

CITY OF ST JOSEPH

REQUEST FOR PROPOSAL

NO RFP2023-22

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Proposals Must Be Received No
Later Than

Time: 4:00PM Date: 4/6/2023

For Information Contact

Purchasing

at (816) 271-5330

This document constitutes a request for sealed bids, including prices, from qualified individuals and organizations to furnish those services and/or items as described herein. All documents included in submission are to be of public record.

Proposals must be mailed or delivered to the Division of Purchasing, 1100 Frederick Avenue Room 201, St. Joseph, MO 64501.

Transit Mowing

Please complete, sign and return this form with the proposal

Please have the Bid Name and Number on the outside of the sealed proposals.

The offeror must provide all information required in this document pursuant to the specifications attached and included herein.

The offeror hereby agrees to provide the services and/or items at the prices quoted, pursuant to the attached terms and conditions of Request for Proposal or Invitation to Bidders and Terms and Conditions of Purchase, and further agrees that when this document is countersigned by an authorized official of the City of St. Joseph, a binding contract, as defined herein, shall exist between the offeror and the City of St. Joseph.

SIGNATURE REQUIRED

Offeror's Signature: _____ Offeror's Printed Name: _____ Title : _____

Company Name: _____ Date of Proposal: _____

Mailing Address: _____ Telephone: _____

City: _____ State: _____ Zip: _____

Email Address: _____

CITY OF ST. JOSEPH
PURCHASING DIVISION
TERMS AND CONDITIONS OF REQUEST FOR PROPOSAL
OR INVITATION TO BIDDER

1. PREPARATION OF BIDS

- a. Bidder's are expected to examine the specifications, delivery schedule, bid prices, and all instructions of the Request for Proposal or Invitation to Bid. Failure to do so will be at bidder's risk. In case of a mistake in extension, the unit price(s) will govern. In case of an identified mistake in calculation the City may, but is not obligated to, correct the calculation based on the unit price submitted by the bidder.
- b. Any manufacturer's names, trade names, brand names, information, and/or catalogue numbers listed in a specification are for information and are not intended to limit competition. The bidder may offer any brand which meets or exceeds the specification for any item. If bids are based on equivalent products, indicate on the bid form the manufacturer's name and model number. The bidder shall explain in detail the reasons why the proposed equivalent will meet the specifications and not be considered an exception thereto. Bids which do not comply with these requirements are subject to rejection. Bids lacking any written indication of intent to bid on alternate brands will be received and considered in complete compliance with the specifications as listed on the bid forms.
- c. All supplies and equipment offered in a bid must be new and of current production unless the Request for Proposal or Invitation to Bidder clearly specifies that used or reconditioned supplies or equipment be offered.
- d. Firm fixed prices shall be bid and include all packing, handling, and shipping charges.
- e. Unless otherwise indicated, prices quoted shall be firm for acceptance for ninety days (90) from bid opening and for the specified contract period.

2. TAX EXEMPTION

- a. Do not bill federal tax. Certificate number 44-6000256.
Do not bill state tax. Certificate number 12493457.

3. SUBMISSION OF BIDS

- a. A bid submitted by a bidder must (1) be manually signed by the bidder on the Purchasing Division's Request for Proposal or Invitation to Bidder, (2) contain all requested information, (3) be priced as required, (4) be sealed in an envelope or container, (5) be attached to a security deposit if required, and (6) be delivered to: the Purchasing Division, 1100 Frederick Avenue, Room 201; St. Joseph, MO 64501, and officially clocked in no later than the exact time and date specified on the Request for Proposal or Invitation to Bidder.
- b. The sealed envelope or container containing a bid should be clearly marked on the outside left corner with (1) the official Price Inquiry number and (2) the official closing date and time.
- c. Submission of this bid constitutes an assignment by the bidder to the City of all rights, title, and interest in and to all causes of action it may have under the antitrust laws of the United States or the State of Missouri, which causes of action have accrued or will accrue as the result of or in relation to the particular good or services purchased or procured by it in fulfillment of any contract with the City arising from this bid.

