BAT has written this RFP to be as complete as possible in its statement of what the total system shall consist of, the proposer shall include and specifically explain and separately price in its proposal any equipment, software, training, maintenance or support that is not mentioned in the RFP and that the proposer believes is necessary to include. Omission of essential items or functions by the successful proposer will result in the Contractor providing**

the omitted items(s) at no cost to Transit as part of the total system installed.

3. Transit anticipates continued growth in the amount and complexity of services it provides. Transit desires to purchase a system with full featured capabilities that allows for planned additions and future technology.
4. The recorded images and sound files must meet the specifications required by local, state, and federal courts of law to be used during litigation and prosecution.
5. Digital Video recording system (DVRS) shall refer to the system in its entirety. Digital video recording unit (DVR) shall refer to the individual digital recording unit installed in each transit vehicle or facility.
6. The work for this project will be executed under a single contract. The contract will be for three years to allow for system expansion and include a “piggyback” clause for use by other transit providers as permitted by the Federal Transit Administration for the purchase of up to 40 additional vehicle DVR’s and 240 cameras. See Exhibit E for Form of Assignment.
7. The work for this project shall occur at BAT’s Transit Facility at 1250 NE Bear Creek Rd, Bend OR 97701. The proposer shall delineate its delivery, storage and security needs for any equipment to be stored at the work site.
8. Nine fixed route buses will be included in the camera project. The vehicles system must have capacity for at least 8 units per bus, and include a total of 6 cameras per bus, two with audio.
9. A DVR will be placed in the Intermodal Center and one at the Transit Facility, each with a minimum camera capacity of 16 units. The facility/station cameras will be permanently mounted and hardwired, with motion sensors. The system will include an estimated 15 cameras in 3 areas (Hawthorne Station street light mounted – 3, Intermodal Center – 3 interior/5 exterior, Transit Facility – 2 interior/2 exterior). The City has the right to modify the number and locations of cameras. The project includes a 46-inch flat panel display mounted within the Dispatch Center for viewing of selected cameras by live feed.

Deliverables

1. System Design & Testing – The contractor will work with transit, maintenance, and IT staff to design two stand alone camera security programs, one for onboard vehicles security and one for facility security. The contractor will present the *initial proposed system* design and incorporate staff feedback. For the vehicle system only, the contractor will install the proposed equipment as designed in the *proposed system design* and allow Bend Area Transit to test the system for at least one week and response with feedback that will be incorporated into the *final design* prior to production and installation.

Only Nine fixed route buses will be included in the camera project. The vehicles system must have capacity for at least 8 units per bus, and initially include 6 cameras per bus, two with audio. A DVR will be installed in the Intermodal Center and one at the Transit Facility, each with a minimum camera capacity of 16 units. The facility/station cameras will be permanently mounted and hardwired, with motion sensors. The system will include an estimated 15 cameras in 3 areas (Hawthorne Station street light mounted – 3, Intermodal Center – 3 interior/5 exterior, Transit Facility – 2 interior/2 exterior). The City has the right to modify the number and locations of cameras. The project includes a 46" flat panel display mounted within the Dispatch Center for viewing of selected cameras by live feed

2. Installation of Equipment & Software – The contractor will install all equipment identified in the approved design plan. Bend Area Transit will make a single maintenance bay available to the contractor during the day, and multiple bays available in the evening and weekends for installation. Any work within in the public right of way or with local utilities will need to be coordinated and permitted by the contractor.
3. System Startup and Training – The contractor will provide full start up of the newly installed systems, and assure all systems are operating correctly and without flaws or defects. Provide specific training to designated transit staff as to the proper operation of camera systems including but not limited to: proper use of hardware and software as it relates to monitoring, retrieving, searching and saving o recorded information. Provide special training to the Transit Manager, Contracted Operations Manager, and Maintenance Manager or their designees on the installation, adjustments, and removal of equipment and hardware for use, repairs and warranty.

Additional Information to meet requirements: All installation of DVCR's are to include on site installation, shipping charges, necessary mounting brackets, cables and other hardware or wiring deemed necessary to complete the installation to the agency's satisfaction. Programming software and necessary electronic storage and transfer media with cables as required to be provided at the completion of installation. DVCR's are to be programmed with the agency's current route and destination information if necessary. DVCR's are to be tested for accuracy and visibility to meet the agency's current operating conditions during the design test phase during daylight and evening hours. The standard manufacturer's warranty for installed equipment will be supplied and documented.

Special Provisions: The selected vendor will work directly with the Transit Division Manager for delivery of goods, and scheduling of project meetings/presentations, shop space, and installation locations. The vendor will verify each completed installation and proper operation with a designated representative for Bend Area Transit before a unit is placed back into transit operations. The Transit Manager will verify when the vendor's work is completed and sign off on vendor's payment.

Schedule

The project is scheduled to begin August 2, 2010 and is expected to take up to 3 months to complete and must not exceed 5 months under any circumstances due to funding use requirements. Prepare a proposed schedule to include all major milestones.

Exhibit B
Specifications Worksheet
(include completed worksheet in response)

Specifications: On-Board Digital Video Recording System

Specify using an 'X' whether the system is fully compliant or not fully compliant with each of the following specifications. Each proposal **must** include written responses to each of the following specifications stating how they comply or do not comply with each specification.

