

# CITY OF ST JOSEPH

## REQUEST FOR PROPOSAL

NO RFP2023-29

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Proposals Must Be Received No  
Later Than

Time: 4:00PM Date: 6/5/2023

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.

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

## Transit Worker's Compensation Insurance

**This form must be completed, signed and returned 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, Missouri (hereinafter "City") is soliciting proposals from qualified vendors to furnish Worker's Compensation Insurance for the employees of City of St. Joseph-Mass Transit Division.

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

### **PROPOSAL SCHEDULE**

RFP Advertisement	May 5, 2023
Proposals Due	June 5, 2023
Award of Services	June 26, 2023
Effective Date of Coverage	July 1, 2023

### **GENERAL INFORMATION**

Proposals will be accepted only from insurance companies having a policyholder's rating and financial rating acceptable to the City. The City prefers policies with a "Best's" Rating of A- or above. Un-rated companies or companies with a rating of B+ may be acceptable; however, proposers of such companies must provide details of financial condition and reinsurance arrangements.

All contracts between the City and the carrier must state that rates cannot be changed except as agreed upon between the City and the carrier. Written notice must be provided at least 120 days in advance of cancellation, material change in coverage, or change in rates. All policies of insurance are to be non-assessable.

Anyone submitting a proposal is required to examine carefully this request for proposals specifications. No warranty is made or implied as to the information contained in these specifications. No oral interpretation will be made to any proposer as to the meaning of the RFP. Any oral communication will be considered unofficial and non-binding on the City. Requests for interpretation must be made in writing to the reference contact listed in this document.

Policy must be in effect July 1, 2023. An insurance binder must be issued to the City, the named insured being City of St. Joseph-Mass Transit Division, prior to the effective date of the policy. All complete policies must be delivered within thirty (30) days of the effective date of the policy.

This request for proposal does not commit the City to pay any cost incurred in preparation of proposals to this request 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. Neither the commencement nor cessation of negotiations shall constitute rejection of the proposal or a counter offer on the part of the City. The City reserves the right to award the insurance coverage 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. All proposals shall be deemed final, conclusive and irrevocable. No proposal shall be subject to correction or amendment for any error or miscalculation. No proposal shall be withdrawn without the consent of the City.

Proposers are required to comply with all applicable Federal clauses (Attachment A).

### **SCOPE OF SERVICES**

The selected company will be responsible for providing fully insured, guaranteed cost Workers Compensation insurance program with no deductible. Workers Compensation insurance has previously been provided through a management contract with First Transit.

## **INSURANCE PLAN SPECIFICATIONS**

The City of St Joseph Mass Transit Division is responsible for providing bus service to the residents of St Joseph MO. All covered personnel are employees of St Joseph Transit, Inc. and all Operators and Maintenance workers are members of the Amalgamated Transit Union.

All employees must be covered.

### Current Staffing:

Full Time Bus Operators:	34
Part Time Bus Operators:	4
Full Time Mechanics:	3
Full Time Hostlers (Utility)	3
Office Staff:	<u>8</u>

Current Staffing 52

### Optimal Staffing Levels:

Full Time Bus Operators:	40
Part Time Bus Operators:	4
Full Time Mechanics:	3
Full Time Hostlers (Utility)	4
Office Staff:	<u>9</u>

Optimal Staffing 60

Total payroll for CY22 was \$2,423,702

St Joseph Transit, Inc complies with the FTA regulations requiring pre-employment and random drug and alcohol testing. Additionally, all CDL holders are required to pass a DOT physical.

St Joseph Transit, Inc contracts with Concentra to provide all physicals, drug and alcohol testing and preliminary Worker's Compensation claims.

A detailed employee census is available upon request.

3 year workers compensation loss run is attached.

## **PROPOSAL REQUIREMENTS**

Describe who will be responsible for maintaining the Worker's Compensation Program and what facilities will be required for initial claim.

Describe account management services, including functions available electronically. Identify the representative who will be assigned to the account.

Provide an organization chart and financial summary of the organization, including Best rating.

Provide references for three similar accounts including company name, contact name, street address, telephone number, and email address.

Include **signed** copy of Federal clauses.