4. MODIFICATION OR WITHDRAWAL OF BIDS

- a. Bids may be modified or withdrawn by written or telegraphic notice received prior to the official closing date and time specified. Written notice may be in the form of an email provided the email is actually received by the Purchasing Agent prior to the official closing date and time specified; any email that is not actually received, whether due to a delay in delivery, delivery to a filtering service that does not release the email, or other failure in delivery shall not be deemed to be a written notice of modification or withdrawal. A bid may also be withdrawn or modified in person by the bidder or his authorized representative provided proper identification is presented before the official closing date and time. Verbal phone requests to withdraw or modify a proposal will not be considered.

- b. After the official closing date and time, no bid may be modified or withdrawn.

5. BID OPENING

- a. Bid openings shall be public on the date and at the time specified on the bid form. It is the bidder's responsibility to assure that his bid is delivered at the proper time and place of the bid opening. Bids which for any reason are not so delivered will not be considered. Offers by facsimile, telegraph, email, or telephone will not be acceptable. Bid files may be examined during normal working hours by appointment. Bid tabulations will not be provided by telephone.

6. AWARDS

- a. Unless otherwise stated in the Price Inquiry, cash discounts for prompt payment of invoices will not be considered in the evaluation of prices. However, such discounts are encouraged to motivate prompt payment.
- b. As the best interest of the City may require, the right is reserved to make awards by item, group of items, all or none or a combination thereof; to reject any and all bids or waive any minor irregularity or technicality in bids received.
- c. Awards will be made to the bidder whose bid (1) meets the specifications and all other requirements of the Price Inquiry and (2) is the lowest and best bid, considering price, responsibility of the bidder, the best interest of the City, and all other relevant factors. When multiple bidders are equally responsible and qualified and submit equivalent bids, those bidders that are equally responsible and qualified and submit equivalent bids may be allowed to submit a subsequent lower bid price in accordance with a schedule established by the Purchasing Agent; such bid price must be submitted in a sealed envelope or container clearly marked on the outside left corner with (1) the official Price Inquiry number and (2) the closing date and time established by the Purchasing Agent; the submission may modify only the bid price.
- d. Each bid is received with the understanding that the acceptance in writing by the City of the offer to furnish any or all the materials, equipment, supplies, or services described therein shall constitute a contract between the bidder and the City; and shall bind the bidder to furnish and deliver at the price, and in accordance with the conditions of said accepted bid and detailed specifications.
- e. The City of St. Joseph is not obligated for expenditures unless funds have been encumbered by Purchase Order or Contract. The completion of the "Notice of Award" by the City is not an authorization for shipment or to proceed with services.

7. OPEN COMPETITION

- a. It is the intent and purpose of the Purchasing Division that the Price Inquiry permits free and open competition. However, it shall be the bidder's responsibility to advise the Purchasing Division if any language, requirements, or any combination thereof, inadvertently restricts or limits the requirement to a single source or otherwise prohibits the submission of a bid. The notification should be received by the Purchasing Division at least ten days prior to the Price Inquiry closing date and time. The bidder may submit notification after the bid closing providing sufficient time is permitted for a thorough review by the Purchasing Division and its decision will be final.

The City of St. Joseph is soliciting proposals from qualified vendors to furnish Lawn and Lot Care Service for St. Joseph Transit facilities.

A copy of the Request for Proposals is available at the office of the City Purchasing Agent, Room 201, City Hall, 1100 and Frederick, St. Joseph, MO 64501

SCHEDULE

RFP Advertisement	March 3, 2023
Proposals Due	April 6, 2023 4:00 p.m.
Award of Services	April 17, 2023
Start Date	May 1, 2023

GENERAL INFORMATION

1. The City of Saint Joseph, Mass Transit Division, is soliciting proposals for lawn and lot care from companies that are qualified and experienced to provide said services.
2. This request for proposals does not commit the city to pay any cost incurred in preparation of proposals or to procure or contract for services. The City may require any proposer selected to participate in negotiations and to submit additional price, technical or other revisions to their proposal as may result from negotiations. The City reserves the right to award the work to its best advantage. The City reserves the right to reject any and all proposals or to waive technical defects as it may deem desirable.
3. The proposer assumes all responsibility for compliance with federal laws, regulations and guidelines, state and local laws, statutes, and ordinances, and regulations. Mandatory Federal clauses are included in Exhibit B.

SCOPE OF SERVICES

1. Proposals shall be in accordance with all requirements of the attached sample agreement (Attachment B).
2. The successful proposer agrees to have all necessary equipment and personnel available to commence furnishing the services on May 1, 2023.

