

**Hill Country Transit District**

## **Request For Proposals (RFP)**

**Auditing Services – September, 2023**

NOTICE OF REQUEST FOR PROPOSALS  
HILL COUNTRY TRANSIT DISTRICT  
AUDIT SERVICES

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Hill Country Transit District (hereinafter referred to as HCTD) is seeking proposals from qualified firms to conduct the annual financial audit for Calendar Years 2022, 2023 and 2024, with the option to extend for two years. The audit will encompass the general-purpose financial statements, combining statements, and other schedules for the calendar year ending December 31, 2022. The audit is to be performed in accordance with auditing standards generally accepted in the United States of America, and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of The United States, and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*.

Copies of the RFP will be available at the address listed below on or after **August 18, 2022** and may be obtained by calling 325-372-4677.

HCTD hereby notifies all Contractors that it will affirmatively assure that in regard to all contracts entered into pursuant to this advertisement, Disadvantaged Business Enterprises will be afforded full opportunity to submit proposals. Contractors will not be discriminated against on the ground of race, color, sex, disability, age, or national origin in considering an award.

HCTD reserves the right to reject any and all proposals.

Proposals will be accepted until **4:00 p.m. September 22, 2022**, at the address below. Facsimile or e-mail submittals will not be accepted.

Hill Country Transit District  
Attn: Raymond Suarez, Interim General Manager  
P.O. Box 217 (mailing)  
906 S. High St. (delivery)  
San Saba, Texas 76877

## **SCOPE OF WORK, TERMS AND CONDITIONS**

### **1. CONTRACT**

Submission of a proposal constitutes an offer to perform the work specified and to be bound by the terms contained or referenced herein. Upon acceptance of the offer, and upon award of the Contract to the successful offeror (if any), this procurement solicitation document (entitled "Request for Proposal") together with the completed and executed forms required herein, and all attachments hereto, together with the contract shall collectively constitute the Contract documents.

### **2. CONTRACT TERM**

The initial term of the contract shall cover the three calendar years ending December 31, 2022, December 31, 2023, and December 31, 2024, with the second and each subsequent year subject to renewal based on an evaluation by HCTD of the Auditor's performance for the prior year. The audit engagement is subject to annual renewal for up to two additional years, based on annual review of the Auditor's performance by HCTD's Director of Finance and Grants.

### **3. GENERAL INFORMATION**

The Hill Country Transit District (HCTD) is requesting proposals from qualified certified public accounting firms to audit its basic financial statements, and otherwise serve as HCTD's external independent auditors (hereafter referred to as the "Auditor")

### **4. PROJECT DESCRIPTION**

#### **4.1 GENERAL SCOPE OF WORK**

The auditor is to express an opinion on the basic financial statements based on an audit conducted in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. In addition, the auditor is to issue a report on compliance for each major federal program, a report on internal control over compliance, and a report on the schedule of expenditures of federal awards based on auditing procedures applied in the audit of the basic financial statements. The auditor will provide information necessary to complete the electronic submission and certification of the Data Collection Form with the Federal Audit Clearinghouse within 30 days of receipt of the final reports.

#### 4.2 INITIAL TERM AUDIT SCHEDULE

<b>EVENT</b>	<b>Date</b>
Preliminary planning meeting	January, 2023
Interim audit PBC list provided to HCTD	February 3, 2023
Interim audit fieldwork	Week of February 10, 2023
Year-end audit PBC list provided to HCTD	March 2023
Year-end audit fieldwork	Week of April 1, 2023 Week of April 7, 2023
CAFR draft submitted to HCTD for review	February 27, 2023
Exit conference	Early March 2023
National Transit Database (NTD) reporting review	Early March 2023; NTD report submitted by March 31
Preliminary presentation to Board of Directors	March 27, 2023; agenda packet items due April 18
Final CAFR, Single Audit drafts submitted to HCTD for approval	May 3, 2023
Final bound CAFR, Single Audit delivered to HCTD	May 17, 2023
Presentation to Board of Directors	June 24, 2023; agenda packet items due June 15

#### 4.3 AUDIT OF FINANCIAL STATEMENTS

The auditor is required to audit the statement of net position; the related statement of revenues, expenses, and changes in net position; and the statement of cash flows for the years covered in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. The auditor is required to issue an opinion on the fairness of presentation of the statements in accordance with accounting principles generally accepted in the United States and the fairness of the supplementary information in relation to the financial statements as a whole. The auditor is not required to audit the introductory section, management’s discussion and analysis, supplementary information, or statistical section, but limited procedures shall be applied to these sections in accordance with auditing standards generally accepted in the United States of America. The Auditor shall provide printable copies of the opinion on the Auditor's original letterhead.