Two (2) copies of the proposal must be submitted in a sealed envelope to the following address, by **Monday, June 5, 2023 at 4:00pm**:

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

Please include the Bid (Proposal) Name and Number on the outside of the sealed envelope.

Criteria:												
Gallgher Basset only												
WC claims												
Accident_date between '1-APR-2020' and '31-MAR-2023'-- last 36 months												
Location 55892												
MAJOR_C	MINOR_CC	JURISDICT	LOC_CD_L	LOC_CD_L	CLMT_NA	CAUSE_DE	NATURE_I	PART_DES	ACCIDENT_DESCRIPTION	PAID	OUTSTANDING	INCURRED
WC	IND	MO	55892	FT	WHITEHEA	Motor Vel	Back Pain	Soft Tissu	EE BUS WAS DRIVING EAST	14727.53	0	14727.53
WC	IND	MO	55892	FT	SOLLARS J	Strain or I	Torn Ligan	Shoulder	DRIVER REACHED FOR SHO	8767.23	0	8767.23
WC	IND	MO	55892	FT	PRESTON	Motor Vel	Back Pain	Soft Tissu	EMPLOYEE WAS DRIVING A	3181.63	0	3181.63
WC	MED	MO	55892	FT	VANOOTE	Strain or I	Back Pain	Shoulder	WENT TO PULL DOWN SIDE	2241.86	0	2241.86
WC	MED	MO	55892	FT	THOMPSC	FALL/SLIP	Back Pain	Back, Low	EMPLOYEE WAS SITTING ON	488.47	0	488.47
WC	IND	MO	55892	FT	STEELE HE	Motor Vel	Back Pain	Shoulder	DRIVER WAS STANDING ON	3156.76	0	3156.76
WC	IND	MO	55892	FT	PAYNE RIC	FALL/SLIP	Torn Ligan	Knee - Rig	THE EE WAS EXITING THE VI	44384.25	14591.75	58976
WC	IND	MO	55892	FT	POST MIC	Motor Vel	Back Pain	Back, Low	VEHICULAR ACCIDENT.EMP	489.84	4410.16	4900

# 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.

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## **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.

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## **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

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.
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### **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

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### **Termination**

#### **Termination for Convenience (General Provision)**

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 [Breach or Cause] (General Provision)**

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 (General Provision)**

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



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 Convenience (Professional or Transit Service Contracts)**

The CITY OF ST. JOSEPH, by written notice, may terminate this contract, in whole or in part, when it is in the CITY OF ST. JOSEPH's interest. If this contract is terminated, the CITY OF ST. JOSEPH shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

#### **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 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. 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 OF ST. JOSEPH.

#### **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 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 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 THE CITY OF ST. JOSEPH goods, the Contractor shall, upon direction of the CITY OF ST. JOSEPH, protect and preserve the goods until surrendered to the CITY OF ST. JOSEPH or its agent. The Contractor and THE CITY OF ST. JOSEPH 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 OF ST. JOSEPH.

#### **Termination for Default (Construction)**

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.

#### **Termination for Convenience or Default (Architect and Engineering)**

The CITY OF ST. JOSEPH may terminate this contract in whole or in part, for the CITY OF ST. JOSEPH's convenience or because of the failure of the Contractor to fulfill the contract obligations. The CITY OF ST. JOSEPH 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 CITY OF ST. JOSEPH's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. THE CITY OF ST. JOSEPH has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the CITY OF ST. JOSEPH, the CITY OF ST. JOSEPH's 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 OF ST. JOSEPH may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the CITY OF ST. JOSEPH.

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 OF ST. JOSEPH.

#### **Termination for Convenience or Default (Cost-Type Contracts)**

The CITY OF ST. JOSEPH may terminate this contract, or any portion of it, by serving a Notice of Termination on the Potential Bidder. The notice shall state whether the termination is for convenience of THE CITY OF ST. JOSEPH or for the default of the Potential Bidder. 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 OF ST. JOSEPH, or property supplied to the Contractor by the CITY OF ST. JOSEPH. If the termination is for default, the CITY OF ST. JOSEPH may fix the 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 OF ST. JOSEPH and the parties shall negotiate the termination settlement to be paid the Potential Bidder.