EVALUATION

1. Proposals shall be evaluated based on price (50%), qualifications to perform the services (30%), and prior similar experience (20%).
2. The City reserves the right to inspect the establishment, facilities, business reputation, and other general qualifications of any proposer and to reject any proposal, irrespective of quoted prices, if the proposer shall be determined to be lacking in any of the essentials necessary to assure acceptable standards of performance.

PROPOSAL REQUIREMENTS

1. The proposal must be signed by its duly authorized officer and provide the address, telephone, and email of the proposer.
2. Any contract awarded pursuant to this request for proposals shall be a fixed fee per service contract. Proposer shall complete Cost Proposal (Attachment A).
3. Proposers shall complete and submit the Federal Clauses in EXHIBIT B as part of the proposal for services.
4. Proposer agrees to continue the performance of said services, as provided herein, for a period of one year, with automatic renewals for an additional two years at the agreed upon price per service, provided neither the proposer nor the City provide notice of termination in accordance with the terms of the agreement.
5. Proposals shall include a description of the proposer's qualifications to perform the required services including a description of equipment, personnel, experience in performing similar work, and any other information the proposer deems pertinent.
6. Proposers shall provide three (3) customer references, including business name, contact person, telephone, and email address.
7. Proposer shall submit at least two (2) copies of the proposal, labeled "Transit Lawn Mowing" on the outside of the envelope by 4:00PM on April 6, 2023 to the following address:

City of St. Joseph
Attn: Purchasing Agent
1100 Frederick Avenue, Room 201
St. Joseph, Missouri 64501

**ATTACHMENT A
COST PROPOSAL**

For lawn and lot care provided to St. Joseph Transit, under the terms of the attached proposal, the price will be:

Location	Price Per Service
St. Joseph Transit Administration Facility	\$
Angelique Bus Station	\$
HyVee Bus Station	\$

**ATTACHMENT B
LAWN AND LOT CARE SERVICES AGREEMENT**

This Lawn and Lot Care Services Agreement (hereinafter, "Agreement") is entered into on this ____ day of _____, 20__, between the City of St. Joseph, Missouri (hereinafter the "City") and _____ (hereinafter "Contractor") for the purpose of providing lawn and lot care services at the locations identified herein.

Section 1. Property Subject to this Agreement

The following areas (hereinafter, the "Subject Property") are the subject property of this Agreement:

- A. St. Joseph Transit Administration Facility, 702 South 5th Street:
 - 1. All grass areas within the boundaries of an area beginning at the southwest corner of the intersection of 5th Street and Messanie Street, thence approximately two hundred ten feet (210') west to the fence bordering the storage facility, thence approximately five hundred twenty-five feet (525') south to the edge of the property (tree line), thence approximately two hundred ten feet (210') east to 5th Street, thence approximately five hundred twenty-five feet (525') north to the point of beginning at the southwest corner of the intersection of 5th Street and Messanie Street.
 - 2. Curbs and sidewalks along the north and east sides of the above-described area.

- B. Angelique Bus Station, 6th Street and Angelique Street:
 - 1. All grass areas within the boundaries of the area beginning at the northwest corner of the intersection of 7th Street and Angelique Street, thence approximately two hundred eighty-five feet (285') west to 6th Street, thence approximately one hundred thirty feet (130') north to the open parking area, thence approximately two hundred eighty-five feet (285') east to 7th Street, thence approximately one hundred thirty feet (130') south to the point of beginning at the northwest corner of the intersection of 7th Street and Angelique Street. This includes all grass areas on both sides of walls within the area.
 - 2. Curbs and sidewalks along the perimeter of the above-described area.

- C. HyVee Bus Station: 201 N. Belt Highway:
 - 1. All grass at the bus station located in front of HyVee store, 201 N. Belt Highway.

Maps showing all areas to be maintained are included in Exhibit "A".

Section 2. Scope of Work

Using its own labor, materials, and equipment, Contractor shall perform the following services (hereinafter, the "Services") at the intervals required by this Agreement:

- A. Contractor will mow or otherwise cut the grass in all grass-covered areas of the Subject Property to a height specified by the City utilizing a riding-type lawn mower or tractor with a fine finish cut or, if portions of such areas cannot be mowed or otherwise cut using a riding-type lawn mower or tractor, such areas shall be cut with a push-type lawn mower, trimmer, or other tool necessary to complete cutting of all grass-covered areas.