#### 4.4 COMPREHENSIVE ANNUAL FINANCIAL REPORT

For each fiscal year covered by the proposed audit engagement, HCTD will submit a Comprehensive Annual Financial Report (CAFR) to the Government Finance Officers Association

(GFOA) to determine eligibility for a Certificate of Achievement for Excellence in Financial Reporting. The Auditor shall assist in this effort by examining the introductory and statistical sections of the CAFR as prepared by HCTD to ensure conformance with audited financial data and compliance with GFOA certification standards. The Auditor shall also prepare the financial section and supplementary information of the CAFR to ensure compliance with GFOA certification standards and shall otherwise offer the necessary assistance and suggestions for improvement to the CAFR to ensure that a Certificate of Achievement is received. The Auditor shall provide a searchable PDF version via e-mail and 2 bound copies of the CAFR along with an unbound copy.

#### 4.5 SINGLE AUDIT

The Auditor shall also audit the financial transactions regarding HCTD's federal grants received in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States and for compliance with CFR 2 Part 200. The Auditor shall provide two bound copies and an unbound copy of all required Single Audit Reports, including the Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*; and the Independent Auditor's Report on Compliance for Each Major Program and Report on Internal Control over Compliance in Accordance with CFR 2 Part 200, and on the Schedule of Expenditures of Federal Awards.

#### 4.6 REPORT TO MANAGEMENT

The auditor will inform the General Manager and the Director of Finance and Grants any material errors, fraudulent financial reporting, or misappropriation of assets as well as any violations of laws or government regulations that come to attention.

In performing the proposed audit described herein, the Auditor shall observe the adequacy of HCTD's system of internal control. If significant deficiencies or material weaknesses are noted, or if in the opinion of the Auditor improvements to internal control should be made, such comments and recommendations shall be included in a separate Report to Management. To the extent possible, any problem or deficiency identified in the Report to Management shall be accompanied by specific suggestions as to how such problem or deficiency can be corrected.

The Report to Management must include a statement that the Auditors have reviewed the financial reports presented to the Board and report any errors or exceptions to the reports.

The Report to Management shall be addressed to HCTD's Board of Directors and shall be reviewed prior to final preparation at the Exit Conference with the General Manager and Director of Finance and Grants.

#### 4.7 EXIT CONFERENCE AND CAFR PRESENTATION

Upon completion of the audit, the Auditor shall meet with the GENERAL MANAGER and Director of Finance and Grants to review and discuss significant audit findings, draft financial statements, audit adjustments, and other matters as requested by either the Auditor or HCTD. This meeting shall take place prior to preparation of the draft Report to Management.

The audit Partner and/or Manager will present the draft basic financials and draft opinion to the Board of Directors in June. Included in this presentation will be any required communications to those charged with governance including but not limited to:

- Auditor's responsibility under generally accepted auditing standards and *government auditing standards*
- Auditor's responsibility under CFR 2 Part 200
- Unusual transactions and the adoption of new accounting principles
- Fraud and illegal acts
- Material weakness in internal control
- Management judgments and accounting estimates
- Difficulties encountered or disagreements with management
- Management representations and management consultations
- Auditor independence
- Audit adjustments

The audit Partner and/or Manager will present the CAFR at the June Board of Directors Meeting.

#### 4.8 PREPARATION OF AUDIT WORKING PAPERS AND SCHEDULES

It is intended that the Auditor shall prepare all audit working papers required by the examinations described herein, and that the staff of HCTD's Finance Department shall assist in the preparation of supporting schedules. Therefore, as part of the proposed audit engagement, the Auditor shall identify those schedules for which the Finance Department shall be responsible, and then shall reach agreement with the Director of Finance and Grants as to the work to be performed and the specific timetable to be observed. It shall be the responsibility of the Auditor to complete all schedules not specifically assigned to HCTD's Finance Department.

The auditor will maintain all working papers and reports, at the auditor's expense, for at least five (5) years after the fiscal year end. A copy of all audit working papers and schedules will be made available to authorized representatives of federal and state agencies and to HCTD. The auditor will allow successor auditors to review working papers related to matters of continuing financial significance.

#### 4.9 SERVICE, FACILITIES PROVIDED TO THE AUDITOR

HCTD shall provide the space and facilities in San Saba necessary for the Auditor to conduct the examinations described herein. In addition, all information, data, reports, and records, necessary for carrying out the required work, including photocopies of same, shall be furnished to the Auditor without charge, and HCTD shall cooperate with the Auditor in every reasonable way to ensure timely completion of the audit. Auditors will work remotely or at Auditor's office if needed outside of HCTD's normal business hours or as requested by HCTD.

#### 4.10 WORK SCHEDULE

The draft audited financial statements, the Auditor's opinion on the financial statements, the Single Audit Reports, and the Report to Management shall be completed for a presentation to HCTD's Board of Directors in June 2023 for the audit covering the calendar year ending December 31, 2022. The CAFR shall be completed by mid-February of each year and distributed to HCTD's Board of Directors at their meeting in June.

With these critical dates in mind, a proposed "Schedule of Audit Activities" has been prepared for completion of the audit process for the calendar year ending December 31, 2022 and is included in section 4.2 of this RFP. This schedule should serve as the proposed timeline for all years under contract. As part of each proposal, the Auditor shall respond to this schedule, including the proposed assignments of responsibility, and provide suggested changes if the proposed schedule is not acceptable.