Specification:	Fully Compliant	Not Fully Compliant
A. Digital Video Recorder (DVR) System:		
1. The system shall be provided in compatible and interchangeable formats that support simultaneous minimum recording of up to eight (8) cameras.		
2. Compatible software shall be provided to support systems capable of sixteen (16) cameras.		
3. The hardware shall support simultaneous recording of a minimum of two (2) independent audio channels.		
4. Audio channels shall be capable of synchronizing to user-selectable cameras.		
5. The DVR shall be ruggedized and secure with lockable recording media without the need for an additional enclosure.		
6. The system shall include a driver event switch that features a system status "Heartbeat" health indicator to provide visual confirmation that the system is operating properly.		
7. The digital video recording system shall be capable of simultaneous recording, playback and remote access allowing multiple users to review video without interruption of recording.		
8. The system shall utilize a removable and lockable solid-state or standard hard disk drive.		
9. The system capable of recording up to eight (8) cameras shall have a minimum recording and playback rate of 240 images per second system-wide and shall be capable of recording and playback each individual camera up to 30 images per second without the use of a quad process or multiplexer. The system capable of recording up to twelve (8) and sixteen (16) cameras shall have a minimum recording and playback rate of 480 images per second system-wide.		
10. The system shall be capable of recording and playback each individual camera up to 30 images per second without the use of a quad process or multiplexer.		
11. The system shall be made entirely of new materials and shall be engineered and constructed with rugged materials to protect the system from environmental elements including shock, dust and humidity.		
12. The Digital Video Recorder and casing material shall be Mil-Spec Rated: STD-810F and SAE Rated: J1455 for vibration and shock and include a shock absorbing mounting kit (specifically rated for heavy duty diesel powered vehicles driven on normal highway conditions).		

13. The DVR shall record 30 images per second system-wide of high quality video for a minimum of 2, 016 hours on a single on-board drive.		
14. The system shall record onto a removable hard disk drive equipped with a key lock to prevent tampering.		
15. The system shall be capable of configuring video quality, resolution and recording speed individually for each camera.		
16. The DVR shall record in user adjustable resolution setting of 1CIF, 2CIF or 4CIF.		
17. The system shall include an optional built-in heater for operating in temperatures as low as -20°F. Systems that include an enclosure, lock-box or additional to comply with this requirement are not acceptable.		
18. The system shall not utilize forced ventilation for system to cooling to eliminate build-up of dust and debris in the DVR unit.		
19. The system shall have an optional hard disk player and software to allow for transferring of files directly from the HDD to a PC, where the images can be printed, emailed or saved onto another storage media.		
20. The system shall feature an optional 3-axis accelerometer capable of tagging video or sending alarm notification when the vehicle exceeds a pre-determined G-force setting.		
21. The system shall have power back up, un-interruptible start up capability once ignition is turned on.		
22. No videotapes or videotape recorders shall be used.		
23. The system shall be FCC approved and shall be powered by 12 or 24 VDC vehicle power supply connected by 12 gauge wire and protected from spikes, surges and reverse polarity.		
24. The DVR shall operate between 9 and 36 VDC and be powered by either 12 or 24 VDC (not model-specific) vehicle power.		
25. The system shall feature an option for full integration with J1939 CAN-bus or Multiplex system. The DVR integration with the CAN-bus shall include support for diagnostic message reporting (including: video loss per camera, video obstruction per camera, DVR alarm events and 3-axis accelerometer events, hard drive status, system temperature status, bus alarm acknowledgement and roll-call acknowledgement.)		
26. When equipped, the DVR shall also interface with the CAN-bus, or Multiplex system to record bus status information such as GPS, turn signals, bus speed, brake application, door position, bus unit number, route number, etc. to the DVR.		
27. The DVR shall meet the requirements of ISO 7637-2 "Electrical disturbances from conduction and coupling" i.e. the DVR will not cause any interference with the operation of the bus's electronics or radios systems.		
28. The DVR shall provide regulated 12-volt power for all peripherals (up to 40 watts).		
29. The DVR shall have the option to remain operating for a pre-determined length of time after the vehicle power is terminated, up to		

twenty-four hours.		
30. The system shall feature pre-event recording that allows the system to record up to five (5) minutes of video prior to system activation (manually, motion activation, etc.).		
31. The system shall be capable of streaming live video to first responders through cellular or wireless LAN options.		
32. The system shall feature an optional GPS receiver.		
33. The system shall be equipped with a USB port to allow for exporting video clips using CDRW, HDD or USB flash memory.		
34. The DVR shall include a functional Ethernet port and be capable of configuration and transmission of video using software over 802.11, LAN/WAN or cellular networks.		
35. The DVR shall feature H.264 "Main Profile" video compression for superior video quality and recording duration.		
36. The DVR shall be programmable utilizing a mouse and LCD display.		
37. The system shall be capable of on-board viewing, downloading and control via laptop using the included software.		
38. The DVR dimensions with protective encasement shall not exceed: 12" x 6" x 14" (WxHxD).		
39. The DVR shall be compatible with a facility-based DVR system and allow for software interoperability between vehicle and facility recording systems.		
40. Onboard system components shall be removable / replaceable as an entire component to minimize vehicle down times and simplify maintenance.		
41. Video clips samples shall be provided to display video quality recorded at the maximum recording quality and rate while maintaining on-board video on a single hard disk drive for 8 days, utilizing the hard disk drive specified in the base bid of this proposal.		
B. Software / Firmware:		
1. License-free software that is capable of live viewing, playback, calendar and event searches, and administration shall be provided at no extra cost, and shall be compatible with Windows® XP, Vista and Windows® 7.		
2. All future software updates for license-free software shall be included free of charge.		
3. The software shall provide various levels of user access rights that allow and restrict access to various functions. The software features 256 user passwords and 64 user groups.		
4. When equipped with GPS, the system shall provide historical and live software mapping display routes of the vehicle location and speed charts.		
5. When equipped with GPS, the system software shall be capable of connecting to pre-recorded video by selecting a point on the map or selecting a point on the speed chart to view from that speed or location.		
6. To retrieve recorded video, the software shall provide searches by: event, time lapse, time & date, vehicle location and vehicle speed.		