- B. Contractor shall remove substantially all clippings and other debris from the sidewalks of the grass covered areas following each mowing or cutting of the Subject Property.
- C. Contractor shall remove all weeds and other natural vegetation from curbs, sidewalks, and other non-driving hard surfaces of the Subject Property.

Section 3. Completion of Services

- A. Frequency of Services. Beginning on approximately April 1st and continuing through October 31st of each year during which this Agreement is in effect, Contractor shall complete the Services at each of the areas that constitute the Subject Property approximately every seventh day unless otherwise directed by the City. Notwithstanding the foregoing, however, Contractor shall delay or refrain from performing the Services when directed by the City or when such Services are unnecessary due to lack of growth.
- B. Unscheduled Services. When directed by the City to complete the Services within the Subject Property, Contractor shall complete such Services. Such Services shall be completed within twenty-four (24) hours of the City's direction to complete the Services.

Section 4. Payment and Invoices

- A. Payment Schedule. Contractor will be entitled to payment for full completion of Services at the respective locations that constitute the Subject Property. Payment for such completion of Services shall be in the amounts set forth below:
 - 1. St. Joseph Transit Administration Facility: _____ Dollars (\$ __.00).
 - 2. Angelique Bus Station: _____ Dollars (\$ __.00).
 - 3. HyVee Bus Station: _____ Dollars (\$ __.00).
- B. Invoices. Upon completion of Services, and in no event more than ten (10) days following such completion, Contractor shall submit an invoice to the City identifying the following: (1) Contractor, (2) the Services for which payment is sought, (3) the date of completion of Services for which payment is sought, (4) total invoice amount, (5) the address to which payment should be mailed, and (6) any other information reasonably requested or required by the City to identify the work performed by Contractor and to process and issue payment for such work. Such invoices shall be submitted to the following: St. Joseph Transit, 702 South 5th Street, St. Joseph, Missouri 64501.
- C. Payment of Invoices. Within thirty (30) days of receipt of a proper invoice for properly completed and undisputed Services, the City shall submit payment to Contractor.
- D. No Guaranteed Payment. Contractor shall not be entitled to payment of any amount pursuant to this Agreement other than amount owed for Services actually performed.

Section 5. Personnel

Contractor is responsible for providing competent equipment operators and personnel for performance of the Services. Contractor must provide the City with the names and addresses of all persons performing the Services for Contractor. Contractor must keep this information current during the term of the Agreement. At no time will Contractor or the personnel completing the Services on behalf of Contractor be considered employees of the City. Contractor shall not charge the City any additional rate for labor, equipment, or materials as such charges will be deemed included in the prices stated herein.

Section 6. Indemnification

- A. Contractor shall indemnify and hold harmless the City and its consultants, officers, agents, and employees from and against claims, damages, losses, or expenses, including, but not limited to, reasonable attorneys' fees, arising out of or resulting from the negligent performance of Contractor's services hereunder regardless of whether or not such claim, damage, loss, or expense is caused or is alleged to be caused in part by the negligence of a party indemnified hereunder. The above-said right of indemnity shall be in addition to other rights of indemnity that the City may possess.
- B. The indemnification obligation under this section shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for Contractor under workers' or workmen's compensation acts, disability payment acts, or other employee benefit acts.
- C. All insurance required hereunder shall provide that the insurer's cost of providing the insured(s) a defense and appeal, including attorneys' fees, shall be supplementary and shall not be included as part of the policy limits, but shall remain the insurer's separate responsibility. Contractor shall cause its insurance carriers to waive all rights of subrogation against the City and its officers, employees, and agents.

Section 7. Insurance

Contractor shall maintain in full force and effect throughout the term of this Agreement general liability insurance covering bodily injury liability and property damage in the amount of not less than One Million Dollars (\$1,000,000.00). Contractor shall maintain automobile insurance for all owned, hired or non-owned, but used for Services, vehicles for combined single limit bodily injury and property damage per accident in an amount not less than One Hundred Thousand Dollars (\$100,000.00). Contractor shall further provide the City with evidence of insurance coverage for Worker's Compensation in accordance with the requirements of Missouri statutes and regulations relating to Worker's Compensation insurance coverage, if applicable. The City shall be named as an additional insured on said insurance policies described herein. A certificate of such policy or policies of insurance shall be furnished to the City prior to the execution of this Agreement. The City shall receive at least ten (10) days' written notice prior to the cancellation of any insurance.