#### 4.11 OTHER SERVICES

HCTD may, at its discretion, request the Auditor to perform other audits or reviews, or provide other services not specifically described in this RFP including consulting and providing professional advice as needed. If such a request is made, the Auditor shall be asked to submit a separate proposal for providing such services, along with proposed fees, if applicable.

### **5. BACKGROUND INFORMATION**

#### 5.1 AGENCY DESCRIPTION

Hill Country Transit District is a regional public transportation system which operates a rural demand-response public transportation system in a nine-county area of Central Texas, including the counties of Bell, Coryell, Hamilton, Lampasas, Llano, Mason, Milam, Mills, and San Saba, and two separate urban fixed route bus systems: one which encompasses the corporate city limits of Copperas Cove, Killeen, Harker Heights, and Nolanville; and one which encompasses the corporate city limits of Belton and Temple, Texas. HCTD has approximately one hundred fifty (150) employees and an annual budget of between \$10,000,000 to \$11,000,000 annually.

## 5.2 BASIS OF ACCOUNTING AND BUDGETARY DATA

HCTD is a multi-funded public transportation system, which currently oversees more than thirty (30) separate funding contracts:

TxDOT Section 5311 Federal – Rural (3)  
TxDOT Section 5311 State – Rural (2)  
TxDOT Section 5339 Federal – Rural (3)  
TxDOT Section 5339 Discretionary – Rural (2)  
FTA Section 5307 Federal – Killeen (2)  
FTA Section 5307 Federal CARES – Killeen (1)  
FTA Section 5307 Federal ARPA – Killeen (1)  
TxDOT Section 5307 State – Killeen (2)  
FTA Section 5310 Federal – Killeen (3)  
FTA Section 5339 Federal – Killeen (3)  
FTA CAT7/STP Section 5307 Federal – Killeen (2)  
FTA Section 5307 Federal – Temple (2)  
FTA Section 5307 Federal CARES – Temple (1)  
FTA Section 5307 Federal ARPA – Temple (1)  
TxDOT Section 5307 State – Temple (2)  
FTA Section 5339 Federal – Temple (2)  
FTA Section 5307 Federal Fleet Replacement – Temple (1)  
FTA CAT7/STP Section 5307 Federal – Temple (1)  
Area Agency on Aging of the Capital Area – Rural (1)  
Concho Valley Area Agency on Aging – Rural (1)  
NEMT – Non-Emergency Medical Transportation

This structure requires a high degree of coordination, and results in very complex bookkeeping and reporting procedures. The firm chosen to perform this audit must have comprehensive knowledge and experience in dealing with such a structure. HCTD was established under Chapter 458 of the Transportation Code and 791 of the Government Code of the State of Texas. Public accounting firms that have an understanding of and experience with this type of entity are encouraged to submit a proposal.

HCTD is governed by a fourteen-member volunteer Board of Directors. Administrative offices and all records are located at 906 S. High St., San Saba, Texas. There are twelve operational sites located in the nine-county area; however, no financial records are maintained at these sites.

Records to be audited include the following:

- Number of bank accounts – one main checking account, two MMAs, nine small satellite accounts
- One set of books, which includes all grants received – automated



- Automated payroll system
- Approximately 6,000 checks per year written on main account
- Records are available for review

### 5.3 ORGANIZATIONAL RESPONSIBILITIES

HCTD financial functions fall under the general supervision of the General Manager, with the Director of Finances and Grants responsible for planning, organizing, directing and coordinating the activities of the finance, accounting, purchasing, cash management, financial reporting and budgeting functions.

### 5.4 COMPUTER SYSTEMS

HCTD currently uses MIP Accounting Software, which includes a general ledger accounting system with accounts payable, accounts receivable, and fixed assets modules. HCTD utilizes processes payroll internally.

### 5.5 FEDERAL FINANCIAL ASSISTANCE

HCTD is the recipient of Federal Transit Administration (FTA) grants. The FTA is an agency of the U.S. Department of Transportation and is the principal source of federal financial assistance for the planning, development, and improvement of public transportation systems. This assistance is provided through a variety of programs under the Federal Transit Act, as amended.

The Auditor shall be knowledgeable of National Transit Database (NTD) reporting requirements. NTD requires HCTD to submit an Independent Auditor Statement for Financial Data every ten report years and an Independent Auditor Statement for Federal Funding Allocation Data annually in January of each year.

In addition to FTA funds, HCTD currently also has open grants from Texas Department of Transportation (TxDOT), Area Agency on Aging-Capital Area (AAACA), and Concho Valley Area Agency on Aging (CVAAA).

### 5.6 HCTD RETIREMENT PLANS

Hill Country Transit District's employees participate in a 401k program administered through Ascensus.