Specifications: Transit Facility Digital Video Recording System

Specify using an 'X' whether the system is fully compliant or not fully compliant with each of the following specifications. Each proposal **must** include written responses to each of the following specifications stating how they comply or do not comply with each specification.

Specification:	Fully Compliant	Not Fully Compliant
C. Transit Facility Digital Video Recorder (DVR) System:		
42. The system shall be provided in compatible and interchangeable formats that support simultaneous recording of up to sixteen (16) cameras.		
43. Compatible software shall be provided to support systems capable of up to sixteen (16) cameras.		
44. The system will use cameras which are compatible and will use the ethernet-city network to transmit video from the camera to the recording server to be located in the control room of the Transit communications center.		
45. Cameras will be stationary mountable with Day-Night (IR), zoom capable and weather proof.		
46. The digital video recording system shall be capable of simultaneous recording, playback and remote access allowing multiple users to review video without interruption of recording.		
47. Installation of the transit facility system will be listed and priced separately.		
48. Any specifications in the onboard system listed above that are included, duplicated, compatible or a part of the facility system, proposers will signify by noting with (**) beside that item.		

Any additional items and/or specifications, provided as included in proposer's system(s) that are essential but may have been overlooked by the City of Santa Fe or not listed in the RFP specifications above, please list accordingly:

1. _____
2. _____
3. _____

Exhibit C



PERSONAL SERVICES AGREEMENT BETWEEN THE CITY OF BEND AND _____



Project Number: _____

This Personal Services Agreement is between the City of Bend, Oregon ("City") and _____ ("Contractor") for professional personal services.

RECITALS

- A. The City desires to enter into the Agreement for [insert purpose].
- B. Contractor has the training, ability, knowledge, and experience to provide the services desired by the City.
- C. Contractor was selected through a request for proposal process.

TERMS OF AGREEMENT

1. **Effective Date; Duration.** This Agreement shall become effective when signed by both parties and approved by the City's legal counsel. Unless sooner terminated, this Agreement shall expire on _____. Termination or expiration shall not extinguish or prejudice the City's right to enforce this Agreement with respect to any default or defect in performance that has not been cured.
2. **Services.** Contractor shall _____.
The services to be provided are described in more detail in Exhibit A, Scope of Work. Contractor shall perform all work in accordance with Exhibit A.
3. **Contract Documents.** This contract consists of the main text of this contract and the following exhibits:
 - a. Exhibit A – Scope of Work
 - b. Exhibit B – Schedule of Costs
 - c. Exhibit C – Relevant Provisions Of ORS Chapter 279B
 - d. Exhibit D – Federal Transit Administration Contract Clauses
4. **Consideration.** City shall pay Contractor as set out in Exhibit B, but the total payment under this Agreement **shall not exceed \$_____**.
 - 4.1. Contractor shall send City an invoice each month setting forth the fee due for that month and include a detailed summary of the work performed during the pay period. City shall review all submitted invoices promptly and shall pay all undisputed amounts within 30 days of City's receipt of the invoice.
 - 4.2. Invoices will be directed to the City of Bend, Attention: Accounts Payable, P.O. Box 1458, Bend, Oregon 97709.

4.3. Contractor shall reference the Contract Number and the Project Number as appropriate.

5. **Standard of Care.** Contractor will provide services with the degree of skill and diligence normally employed by professionals performing the same or similar services at the time the services are performed. Contractor shall, at all times during the term of this Agreement, be duly licensed to perform the Work, and if there is no licensing requirement for the profession or Work, be duly qualified and competent.

6. **Termination.** The parties may terminate this Agreement as follows:

6.1. This Agreement may be terminated at any time by mutual consent of both parties.

6.2. City may, at its sole discretion, terminate this Agreement, in whole or in part, upon thirty (30) days' notice, in writing and delivered by certified mail or in person.

6.3. City may terminate this Agreement, effective upon delivery of written notice to the Consultant, or at a later date established by the City under any of the following conditions:

- (a) City funding is not obtained and continued at levels sufficient to pay for Consultant's Work. The Agreement may be modified to accommodate a reduction in funds. In determining the availability of funds, City may use the biennial budget adopted or modified by the City Council.
- (b) If federal, state or City regulations or guidelines are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.
- (c) If any license or certificate required by law or regulation to be held by the Consultant to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.

6.4. Any termination of this Agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to the termination.

6.5. The City by written notice of default (including breach of contract) to the Consultant may terminate the whole or any part of this Agreement:

- (a) If the Consultant fails to provide services called for by this Agreement within the time specified or any extension of the Agreement, or
- (b) If the Consultant fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from the City, fails to correct the failures within 10 days or such longer period as the City may authorize.

6.6. Consultant may terminate this Agreement upon 30 days' written notice to City if City fails to pay Consultant pursuant to the terms of this Agreement and City fails to

cure within 30 business days after receipt of Consultant's notice, or such longer period of cure as Consultant may specify in the notice.