Section 8. Performance Bond

In order to guarantee that the full and faithful performance of provisions contained in this Agreement, Contractor shall furnish a bond or its equivalent to the City in such form and terms as may be provided by the City in the sum of One Thousand Dollars (\$1,000.00).

Section 9. Term and Termination

- A. Term. This Agreement shall become effective on the date and year first above written, and shall continue in full force and effect for a period of one (1) year. Thereafter, this Agreement will be extended for up to two (2) additional one (1) year terms on each anniversary of the effective date up to a total of three years, unless within ninety (90) days of an extension, but not less than thirty (30) days before an extension, either party notifies the other of its intent to terminate this Agreement upon expiration of the then-current term..
- B. Termination. Notwithstanding the term stated above, this City may terminate this Agreement at any time and for any reason, or for no reason, upon providing notice of such termination. In the event of such termination, Contractor's sole remedy shall be payment for Services performed prior to termination.

Section 10. Employment of Unauthorized Aliens Prohibited

Contractor shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri. As a condition for the award of this Agreement, Contractor shall affirm, by sworn affidavit and provision of documentation, its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the services provided pursuant to this Agreement. Contractor shall also affirm, by sworn affidavit, that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

Contractor agrees to abide by any and all rules promulgated by the attorney general that are designed to implement R.S.Mo. Sections 285.525 – 285.555.

Section 11. Non-Exclusivity

The parties agree the City may contract with other parties for performance of Services.

Section 12. Notices

Notices required or allowed pursuant to this Agreement shall be sent to the following:

If to the City: St. Joseph Transit
702 South 5th Street
St. Joseph, Missouri 64501

with a copy to: City of St. Joseph
Department of Public Works and Transportation
1100 Frederick Avenue, Room 204
St. Joseph, Missouri 64501

If to Contractor: _____

Each party's address may be changed by written notice to the other party. Each notice, demand, request, or other communication transmitted in the manner described above shall be deemed sufficiently given, served, sent, and received for all purposes at such time as it is received by the addressee.

Section 13. Compliance with Ordinances, Laws, and Federal Transit Administration Clauses

- A. Compliance with Ordinances and Laws. Contractor represents that it will strictly comply with all applicable national, federal, state, municipal, and local laws, statutes, ordinances, regulations, codes, orders, requirements, interpretations, and all revisions or amendments thereto and with any other regulations or other requirements of any other governing body having jurisdiction over the Services. Such compliance shall include the requirement to obtain a business license from the City.

- B. Compliance with Federal Transit Administration Clauses. Contractor agrees to comply with the Federal Transit Administration Clauses listed in the "Federal Transit Administration Clauses" attached hereto as Exhibit "B," as such clauses may be updated.

Section 14. Miscellaneous

- A. Venue and Jurisdiction. In the event of any dispute or controversy between the parties relating to this Agreement, each party agrees that the Circuit Court of Buchanan County, Missouri shall have exclusive jurisdiction, and provide the sole venue, to determine the issues. Should the City be required to institute legal action to enforce any of its rights set forth in this Agreement then the City shall be entitled to reimbursement for all reasonable attorneys' fees and costs incurred as determined by the court in any such action.

- B. Severability and Modification. If any provision of this Agreement is determined to be invalid or unenforceable, that determination will not affect the other provisions of this Agreement, which will be construed in all respects as if the invalid or unenforceable provision was omitted. No extension, modification, or amendment of this Agreement will be effective unless it is described in writing and signed by the parties.

- C. Headings. Headings are for convenience only and must not be deemed to be part of the Agreement.

- D. Assignment. Contractor may not assign its rights under this Agreement without the written consent of the City.

- E. Direction. The abilities to direct Contractor's performance, as described herein, shall be the abilities of the City Manager, the Transit General Manager, or either of their designees.

IN WITNESS WHEREOF, the parties hereto agree and set their hands on the date set forth above.

CITY OF ST. JOSEPH, MISSOURI (“CITY”) _____ (“CONTRACTOR”)

By: _____
Bryan Carter, City Manager

By: _____

Title: _____

ATTEST:

Paula Heyde, City Clerk

APPROVED AS TO FORM:

City Attorney

SAMPLE

EXHIBIT "A"

Lawn & Lot Care areas are outlined in red.