## **PROPOSAL SUBMITTAL INFORMATION**

The response shall be submitted through delivery or courier service to the address listed below. Proposals submitted to HCTD must be in unbound volumes on standard 8½"x11" standard paper. All information must be assembled and indexed in the order described below. The proposal (not including requested attachments) shall not exceed 25 double sided pages. Submission address:

Hill Country Transit District  
Attention: Raymond Suarez, Interim General Manager  
P.O. Box 217 (mail)  
906 S. High St. (delivery)  
San Saba, TX 76877

In order to be considered responsive to this RFP, the Proposal Packet shall include at least the following information:

### **COVER LETTER**

Each Contractor shall submit a maximum two-page letter including the name and address of the organization submitting the Packet; whether the organization is an individual, partnership, corporation or joint venture; and the name, address and telephone number of the contact person who will be authorized to make representations for the organization. The cover letter should also contain a certification that no member of the governing body of HCTD or staff exercising any functions or responsibilities with respect to this project shall during his/her tenure, or for one year thereafter, have any interest, direct or indirect, in any proceeds thereof. The cover letter should also stipulate that the offer is valid for 90 days after submittal. The cover letter must be signed by a person authorized to bind the organization.

### **TAB 1 - SCOPE OF WORK / AUDIT APPROACH**

This section must outline how the auditor intends to provide the required services to accomplish the Scope of Work. The proposal should include the audit methodology to be followed, type and extent of analytical procedures and statistical sampling to be used, approach taken to understand the Authority's internal control structure and applicable laws and regulations, and any additional capabilities the auditor offers to provide the best quality work product.

### **TAB 2 - STATEMENT OF FIRM EXPERIENCE AND QUALIFICATIONS**

This Statement shall include, but not be limited to, the following information:

Qualifications – Interested auditors should state size of the organization, size of the organization's governmental audit group, office location where engagement work will be

performed, and a confirmation that the organization is licensed to practice in Texas. The auditor is required to submit a copy of the most recent external quality control review.

Relevant Experience – Interested firm/individuals should briefly state their firm’s experience in projects of similar size, scope and complexity, including the dates the project spanned. In addition, key staff that will be assigned to HCTD should provide their experience in this type of project, whether each person is licensed to practice as a certified public accountant in Texas, and any special skills or experience.

Past Performance – Please specify between three (3) and five (5) projects that are similar in nature to that contemplated in this RFP that the firm and/or key staff has performed within the last three years. Furnish a short narrative describing the project and the outcome. List the name of the entities for which the services were provided, the timeframe of the project, and the project managers’ names, addresses and phone numbers.

Availability – Please specify that the firm’s key staff will be available to work with HCTD during the timeframe specified in Section 4.2 of the Scope of Work. The auditor should indicate how the quality and experience of staff over the term of the contract will be assured.

### **TAB 3 – REFERENCES**

Provide at least three (3) references, complete with address and telephone number, of the government entities for whom the contractor has performed similar work. The references should match the examples provided in Tab 2 above. Also please provide a list of all current government clients in the DFW area, along with contact information including a telephone number.

### **TAB 4 - FEES**

Provide the fee schedule that would apply to this engagement for each of the first three years. Explain any additional expenses not covered by the fee schedule for which HCTD would be billed. Provide your projections of fees for the two optional fiscal years. Describe the billing schedule to be observed.

### **TAB 5 - ATTACHMENTS**

Include company brochure, copies of referenced certifications, acknowledgement of any Addenda issued, certifications and required forms, and any other attachments or acknowledgement required as part of this submittal.

Required forms shall be included in Tab 5:

1. Bidder’s Questionnaire
2. Non-Collusion Affidavit

3. Conflict of Interest Questionnaire
4. Prohibition of Contracts with Companies Boycotting Israel
5. Signed clauses.
6. Signed and completed PTN-130 Form (available from TxDOT's website at <https://www.txdot.gov/inside-txdot/forms-publications/forms/public-transportation.html>).

Each Contractor shall submit a detailed response to the RFP. The response shall include sufficient information to enable Hill Country Transit District to evaluate the capabilities of the Contractor and its approach to providing the specified services. Best Value will be the base for the evaluation. Unnecessarily elaborate or voluminous responses are neither required nor wanted. The 25-page limit and other requirements described shall be enforced. Discussion of the firm's past experience, which is not related to the specified services, should not be included. The response shall specifically address the issues raised, and provide the information requested.

It is the responsibility of the Contractor to examine the entire RFP package and seek clarification of any item or requirement that may not be clear and to check all responses for accuracy before submitting a proposal.

Contractors may not contact members of the Authority's Board of Directors concerning this procurement. Any Contractor violating this provision may be disqualified from consideration in this procurement.

HCTD will not respond to oral requests. Any request for a change to any part of this document must be fully supported with technical data, or other pertinent information evidencing that the exception will result in a condition equal to or better than the required by the RFP, without substantial increase in cost or time requirements. Any responses to such written requests shall be provided by HCTD in the form of an addendum. Only written responses (including e-mail and/or e-mail attachments) provided as addenda shall be official and all other forms of communication with any officer, employee or agent of HCTD shall not be binding on HCTD.