7. **Access to Records – Files; Confidential Information.** Contractor shall maintain all books, documents, papers and records relating to the Agreement for at least seven years following completion of the project. Contractor shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Contractor's performance. City, state and federal government, and their duly authorized representatives shall have access to the books, documents, papers and records of the Contractor which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts and transcript. Contractor agrees that all files or other documents generated or in the possession of Contractor related to Contractor's delivery of service are the property of the City and shall be available to the City upon request. Contractor understands the nature of project/projects means that Contractor may be privy to information that is confidential, proprietary or sensitive in nature, which information shall not be disclosed to any third person or entity with the consent of the City of Bend or at the City's direction, either during the term of this Agreement or after its termination. Likewise, any analysis or commentary provided by Contractor of a confidential or sensitive nature shall not be released or disclosed to any person without the consent or direction of the City.

8. **Independent Contractor; Responsibility for Taxes & Withholding.**

- 8.1. The Work to be rendered under this Agreement is that of an Independent Contractor. Contractor is not an officer, employee, or agent of the State or Department as those terms are used in ORS 30.265 of the Oregon Tort Claims Act, and Contractor is not to be considered an officer, employee or agent of the City for any purpose. Contractor shall be solely and entirely responsible for its acts and for the acts of its agents or employees during the performance of this Agreement. Contractor is an independent Contractor for purposes of the Oregon Workers' Compensation Law (ORS Chapter 656) and is solely liable for workers' compensation coverage under this Agreement. City does not have the right of direction or control of the manner in which Contractor delivers the Work under this Agreement or exercise any control over the activities of the Contractor.
- 8.2. No Agency, Partnership or Joint Venture/Independent Contractor - Neither the City or Contractor, by virtue of this Agreement, is a partner or joint venture with the other party in connection with the activities carried out under this Agreement.
- 8.3. This Agreement is not intended to entitle the Contractor nor any of its Agents to any benefits generally granted to City employees. Without limitation, but by way of illustration, the benefits which are not intended to be extended by this Agreement are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement. Contractor shall be responsible for all federal or state taxes applicable to compensation or payment paid to Contractor under this Agreement.

9. **Ownership of Work Product.** All work product of Contractor under this Agreement shall be the exclusive property of the City. Contractor waives and releases all rights relating to the use of the work under this Agreement, including any rights arising under 17 U.S.C. § 106A. Reuse of work product by City or others for purposes outside the Scope of Work shall be without liability to Contractor.

10. **Indemnification.** Contractor shall defend, indemnify, protect and hold the City, its officers, agents, volunteers and employees harmless from all claims, losses, demands, expenses, suits, fees, including attorney's fees, costs and judgments (collectively referenced as "claims") that may be asserted against the City arising out of or in any way connected with the acts or omissions of Contractor under this Agreement, except that this indemnification requirement shall not apply to claims caused by the sole negligence or willful misconduct of the City, its officials, employees, agents and volunteers. The Contractor agrees that it is not an agent of the City and is not entitled to indemnification and defense under ORS 30.285 and ORS 30.287.

11. **Insurance – Liability.**

11.1 Contractor, at Contractor's own expense, shall procure and maintain in good standing, such customary and usual liability insurance as is required to protect Contractor from claims that may arise out of result from Contractor's operations under this Agreement or for which Contractor may be legally liable. Prior to execution of this Agreement, Contractor shall provide certificates of insurance for all copies of insurance policies required under this Agreement. Liability insurance will be in an amount at least equal to the City's then current tort liability established by the Oregon Legislature, and shall name the City as additionally insured. Insuring companies or entities are subject to the City acceptance. Contractor shall be liable for all pertinent deductibles, self-insured retentions and/or self insurance, as applicable.

11.2 Contractor shall maintain in full force and effect professional liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident or occurrence, \$2,000,000 aggregate. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Agreement. Contractor shall remain fully liable for any deductible required under its professional liability errors and omissions policy if found to be negligent related to the professional services to be provided under this Agreement. Coverage must be in effect prior to the commencement of the performance of this Agreement. Contractor shall furnish proof of continuous "tail" coverage for 24 months after Agreement completion.

11.3 Contractor, and all subcontractors, shall maintain in full force and effect Worker's Compensation Insurance and Agreement Employer Liability Insurance in compliance Oregon state law.

11.4 Contractor shall maintain commercial general liability insurance with a combined single limit of at least \$1,000,000 for each claim, incident or occurrence, \$2,000,000 aggregate. The policy shall name the City of Bend, its officers, agents and employees, as an Additional Insured with respect to the Work to be provided under this Agreement.

11.5 Contractor shall notify the City 30 days prior to any material change in the Contractor's insurance covered by this section.

12. **Nondiscrimination - ADA Compliance** – Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Contractor also shall comply with the Americans with Disabilities Act (ADA) of 1990, as amended by the ADA Amendments Act (ADAAA) of 2008 and any subsequent amendments (42 U.S.C. § 12101, et seq.) (Pub No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws. Contractor agrees to comply with ADA in its employment and nondiscrimination practices, and that it shall perform its contractual obligations consistent with ADA federal requirements/regulations, state disability and accessibility law and requirements, and applicable regulations and administrative rules established pursuant to those laws.

13. **Successors and Assigns.** City and Contractor each binds itself, its successors, assigns and legal representatives to the other party to this Agreement and to the successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement. Contractor shall not assign or transfer its interests in this Agreement without written consent of City, which consent may be withheld in the City's sole, subjective discretion. The rights under this Agreement may not be transferred or assigned by operation of law, change of control or merger without the prior written consent of the City. The City may rescind this Agreement if transferred or assigned by operation of law, change of control or merger, or without the prior written consent of the City.