St. Joseph Transit Administration Facility & Angelique Bus Station



HyVee Bus Station

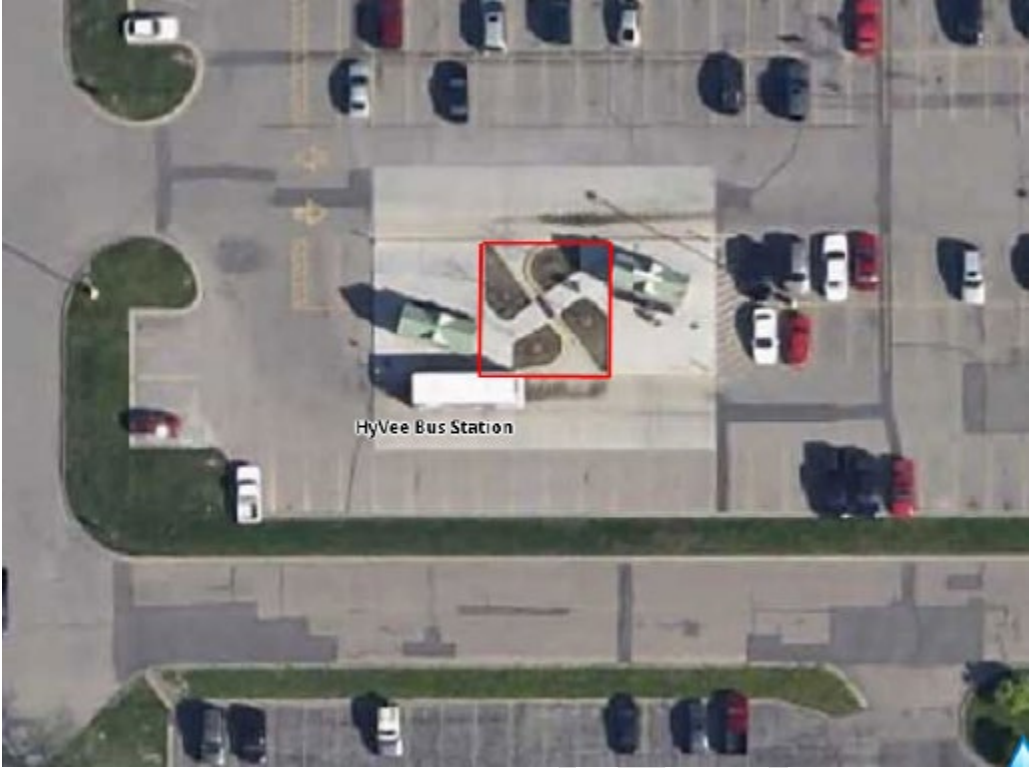


EXHIBIT B
Federal Transit Administration Clauses

Federal Clauses

No Federal Government Obligation to Third Parties.

The Recipient 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 Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the sub Contractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts

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 U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, 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.

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. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

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

Access to Third Party Contract Records

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

EXHIBIT B
Federal Transit Administration Clauses

- claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its Contractor s to inspect and audit records and information related to performance of this contract as reasonably may be required.
 - d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its Contractor s access to the sites of performance under this contract as reasonably may be required.
-

Changes to Federal Requirements

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

Termination

Termination for Convenience

The CITY OF ST. JOSEPH may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the CITY OF ST. JOSEPH'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 OF ST. JOSEPH to be paid the Potential Bidder. If the Contractor has any property in its possession belonging to THE CITY OF ST. JOSEPH, the Contractor will account for the same, and dispose of it in the manner THE CITY OF ST. JOSEPH directs.

Termination for Default

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 OF ST. JOSEPH 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 be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the CITY OF ST. JOSEPH 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 are beyond the control of the Potential Bidder, the CITY OF ST. JOSEPH, 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.