If the termination is for the convenience of THE CITY OF ST. JOSEPH, 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 OF ST. JOSEPH determines that the Contractor has an excusable reason for not performing, the CITY OF ST. JOSEPH, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

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#### **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.

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).

#### **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;
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 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 [The City of St. Joseph Name1] and [The City of St. Joseph 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.

### **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

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**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.

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**Debarment, Suspension, Ineligibility and Voluntary Exclusion**

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

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

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

The certification in this clause is a material representation of fact relied upon by the CITY OF ST. JOSEPH. If it is later determined by the CITY OF ST. JOSEPH that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the CITY OF ST. JOSEPH, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. parts 180, subpart C, as supplemented by 2 C.F.R. parts 1200, while this offer is valid and throughout the period of any



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

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### **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.

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### **Recycled/Recovered Materials**

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

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### **Conformance with National ITS Architecture**

The Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards ITS projects in accordance with the requirements contained in this part. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR part 613 and 621).

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### **ADA Access**

49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private public and private entities. Third party Contractor s must comply with their responsibilities under Titles I thru V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies. The following clauses should be included for the appropriate procurement action.

1. Rolling Stock Accessibility: Rolling stock must comply with the accessibility requirements of DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37, and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38. Vehicles

- acquired (with limited exceptions) should be accessible to and usable by individuals with disabilities, including individuals using wheelchairs;
2. Purchased Transportation Services Accessibility. A third party Contractor providing public transportation services must operate its services in compliance with 42 U.S.C. Sections 12101 et seq. and DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” using facilities and equipment that comply with 49 CFR Part 37; and Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38. Private entities must comply with the requirements of 49 CFR Part 37 applicable to public entities with which they contract to provide public transportation services. MART advises its third party Contractor s operating public transportation services to review the requirements for public entities in this context which include but are not limited to:
    - a. Complementary Paratransit Service. Requirements that public entities providing fixed-route service provide complementary paratransit service to individuals with disabilities who cannot use the fixed-route service.
    - b. Equal Opportunity. Requirements for compliance with service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems and services
  3. Design and Construction Accessibility. Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 et seq. and DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37; and Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38. Notably, DOT incorporated by reference the ATBCB’s “Americans with Disabilities Act Accessibility Guidelines” (ADAAG), revised July 2004, which include accessibility guidelines for buildings and facilities, and are incorporated into Appendix A to 49 CFR Part 37. DOT also added specific provisions to Appendix A modifying the ADAAG, with the result that buildings and facilities must comply with both the ADAAG and amendments thereto in Appendix A to 49 CFR Part 37.

Information obtained from FTA’s Best Practice Manual – October 2016

<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/funding/procurement/8286/fta-best-practices-procurement-and-lessons-learned-manual-2016.pdf>

### **Contract Work Hours and Safety Standards for Awards Not Involving Construction**

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.

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

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

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

### **Transit Employee Protective Arrangements**

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

The Contractor agrees:

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

### **LOBBYING RESTRICTIONS**

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an the City of St. Joseph , a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any the City of St. Joseph , a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

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

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Signature of Potential Bidder’s Authorized Official

\_\_\_\_\_  
Name and Title of Potential Bidder's Authorized Official

\_\_\_\_\_  
Date

## **VIOLATION AND BREACH OF CONTRACT**

Rights and Remedies of the AGENCY. The AGENCY shall have the following rights in the event that the AGENCY deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

Rights and Remedies of Contractor. Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the AGENCY, the Contractor expressly agrees that no default, act or omission of the AGENCY shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the AGENCY directs Contractor to do so) or to suspend or abandon performance.

Remedies. Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the AGENCY will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before the AGENCY takes action contemplated herein, the AGENCY will provide the Contractor with sixty (60) days written notice that the AGENCY considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

Disputes. The AGENCY and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the AGENCY and the Contractor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the AGENCY's direction or decisions made thereof.

Performance during Dispute. Unless otherwise directed by AGENCY, 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 its employees, agents or others for whose acts it 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 question between the AGENCY 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 in which the AGENCY is located.

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 AGENCY 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.