14. **Force Majeure.** Contractor shall not be held responsible for delay or default caused by fire, riot, acts of God and war which is beyond Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the Agreement.

15. **No Third Party Beneficiaries.** City and Contractor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

16. **Waiver.** City's failure to enforce a provision of this Agreement shall not constitute a continuing waiver, shall not constitute a relinquishment of City's right to performance in the future and shall not operate as a waiver of City's right to enforce any other provision of this Agreement.

17. **Limitation on Authority.** City retains its authority to execute all applications, Agreements and other documents relating to the Project. Contractor has no right or authority, express or implied, to commit or otherwise obligate City or any of its partners, except as permitted by the express terms of this Agreement, or as authorized in writing.

18. **Attorney Fees & Governing Law.** In the event an action, suit or proceeding, including appeals, is brought for failure to observe any of the terms of this Agreement, each

party shall be responsible for that party's own attorney fees, expenses, costs and disbursements for any the action, suit, proceeding or appeal. The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any claim, action, suit, or proceeding between City and Contractor arising from or relating to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Deschutes County, Oregon, or, if the claim must be brought in a federal forum, the United States District Court for the District of Oregon. Contractor hereby consents to *in personam* jurisdiction of said courts.

19. **ORS 279A.125 Preference for Recycled Materials.** Contractor will use where applicable, recycled materials if (a) The recycled product is available; (b) The recycled product meets applicable standards; (c) The recycled product can be substituted for a comparable non-recycled product; and (d) The recycled product's costs do not exceed the costs of non-recycled products by more than five percent (5%).

20. **Compliance with Law.** Contractor shall comply with applicable federal, state, and local laws and ordinances applicable to the work under this Agreement. This Agreement incorporates the provisions required to be in an agreement of this type by ORS 279B.200 through 279B.235 (see Exhibit C).

21. **Merger Clause.** This Agreement and attached exhibits constitute the entire Agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. The waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Contractor by signature of its authorized representative hereby acknowledges that he/she has read this Agreement/Agreement, understands it, and agrees to be bound by its terms and conditions.

22. **Notices.** All notices and demands of a legal nature that either party may be required or may desire to serve upon the other party shall be in writing and shall be served upon the other party by personal service, by facsimile transmission, E-Mail followed by mail delivery of the original of the notice, by overnight courier with proof of receipt, or by certified mail, return receipt requested, postage prepaid, addressed as follows:

City of Bend, 710 NW Wall Street, Bend, Oregon 97701
Attn: Eric King, City Manager, Phone: 541-382-3917 & Fax: 541-388-3705.
Email: eking@ci.bend.or.us

Contractor: _____

Service by mail shall be deemed complete on the date of actual delivery or three business days after being sent via certified mail. Service by facsimile transmission or E-Mail shall be deemed served upon receipt of the facsimile or E-Mail, followed by mail delivery.

23. **Severability.** If the event any of the provisions or portion of the Agreement are held to be unenforceable or invalid by any court of competent jurisdiction for any reason, the invalid or unenforceable provision shall in no way effect the validity or enforceability of the remaining provisions or portions.

24. **Counterparts.** This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.

25. **ARRA – DUNS Number and CCR Registration.** Contractor must obtain a Data Universal Numbering System (DUNS) number and maintain current registration with the Central Contractor Registration (CCR).

26. **ARRA – Conflict of Interest.** Contractor shall not give or offer any gift, loan, or other thing of value to any member of the City's governing body or employee of the City in connection with the award or performance of this Contract. The Contractor shall not rent, lease or purchase materials, supplies, or equipment, with or through any City employee or member of the City's governing body.

CITY OF BEND, OREGON

Eric King, City Manager

Date

APPROVED AS TO FORM:

City Attorney's Office

Date

CONTRACTOR NAME

Title:

Date

City Contracting & Funding Authorizations:

By:

Paul Rheault, Public Works Director
City of Bend, Oregon

Date

By:

Heather Ornelas, Transit Manager
City of Bend, Oregon

Date

By:

Gwen Chapman, Purchasing Manager
City of Bend, Oregon

Date

Contract Exhibit
Relevant Provisions Of ORS Chapter 279B

279B.220 Conditions concerning payment, contributions, liens, withholding. Every public contract shall contain a condition that the contractor shall:

- (1) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.
- (2) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.
- (3) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
- (4) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

279B.230 Condition concerning payment for medical care and providing workers' compensation.

(1) Every public contract shall contain a condition that the contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

(2) Every public contract shall contain a clause or condition that all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. [2003 c.794 §76c]

279B.235 Condition concerning hours of labor.

* * * * *

(2) An employer must give notice in writing to employees who work on a public contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

(3) In the case of contracts for personal services as described in ORS 279A.055, the contract shall contain a provision that the employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

* * * * *

(5) (a) Except as provided in subsection (4) of this section, contracts for services must contain a provision that requires that persons employed under the contracts shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020 (1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.

(b) An employer shall give notice in writing to employees who work on a contract for services, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

Contract Exhibit

FEDERAL TRANSIT ADMINISTRATION CONTRACT CLAUSES

The following clauses are included in all procurements and all contracts where federal funds are involved. The applicability of each clause is defined under the title. Vendors are required to sign certifications where applicable.