## **EVALUATION AND SELECTION**

### **1. GENERAL RESPONSIVENESS**

In order for a Contractor to be eligible to be awarded the Contract, the Proposal must be responsive to the Request for Proposal, and HCTD must be able to determine that the Contractor is responsible to perform the Contract satisfactorily. Responsive Proposals are those complying in all material aspects of the solicitation. Proposals which do not comply with all the terms and conditions of this solicitation may be rejected as nonresponsive. A Contractor may, at any time after the submission of the Proposal, be requested to submit further written evidence verifying that the firm(s) meet the criteria necessary to be determined a responsible Contractor. Refusal to provide requested information may result in the Contractor being declared nonresponsive, and the Proposal may be rejected.

### **2. EVALUATION OF PROPOSAL**

Proposals will be reviewed for compliance with the requirements of the RFP. Those proposals which are deemed incomplete will be rejected. Proposals will also be scored on the clarity and completeness.

A committee of HCTD staff will evaluate the responses and will make a recommendation for award based on the best value to the agency. Evaluation will be based on the following criteria:

### **3. CRITERIA FOR PROPOSAL EVALUATION**

Proposals will be evaluated for compliance with the following mandatory criteria:

- The firm is independent and licensed to practice in Texas
- The key staff identified for the engagement have extensive local government audit experience and Single Audit experience
- The key staff identified for the engagement have extensive experience with clients who receive the GFOA Certificate of Achievement for Excellence in Financial Reporting.

Auditors that meet the mandatory criteria shall be evaluated on the following criteria. Each Proposal Packet will be rated on a 100-point scale, with maximum points for each of the evaluation criteria listed below.

<b>SCORING CRITERIA</b>	<b>WEIGHT</b>
<b>QUALIFICATION OF FIRM / STAFF</b> Substantial representations regarding the firm’s qualifications and demonstrated skill appropriate for entity needs and the technical capabilities and professional competence of the Contractor and assigned personnel	30
<b>RECORD OF PERFORMANCE</b> Record of performance based on previous work with HCTD and/or other client references.	25
<b>PROJECT UNDERSTANDING</b> Evidence of a clear understanding of project objectives and methodology to be used, responsiveness of the proposal	20
<b>PROJECT MANAGEMENT EXPERIENCE</b> Demonstrated ability to meet the required time schedule; availability for meetings with staff and Board of Directors	15
<b>FEE SCHEDULE / PRICE</b> Fair and reasonable fee/price when compared with firm’s qualifications, industry standards, and HCTD’s cost estimate	10
<b>TOTAL</b>	100

**4. REFERENCE EVALUATION**

HCTD will also evaluate qualifications by inquiries into the firm/individual’s references and/or client list. HCTD is especially concerned with the firm/individual’s:

- Ability to effectively work with government agencies.
- Past experience working with organizations with similar size, scope and complexity, including Federal Transit Administration requirements.
- Ability to complete projects on time and within budget.

**5. ORAL PRESENTATION**

Some or all of the firms being considered for the project may, at the sole discretion of HCTD, be invited to make an oral presentation to the Selection Committee. The oral presentations, if required, shall be conducted so as to solicit information to enable HCTD to evaluate the capability of the applicable firms/individuals to provide the desired services. If HCTD notifies a firm/interview that an oral presentation is required, HCTD shall inform the firm/individual of the schedule, order and procedure for the presentation, including its content, time limits, identity of the presenters, and use of handouts and visual aids. HCTD may videotape any presentations. Any cost incurred by the vendor/supplier is the responsibility of the vendor/supplier and cannot be charged to HCTD.

If oral presentations are required, the written response will count as 75% of the overall score and the oral presentation as 25%. Notwithstanding the foregoing, HCTD emphasizes that it may elect to forego oral presentations for all or some firms/individuals. Consequently, all responses should be comprehensive and clear on their face, and no firm/individual should rely upon the opportunity to present additional or clarifying information at a later time.

## **6. BEST AND FINAL OFFER**

HCTD reserves the right to request a best and final offer from all or select Contractors.

## **7. CONTRACT AWARD**

Award will be made to the responsible firm whose proposal is most advantageous to HCTD. Accordingly, HCTD may not necessarily make an award to the Contractor with the highest technical ranking nor award to the Contractor with the lowest Price Proposal if doing so would not be in the overall best interest of HCTD.

## **GENERAL TERMS AND CONDITIONS**

### **1. CANCELLATION**

HCTD reserves the right to cancel this RFP or cancel the award of this contract at any time before execution of the contract by both parties if cancellation is deemed to be in HCTD's best interest. In no event shall HCTD have any liability for the cancellation of award. The Contractor assumes the sole risk and responsibility for all expenses connected with the preparation of its proposal.