Opportunity to Cure

The CITY OF ST. JOSEPH, 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 cure is permitted and other appropriate conditions

If Contractor fails to remedy to THE CITY OF ST. JOSEPH's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor

EXHIBIT B

Federal Transit Administration Clauses

of written notice from THE CITY OF ST. JOSEPH setting forth the nature of said breach or default, THE CITY OF ST. JOSEPH shall have the right to terminate the contract without any further obligation to Potential Bidder. Any such termination for default shall not in any way operate to preclude THE CITY OF ST. JOSEPH from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach

In the event that THE CITY OF ST. JOSEPH elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by THE CITY OF ST. JOSEPH shall not limit THE CITY OF ST. JOSEPH's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

Termination for Default

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, THE CITY OF ST. JOSEPH may terminate this contract for default. The CITY OF ST. JOSEPH shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the CITY OF ST. JOSEPH 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 OF ST. JOSEPH resulting from the Potential Bidder's refusal or failure to complete the work within specified time, whether or not the Potential Bidder's right to proceed with the work is terminated. This liability includes any increased costs incurred by the CITY OF ST. JOSEPH in completing the work.

The Potential Bidder's right to proceed shall not be terminated nor shall the Contractor be 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 Potential Bidder. Examples of such causes include: acts of God, acts of THE CITY OF ST. JOSEPH, acts of another Contractor in the performance of a contract with THE CITY OF ST. JOSEPH, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Potential Bidder, within [10] days from the beginning of any delay, notifies THE CITY OF ST. JOSEPH in writing of the causes of delay. If, in the judgment of THE CITY OF ST. JOSEPH, the delay is excusable, the time for completing the work shall be extended. The judgment of THE CITY OF ST. JOSEPH shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.

If, after termination of the Potential Bidder'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 OF ST. JOSEPH.

Civil Rights and Equal Opportunity

The CITY OF ST. JOSEPH is an Equal Opportunity Employer. As such, the CITY OF ST. JOSEPH agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the CITY OF ST. JOSEPH agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

EXHIBIT B Federal Transit Administration Clauses

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

1. **Nondiscrimination.** In accordance with 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, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. 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, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, 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.
4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Disadvantage Business Enterprise (DBE)

The Potential Bidder, sub recipient or sub 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 C.F.R. parts 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient, deems appropriate, which may include, but is not limited to:

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

EXHIBIT B

Federal Transit Administration Clauses

DBE Participation

For the purpose of this Contract, the CITY OF ST. JOSEPH will accept only DBE's who are:

1. Certified, at the time of bid opening or proposal evaluation, by the [*certifying the City of St. Joseph or the Unified Certification Program (UCP)*]; or
2. An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an the City of St. Joseph whose DBE certification process has received FTA approval; or
3. certified by another the City of St. Joseph approved by the CITY OF ST. JOSEPH.

DBE Participation Goal

The DBE participation goal for this Contract is set at %. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling **not less than** % of the total Contract price. Failure to meet the stated goal at the time of proposal submission **may** render the Bidder/Offer or non-responsive.

Proposed Submission

Each Bidder/Offeror, as part of its submission, shall supply the following information:

1. A completed **DBE Utilization Form** (see below) that indicates the percentage and dollar value of the total bid/contract amount to be supplied by Disadvantaged Business Enterprises under this Contract.
2. A list of those qualified DBE's with whom the Bidder/Offeror intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the **DBE Participation Schedule** (see below). No work shall be included in the Schedule that the Bidder/Offeror has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Offeror may not deviate from the DBE Participation Schedule submitted in response to the bid. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by the CITY OF ST. JOSEPH.
3. An original **DBE Letter of Intent** (see below) from each DBE listed in the **DBE Participation Schedule**.
4. An original **DBE Affidavit** (see below) from each DBE stating that there has not been any change in its status since the date of its last certification.

Good Faith Efforts

If the Bidder/Offeror is unable to meet the goal set forth above (DBE Participation Goal), the CITY OF ST. JOSEPH will consider the Bidder/Offeror's documented good faith efforts to meet the goal in determining responsiveness. The types of actions that the CITY OF ST. JOSEPH will consider as part of the Bidder/Offeror's good faith efforts include, but are not limited to, the following:

1. Documented communication with the CITY OF ST. JOSEPH's DBE Coordinator (questions of IFB or RFP requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);
2. Pre-bid meeting attendance. At the pre-bid meeting, the CITY OF ST. JOSEPH generally informs potential Bidder/Offeror's of DBE subcontracting opportunities;

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Federal Transit Administration Clauses

3. The Bidder/Offeror's own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation;
4. Written notification to DBE's encouraging participation in the proposed Contract; and
5. Efforts made to identify specific portions of the work that might be performed by DBE's.