1. FLY AMERICA

Applicability: Transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation.

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

2. BUY AMERICA REQUIREMENTS

Applicability: Construction contracts and acquisition of goods or rolling stock valued at more than \$100,000.

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide 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 the FTA or the product is subject to a general waiver. General waivers are listed at 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by the Chrysler Corporation, microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)© and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (set forth below) with all bids or offers on FTA funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

CERTIFICATION REQUIREMENT FOR PROCUREMENT OF STEEL, IRON, OR MANUFACTURED PRODUCTS

Instructions: Bidders must fill in one (and only one) of the certifications below if procurement is for steel, iron, or manufactured products and is \$100,000 or more.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date_____

Signature_____

Title_____

Company Name_____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 49 U.S.C. 5323(j)(2)(B) or 5323(j)(2)(D) and 49 CFR 661.7.

Date_____

Signature_____

Title_____

Company Name_____

CERTIFICATION REQUIREMENT FOR PROCUREMENT OF BUSES, OTHER ROLLING STOCK AND ASSOCIATED EQUIPMENT

Instructions: Bidders must fill in one (and only one) of the certifications below for the procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date_____

Signature_____

Company Name_____

Title_____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B)m or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date_____

Signature_____

Company
Name_____

Title_____

3a CHARTER BUS REQUIREMENTS

Applicability: All operational service contracts

The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be “incidental,” i.e., it must not interfere with or detract from the provision of mass transportation.

3b SCHOOL BUS REQUIREMENTS

Applicability: All operational service contracts

Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

4. CARGO PREFERENCE – USE OF UNITED STATES FLAG VESSELS

Applicability: All contracts where equipment, materials, or commodities may be transported by ocean vessels

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

5. SEISMIC SAFETY

Applicability: Construction of new buildings or additions to existing buildings

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

6. ENERGY CONSERVATION

Applicability: All contracts

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

7. CLEAN WATER

Applicability: Contracts and subcontracts over \$100,000

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

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

BUS TESTING

Applicability: Acquisition of Rolling Stock

The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(C) and FTA's implementing regulation at 49 C.F.R. Part 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer that releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- 4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS

The undersigned Contractor/Manufacturer certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323© and FTA's implementing regulation at 49 C.F.R. Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 40 C.F.R. Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 C.F.R. Part 29.

Date_____

Signature_____

Company
Name_____

Title_____

8. PRE-AWARD AND POST DELIVERY AUDIT REQUIREMENTS

Applicability: Acquisition of Rolling Stock

The Contractor agrees to comply with 49 U.S.C. 5323(1) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

- 1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or non compliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly. (See certification under item #2 above).
- 2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.
- 3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS , or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

9. LOBBYING CERTIFICATION

Applicability: Bids and Contracts Exceeding \$100,000

Contractors that 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.

CERTIFICATION REGARDING LOBBYING

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

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

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government Wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et. seq.*)].

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

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

Signature of Contractor's Authorized Official _____

Print Name of Contractor's Authorized Official _____

Print Title of Contractor's Authorized Official _____

Date _____

10. ACCESS TO RECORDS AND REPORTS

Applicability: All contracts

The following access to records requirements apply to this contract:

1. Where the purchaser is not a State but a local government and is the FTA recipient or a subgrantee of the FTA recipient in accordance with 49 C.F.R. 18.36(i), the contractor agrees to provide the purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. The contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO contractor access to contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309, or 5311.
2. Where any purchaser which is the FTA recipient or a subgrantee of the FTA recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)(1) through other than competitive bidding, the contractor shall make available records related to the contract to the purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
3. The contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
4. The contractor agrees to maintain all books, records, accounts, and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
5. FTA does not require the inclusion of these requirements in subcontracts.

12. FEDERAL CHANGES

Applicability: All Contracts

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

13. BONDING REQUIREMENTS

Applicability: All construction contracts and some non-construction contracts

Bid Bond Requirements (Construction)

A certified check, cashier's check, or bid bond made payable to the City of Bend in the amount of five percent of the bid must accompany your bid. The Bid Bond must be issued by a fully qualified surety company acceptable to the City and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

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

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within 90 days after the bid opening without the written consent of the City, shall refuse or be unable to enter into this contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of the City's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefore.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by the City as provided in the first paragraph of this section (above)) shall prove inadequate to fully recompense the City for the damages occasioned by default, then the undersigned bidder agrees to indemnify the City and pay over to the City the difference between the bid security and the City's total damages, so as to make the City whole.

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

Performance and Payment Bonding Requirements (Construction)

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

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price.

2. The City 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 City may secure additional protection by directing the contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. 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 dollars if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the City 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 City's interest.

The following situations may warrant a performance bond:

1. City 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 City, 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.

When it is determined that a performance bond and payment bond is required, the amounts of the bonds will be the same as described in the construction section above.

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 City shall determine the amount of the advance payment bond necessary to protect the City.

Patent Infringement Bonds 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 City shall determine the amount of the patent indemnity to protect the City.

Warranty of the Work and Maintenance Bonds

1. The contractor warrants to the City and 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 the City, 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 City, 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 the City and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the City. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment, furnish separate Maintenance (or Guarantee) Bonds in form acceptable to the City 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).

14. CLEAN AIR

Applicability: All contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year

- (1) The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA regional office.
- (2) The contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by the FTA.