### **2. EVALUATION AND AWARD OF CONTRACT**

The Owner reserves the right to reject any and all proposals, to waive any and all informalities except for the time of submission of the Proposal and to negotiate contract terms with the Successful Contractor. The Owner also reserves the right to reject all nonconforming, non-responsive, unbalanced or conditional Proposals. Also, the Owner reserves the right to reject the Proposal of any Contractor if the Owner believes that it would not be in the best interest of the Project to make an award to that Contractor, whether because the Proposal is not responsive or the Contractor is unqualified or has doubtful financial ability or fails to meet any other pertinent standard or criteria established by the Owner. Discrepancies in the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

In evaluating Proposals, the owner will consider the qualifications of the Contractors, whether or not the Proposals comply with the prescribed requirements, unit prices, completion time, and other data, as may be requested in the Proposal form or prior to the Notice of Award.

Because offers can at times be ambiguous, HCTD reserves the right to request additional information before making an award. HCTD also reserves the right to seek clarification from any Contractor or offeror about any statement in its proposal that HCTD finds ambiguous.

The Owner may consider the qualifications and experience of any Subcontractors, Suppliers, or other persons or organizations proposed for those portions of the Work as to which the identity of Subcontractors, Suppliers, and other persons and organizations must be submitted as requested by the Owner:

The Owner may consider its past experience with the Contractor and any Subcontractors, Suppliers or other persons or organizations proposed to perform any portions of the Work, and the Owner reserves the right to reject any and all proposals from persons or organizations with whom the Owner has previously experienced problems including but not limited to issues relating to performance, workmanship, and disputes or litigation.



The Owner may conduct such investigations as the owner deems necessary to assist in the evaluation of any Proposal and to establish the responsibility, qualifications and financial stability of Contractors, proposed Subcontractors, Suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to the Owner's satisfaction within the prescribed time.

If contract is to be awarded, it will be awarded to the best qualified Contractor whose evaluation by the Owner indicates to the Owner that the award will be in the best interests of HCTD. HCTD may award the contract to a single supplier, affording HCTD the improved cost effectiveness as well as one stop shopping. If determined to be in the best interest of HCTD, it reserves the right to award to multiple Contractors.

### **3. ADDENDUM**

The contents of all addendums sent to Contractor are to be incorporated in the RFP documents and will become part of the contract documents.

### **4. PROOF OF INSURABILITY**

Contractor must submit proof of insurability with their proposal. Proof of insurability can be in the form of a letter from the Contractor's insurance provider stating the provider's commitment to insure the Contractor for the types of coverages and levels of coverages specified in this RFP.

### **5. CONFIDENTIALITY**

It is in the public interest for HCTD to receive as many proposals as possible. HCTD acknowledges the possible confidential nature of any aspect of the proposal including the cost or price information requested by the Request for Proposals, and HCTD obliges itself in good faith not to disclose any page of the proposal containing information which the Contractor clearly marks as confidential during the evaluation process. After contract award, disclosure of information shall be made only in accordance with Texas law and applicable Federal requirements.

### **6. TAXES**

HCTD is tax exempt and shall furnish the successful Contractor with the necessary tax exemption certificate.

### **7. INDEMNIFICATION**

**HCTD SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF THE CONTRACTOR PURSUANT TO THIS AGREEMENT. CONTRACTOR HEREBY WAIVES ALL CLAIMS AGAINST HCTD, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "HCTD")**

FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF HCTD. CONTRACTOR AGREES TO INDEMNIFY AND SAVE HARMLESS HCTD FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY THE CONTRACTOR'S NEGLIGENT PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY ACT OR OMISSION ON THE PART OF CONTRACTOR, ITS OFFICERS, DIRECTORS, SERVANTS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO SOLE NEGLIGENCE OF HCTD). IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR AGAINST HCTD IN CONNECTION WITH ANY SUCH LIABILITY OR CLAIM, CONTRACTOR, ON NOTICE FROM HCTD, SHALL DEFEND SUCH ACTION OR PROCEEDINGS AT CONTRACTOR'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO HCTD. CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY CONTRACTOR UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

CONTRACTOR SHALL INDEMNIFY HCTD FOR ANY FINES AND LEGAL FEES INCURRED BECAUSE EMPLOYEES, AGENTS, OR WORKERS SUPPLIED BY CONTRACTOR ARE NOT AUTHORIZED TO WORK IN THE UNITED STATES.

By the execution and submission of this proposal, Contractor acknowledges Contractor has read and does comply with all terms and conditions, clauses and requirements contained herein.

#### **8. PAYMENT**

HCTD shall pay the Successful Contractor, upon the submission of proper invoices. Unless otherwise specified in this contract, payment shall be made within thirty (30) days of receipt of a complete and correct invoice. Contractor's invoices for the services rendered shall be emailed to the following e-mail address: [hctdap@takethehop.com](mailto:hctdap@takethehop.com)

#### **9. ASSIGNMENT**

The successful Contractor shall not assign, sell, transfer or convey the agreement completely or in part, without the prior written consent of HCTD.