The Bidder/Offeror shall provide the following details, at a minimum, of the specific efforts it made to negotiate in good faith with DBE's for elements of the Contract:

1. The names, addresses, and telephone numbers of DBE's that were contacted;
2. A description of the information provided to targeted DBE's regarding the specifications and bid proposals for portions of the work;
3. Efforts made to assist DBE's contacted in obtaining bonding or insurance required by the Bidder or the Authority.

Further, the documentation of good faith efforts must include copies of each DBE and non-DBE sub Contractor quote submitted when a non-DBE sub Contractor was selected over a DBE for work on the contract. 49 C.F.R. § 26.53(b) (2) (VI). In determining whether a Bidder has made good faith efforts, the Authority may take into account the performance of other Bidders in meeting the Contract goals. For example, if the apparent successful Bidder failed to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, the Authority may view this as evidence of the Bidder having made good faith efforts.

Administrative Reconsideration

Within five (5) business days of being informed by the CITY OF ST. JOSEPH that it is not responsive or responsible because it has not documented sufficient good faith efforts, the Bidder/Offeror may request administrative reconsideration. The Bidder should make this request in writing to the CITY OF ST. JOSEPH's [*Contact Name*]. The [*Contact Name*] will forward the Bidder/Offeror's request to a reconsideration official who will not have played any role in the original determination that the Bidder/Offeror did not document sufficient good faith efforts.

As part of this reconsideration, the Bidder/Offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Offeror will have the opportunity to meet in person with the assigned reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The CITY OF ST. JOSEPH will send the Bidder/Offeror a written decision on its reconsideration, explaining the basis for finding that the Bidder/Offeror did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Termination of DBE Sub Contractor

The Contractor shall not terminate the DBE sub Contractor (s) listed in the **DBE Participation Schedule** (see below) without the CITY OF ST. JOSEPH's prior written consent. The CITY OF ST. JOSEPH may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE sub Contractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE sub Contractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE sub Contractor to substitute for the original DBE and immediately notify the CITY OF ST. JOSEPH in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE

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to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement. Failure to comply with these requirements will be in accordance with Section 8 below (Sanctions for Violations).

Continued Compliance

The CITY OF ST. JOSEPH shall monitor the Potential Bidder's DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, **it will be the responsibility of the Contractor to submit quarterly written reports to the CITY OF ST. JOSEPH that summarize the total DBE value for this Contract.** These reports shall provide the following details:

- DBE utilization established for the Contract;
- Total value of expenditures with DBE firms for the quarter;
- The value of expenditures with each DBE firm for the quarter by race and gender;
- Total value of expenditures with DBE firms from inception of the Contract; and
- The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to the DBE Coordinator with copies provided to the [Name1] and [Name2]. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder/Offeror shall permit:

- The CITY OF ST. JOSEPH to have access to necessary records to examine information as the CITY OF ST. JOSEPH deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract.
- The authorized representative(s) of the CITY OF ST. JOSEPH, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.
- All data/record(s) pertaining to DBE shall be maintained as stated in Section [insert reference to record keeping requirements for the Project.]

Sanctions for Violations

If at any time the CITY OF ST. JOSEPH has reason to believe that the Contractor is in violation of its obligations under this Agreement or has otherwise failed to comply with terms of this Section, the CITY OF ST. JOSEPH may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

- Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and
- Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.

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DBE Utilization Form

The undersigned Bidder/Offeror has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):

_____ The Bidder/Offer is committed to a minimum of _____% DBE utilization on this contract.

_____ The Bidder/Offeror (if unable to meet the DBE goal of %) is committed to a minimum of _____% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

DBE Participation Schedule

The Bidder/Offeror shall complete the following information for all DBE's participating in the contract that comprises the DBE Utilization percent stated in the DBE Utilization Form. The Bidder/Offeror shall also furnish the name and telephone number of the appropriate contact person should the Authority have any questions in relation to the information furnished herein.

DBE IDENTIFICATION AND INFORMATION FORM

Name and Address	Contact Name and Telephone Number	Participation Percent (Of Total Contract Value)	Description Of Work To Be Performed	Race and Gender of Firm

Incorporation of FTA Terms

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

Energy Conservation

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.