15. RECYCLED PRODUCTS

Applicability: Contracts and subcontracts for \$10,000 or more

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

16. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Applicability: Construction Contracts over \$2,000

(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 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 C.F.R. 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 C.F.R. 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, 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 labors 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 therefore 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 don-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 City 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 City 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 City 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 29 CFR part 5. This information must be submitted in a form acceptable to the City. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-0001401), 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 to the following:

1. That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5 of Regulations, 29 C.F.R. Part 5 and that such information is correct and complete;
2. That each laborer or mechanic (including each helper, apprentice, and trainee) employee 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" 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, the contractor certifies that neither it (nor he or she) not any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) if 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 the U.S. Criminal Code, 18 U.S.C. 1001.

17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Applicability: All construction contracts over \$100,000; Section 102 of the Act also applies to all turnkey, rolling stock, and operational contracts (excluding contracts for transportation services) in excess of \$100,000

(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 forty 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 forty hours in such workweek.

(2) Violation; Liability for Unpaid Wages; Liquidated Damages

In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States 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 paragraph (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 forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for Unpaid Wages and Liquidated Damages

The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

18. [RESERVED]

19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability: All Contracts

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

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

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

Applicability: All Contracts

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

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

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

21. TERMINATION

Applicability: All contracts in excess of \$10,000

a. Termination for Convenience (All contracts)

The City may terminate this contract, in whole or in part, at any time by written notice to the contractor when it is in the Government's best interest. The contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The contractor shall promptly submit its termination claim to the City to

be paid to the contractor. If the contractor has any property in its possession belonging to the City, the contractor will account for the same, and dispose of it in the manner the City directs.

b. Termination for Default [Breach or Cause] (All contracts)

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

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

c. Opportunity to Cure (All contracts)

The City in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which the cure is permitted and other appropriate conditions.

If Contractor fails to remedy to City's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract with ten (10) days after receipt by Contractor of written notice from the City setting forth the nature of said breach or default, the City shall have the right to terminate the Contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against the Contractor and its sureties for said breach or default.

d. Waivers of Remedies for any Breach

In the event that the City elects to waive its remedies for any breach by the Contractor of any covenant, term, or condition of this Contract, such waiver by the City shall not limit the City's 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 City, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the City shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service)

If the contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the City may terminate this contract for default. The City shall terminate by delivering to the contractor a Notice of Termination specifying the nature of the default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City.

g. Termination for Default (Transportation Services)

If the contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the City may terminate this contract for default. The City shall terminate by delivering to the contractor a Notice of Termination specifying the nature of default. The contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the contractor has possession of goods belonging to the City, the contractor shall, upon direction of the City, protect and preserve the goods until surrendered to the City or its agent. The contractor and the City shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City.

h. Termination for Default (Construction)

If the contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the contractors fails to

comply with any other provisions of this contract, the City may terminate this contract for default. The City shall terminate by delivering to the contractor a Notice of Termination specifying the nature of the default. In this event, the City may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The contractor and its sureties shall be liable for any damage to the City resulting from the contractor's refusal or failure to complete the work within the specified time, whether or not the contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the City in completing the work.

The contractor's right to proceed shall not be terminated nor the contractor charged with damages under this clause if:

(1) the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the contractor. Examples of such causes include: acts of God, acts of the City, acts of another contractor in the performance of a contract with the City, epidemics, quarantine restrictions, strikes, freight embargoes; and

(2) the contractor, within ten (10) days from the beginning of any delay, notifies the City in writing of the causes of delay. If in the judgment of the City, the delay is excusable, the time for completing the work shall be extended. The judgment of the City shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the contractor's right to proceed, it is determined that the contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the City.

i. Termination for Convenience or Default (Architect and Engineering)

The City may terminate this contract in whole or in part, for the City's convenience or because of the failure of the contractor to fulfill the contract obligations. The City shall terminate by delivering to the contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the contracting officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for convenience of the City, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the contractor to fulfill the contract obligations, the City may complete the work by contract or otherwise and the contractor shall be liable for any additional cost incurred by the City.

If, after termination for failure to fulfill contract obligations, it is determined that the contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City.

j. Termination for Convenience or Default (Cost-Type Contracts)

The City may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the City or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the City, or property supplied to the Contractor by the City. If the termination is for default, the City may fix a fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the City, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the City determines that the Contractor has an excusable reason for not performing, such as a strike, fire, flood, events which are not the fault of and are beyond the control of the Contractor, the City, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Applicability: Contracts and Subcontracts Over \$25,000

Definition: Contractors are required to pass this requirement on to subcontractors seeking subcontracts over \$25,000. Thus, the terms “lower tier covered participant” and “lower tier covered transaction” include both contractors and subcontractors and contracts and subcontracts over \$25,000.

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

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

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

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

23. PRIVACY ACT

Applicability: Any contract involving a system of records on behalf of the Federal Government under any contract

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 the FTA.

24. CIVIL RIGHTS REQUIREMENTS

Applicability: All Contracts

(1) Nondiscrimination

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law at 49 U.S.C. § 5332, the contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the contractor agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity

The following equal employment opportunity requirements apply to the underlying contract:

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

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

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

(3) Subcontracts

The contractor also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance provided by the FTA, modified only is necessary to identify the affected parties.

25. BREACHES AND DISPUTE RESOLUTION

Applicability: Contracts in excess of \$100,000

Disputes – Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the City (Director of Public Works). This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the City Director of Public Works. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the City Director of Public Works shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute – Unless otherwise directed by the City, 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 therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies – Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in questions between the City and the 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 State of Wisconsin.