#### **10. VENUE**

The agreement will be governed and construed according to the laws of the State of Texas; and venue for any action concerning this contract shall be in San Saba County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

## **11. INDEPENDENT CONTRACTOR**

It is understood and agreed by and between the parties, that successful Contractor, in satisfying conditions in this contract, is acting independently, and that HCTD assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by successful Contractor pursuant to this contract shall be in the capacity of an independent Contractor, and not as an agent or employee of HCTD. Successful Contractor shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this contract.

## **12. TERMINATION / DISPUTE RESOLUTION**

### **Termination for Convenience of HCTD**

HCTD may terminate all or part of this Contract upon determining that termination is in the public interest. Termination under this Article shall be effective upon delivery of written notice of termination to Contractor. Upon termination under this provision, Contractor shall be entitled to payment in accordance with the terms of this Contract for Contract work completed before termination, and to payment for all reasonable Contract close-out costs including reasonable profit to include materials purchased and work performed. Within thirty (30) days after termination pursuant to this provision, Contractor shall submit an itemized invoice for all unreimbursed Contract work completed before termination and all Contract close-out costs actually incurred by Contractor. HCTD shall not be liable for any costs invoiced later than thirty (30) days after termination notice. Contractor is not entitled to any alleged lost profit on work not performed but which would have been performed had this Contract not been terminated.

### **Termination for Default**

If the Contractor refuses or fails to properly prosecute or perform the work or any separable part, with the diligence and good workmanship that will ensure its completion and acceptance within the time specified in this Contract including any extension, or fails to complete the work within this time, HCTD may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed or not performed in a good workmanship like manner. In this event, HCTD may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, reports, schedules, appliances, or other work product necessary for completing the work. The Contractor and its sureties shall be liable for any damage to HCTD resulting from the Contractor's refusal or failure to complete the work within the specified time or not performed in a good workmanship like

manner, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by HCTD in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this Article, if:

- (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of another Contractor in the performance of a contract with HCTD, (iii) fires, (iv) floods, (v) epidemics, (vi) quarantine restrictions, (vii) strikes, (viii) freight embargoes, (ix) unusually severe weather, or (x) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and
- (2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Project Manager), notifies the Project Manager in writing of the causes of delay. The Project Manager shall ascertain the facts and the extent of delay. If, in the judgment of the Project Manager, the findings of fact warrant such action, the time for completing the work shall be extended with an appropriate Contract amendment, the right to proceed terminated or no action taken by the Project Manager. The findings of the Project Manager shall be final and conclusive on the parties, but subject to Claims.
- (3) The Contractor cures such failures to perform within 10 calendar days (or more if authorized in writing by the Project Manager) after receipt of the notice of default. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of HCTD.

### **Termination of Force Majeure**

To the extent either party of this agreement shall be wholly or partially prevented from the performance of the term specified, or of any obligation or duty placed on such party by reason of or through work strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, court judgment, act of God, or other specific cause reasonably beyond the parties control and not attributable to its malfeasance, neglect or nonfeasance. In such event, the time for performance of such obligation or duty shall be suspended until such disability to perform is removed.

### **Disputes**

Performance During Dispute – Unless otherwise directed by HCTD, contractor shall continue performance under this contract while matters in dispute are being resolved. Further, HCTD shall pay contractor for any undisputed work performed by contractor prior or during the resolution of the matters in dispute.

### **13. PROTEST PROCEDURES**

Protests relative to this procurement will be reviewed and adjudicated by HCTD in accordance with its Procurement Policy and Procedures Manual maintained in HCTD's offices in San Saba, TX.

### **14. ADMINISTRATIVE REMEDIES**

Hill Country Transit District reserves the right to accept or reject any and/or all proposals, to waive any formalities and/or irregularities and to award the Contract in the best interest of HCTD.

By submission of a proposal in response to this solicitation, the Contractor agrees to exhaust its administrative remedies under HCTD's Procurement Regulations or Disputes Clause of any resulting contract prior to seeking judicial relief of any type in connection with any matter related to this solicitation, the award of any contract, and any dispute under any related contract. Protests relative to this procurement will be reviewed and adjudicated by HCTD in accordance with its Procurement Policy and Procedures Manual maintained in HCTD's offices in San Saba, TX.

### **15. OPEN RECORDS**

All responses submitted to HCTD become the property of HCTD and are subject to the Public Information Act (Texas Government Code Chapter 552). The interested firms/individuals should familiarize themselves with the provisions of that Act. In no event shall HCTD, or any of its agents, Representatives, consultants, directors, officers, or employees, be liable to a firm/individual for the disclosure of all or any portion of a response submitted pursuant to the RFP.

If a firm/individual has special concerns about information that it desires to make available to HCTD, but which it believes constitutes a trade secret, proprietary information or other information excepted from disclosure, such firm/individual should specifically and conspicuously designate each page of that information, which the Contractor believes, should not be disclosed outside HCTD. Disclosure of requested information will be subject to the Texas Public Information Act.

### **16. CONTRACT**

The successful Contractor may be required to execute a contract prepared and approved by HCTD General Counsel.