Rights and Remedies – The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City 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.

26. PATENT AND RIGHTS IN DATA

Applicability: Research projects. Does not apply to capital or operating projects.

[This clause does not apply to this contract]

27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

Applicability: All contracts for transit operations performed by employees of a contractor recognized by FTA to be a transit operator

(1) The Contractor agrees to comply with applicable transit employee protective requirements as follows:

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

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

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and

Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

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

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Applicability: All contracts

A. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The City's overall goal for DBE participation is 3.8%. A separate contract goal has not been established for this procurement.

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

C. The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

D. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of this work no later than 30 days after the contractor's receipt of payment for that work for the City. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

E. The contractor must promptly notify the City 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 the City.

29. [RESERVED]

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

Applicability: All Contracts

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

31. DRUG AND ALCOHOL TESTING

Applicability: All operational service contracts

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Oregon, or the City of Bend to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The contractor agrees further to certify annually its compliance with Part 655 before February 1st of each year and to submit the Management Information System (MIS) reports before February 15th of each year for the previous year to the City of Bend. To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to submit for review and approval to the City before February 1st of each year a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to submit to the City for approval the selection of the certified laboratory, the substance abuse professional, the Medical Review Officer, and the use of any consortium.

EXHIBIT D

Oregon Statutory (ORS) Certifications (Must be signed and included with Proposal)

We Hereby Certify to comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. **We Certify** also that we shall comply with the Americans with Disabilities Act of 1990 (Pub L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws. **We Certify** also to nondiscrimination against any minority, women or emerging small business enterprises in obtaining any required subcontracts.

We Hereby Certify, in the performance of any contract issued from any proposal related to these documents, we will in all respects adhere to the City of Bend's policy of non-discrimination.

We Hereby Certify that we will and that our subcontractors will, acknowledging that our employers will be subject employers under the Oregon Workers' Compensation Law, comply with ORS 656.017, which requires contractors to provide all workers with compensation coverage.

We Herby Certify that we accept all the terms and conditions contained herein and in the event of a forthcoming contract containing these same terms and conditions we would agree without exception. Any exception to these terms and conditions will be made a minimum of five (5) days before the proposal deadline.

We Hereby Certify that we _____ ARE _____ ARE NOT a "Resident Bidder" as defined by ORS 279A.120. As defined in ORS 279A.120, "Resident Bidder" means a bidder that has paid unemployment taxes or income taxes in this state in the twelve calendar months immediately preceding submission of the bid, has a business address in this state, and has stated in the bid whether the bidder is a "Resident Bidder". If not a Resident Bidder as defined in ORS 279A.120, please indicate state of residence:_____.

Contractor _____
(Authorized Official)

Date _____

Exceptions to the above Certifications. The Contractor will cross out those items they cannot certify to and then list the reasons for the exception (use additional pages if necessary):

EXHIBIT E

FORM OF ASSIGNMENT

ASSIGNMENT

This Assignment agreement dated _____ 2010 is by and between the City of Bend (Bend Area Transit – a City Division), a municipality of the state of Oregon, and _____, a _____ of the state of _____ (“_____”).

WHEREAS, City of Bend (Bend Area Transit – BAT) and CONTRACTOR are parties to that certain **Agreement For Purchase of Transit Security Camera System (No. 20010-_____)** dated _____, 2010 for the purchase of **Transit Digital Security Camera System** by City of Bend/BAT from CONTRACTOR (the “Contract”); and,

WHEREAS, over the one (1) year term of the agreement, the Contract provides for the purchase of up to 40 additional Transit Bus Security DVR’s and up to 240 Cameras, and allows BAT to assign the right to purchase Optional Transit Bus Security Camera Systems to transit operators and public agencies as permitted by Federal Transit Administration guidelines; and,

WHEREAS, _____ has requested that BAT assign to _____ and BAT has consented to assign to _____, the right to purchase _____ () Optional Transit Bus Security Camera Systems pursuant to the terms and conditions of the Contract;

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the parties agree as follows:

1. BAT hereby assigns and transfers to _____ (“Assignee”), and _____ hereby accepts the assignment of, the right to purchase _____ () Optional Transit Bus Security Camera Systems under the terms and conditions of the Contract effective as of the date last appearing below.
2. BAT represents to _____ that the option to purchase Optional Transit Bus Security Camera Systems offered by CONTRACTOR and the Contract remains in effect and that there are no other agencies authorized to “piggy-back” on the above referenced Contract that would have the effect of reducing the number of Option Transit Bus Security Camera Systems available for Assignee’s purchase to less than the number specified in paragraph 1.
3. Assignee and CONTRACTOR are entitled to enforce their respective rights under the Contract referenced by this Assignment.

4. Assignee acknowledges that it must enter into a separate contract with CONTRACTOR in order to purchase the Optional Transit Bus Security Camera Systems referenced by this Assignment and that any such contract will be subject to the terms and conditions of the Contract.
5. All communications with Assignee shall be addressed as follows:

Name
Title
Public Transit Agency
Address
Phone
Fax

With Copy to: Transit Manager
Bend Area Transit
1250 NE Bear Creek Rd
Bend, OR 97702
Telephone: (541) 317-3023
Facsimile: (541) 389-7367

6. BAT shall give CONTRACTOR a copy of the fully executed Assignment.

IN WITNESS WHEREOF, this Assignment is executed on the day and year last appearing below.

ASSIGNEE:

Bend Area Transit :

Name and Title

Name and Title

Dated: _____

Dated: _____