### **17. PROHIBITION OF BOYCOTT ISRAEL**

Company verifies that (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of the Contract. This section does not apply if the Company is a sole proprietor, a non-profit entity, or a governmental entity; and only applies if: (i) the Company has ten (10) or more fulltime employees and (ii) this Contract has a value of \$100,000.00 or more to be paid under the terms of this Contract.

#### **18. PROHIBITION OF CONTRACTS WITH CERTAIN COMPANIES**

HCTD is prohibited from entering into a contract with a company engaged in business with Iran, Sudan, or a foreign terrorist organization as prohibited by Section 2252.152 of the Texas Government Code.

#### **19. RELATIONSHIP AND WORK IN GENERAL**

Contractor, an independent contractor, covenants and agrees to perform for the stated compensation, all of the services described in Scope of Work, Terms and Conditions of this Contract. Contractor agrees to complete the work in a professional and workmanlike manner with a high degree of care to ensure the accuracy and timeliness thereof.

#### **20. ASSIGNMENT OF PERSONNEL**

Contractor agrees to assign qualified staff members including a Project Manager who shall be responsible for the task administration and work performance.

#### **21. EMPLOYMENT OF PERSONNEL**

Contractor agrees to employ, at its own expense, all personnel required in performing the services under this contract. Personnel employed by Contractor shall not be employees of, nor have any contractual relationship with HCTD. All personnel engaged in the work shall be fully qualified and shall be authorized or licensed to perform such work as required.

#### **22. EMPLOYMENT OF VETERANS**

Applicable to capital projects only-Contractor shall provide a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of Title 5) who have the requisite skills and abilities to perform the construction work required under this contract. This shall not be understood, construed, or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

#### **23. USE OF SUBCONTRACTORS**

The Contractor may utilize the services of specialty subcontractors on those parts of the work which, under normal contracting practices, are performed by specialty subcontractors. No work or services under this Contract shall be subcontracted without the prior written approval of HCTD. HCTD reserves the right to reject any subcontractors proposed to be utilized on this project.

#### **24. DBE SUBCONTRACTS**

If DBE subcontractors are utilized to perform under this contract the contractor must make available to HCTD copies of all DBE subcontracts upon request. The subcontractor shall ensure that all subcontracts or agreements with the Prime to supply labor or materials require that the subcontract and all lower tier subcontracts be performed in accordance with 49 CFR Part 26.55.

#### **25. INSPECTION OF WORK**

HCTD shall have the right to review and inspect the progress of the work described herein at all times.

#### **26. COPYRIGHT**

No reports, maps, or other documents produced in whole or in part under this contract shall be the subject of an application for copyright by or on behalf of the Contractor. All reports, maps, and other documents produced under this contract shall become the property of HCTD. The Contractor shall, at its expense, defend all suits or proceedings instituted against HCTD and pay any award of damages assessed against HCTD in such suits or proceedings, insofar as the same are based on any claim that materials furnished or work performed under the contract constitutes an infringement of any patent, trade secret, copyright, or any other proprietary right.

#### **27. PROPRIETARY RIGHTS**

Contractor agrees not to release data or information about the results of the project to any person outside of HCTD without first obtaining written authorization to release such information from HCTD.

#### **28. OWNERSHIP OF DOCUMENTS**

The parties agree and understand that any and all documents produced under this Contract are the sole and exclusive property of HCTD and HCTD retains ownership of all such documentation including, but not limited to, studies, plans, specifications, intellectual property and all related documents. To the extent necessary, CONTRACTOR HEREBY ASSIGNS AND TRANSFERS ANY AND ALL COPYRIGHTS TO HCTD.

#### **29. MAINTENANCE OF RECORDS**

Contractor must maintain records to show actual time involved in performance of the Work.

### **30. CHANGES BY CONTRACTOR**

If, during the performance of Work under the Contract, the Contractor finds it impracticable to comply strictly with the specifications, the Contractor will notify HCTD Project Manager and Procurement Manager immediately in writing.

### **31. WRITTEN ACCEPTANCE BY HCTD**

Any proposals by Contractor that vary or add to this Contract shall be construed as additional terms or modifications and shall not become part of the Contract unless accepted in writing, by HCTD.

### **32. CHANGE ORDERS / CONTRACT MODIFICATIONS**

All requests for changes in the work must be submitted in writing to HCTD Project Manager. Changes shall be made only with the prior approval of HCTD and only by appropriate written Change Order or Contract Modification as appropriate. The Procurement Manager may, at any time, by a written Change Order or Contract Modification, and without notice to the Surety (if any), make changes within the general scope of this Contract. If the change affects the Contractor's costs, then the Procurement Manager shall also make an equitable adjustment in the Contractor's compensation.

### **33. WHOLE AGREEMENTS**

The Contract constitutes the whole of the agreement between the parties hereto and neither thereof has been induced to make or enter into the Contract by reason of any promise, agreement, representation, statement, or warranty other than contained herein.

### **34. PARTIAL INVALIDITY**

If any term, provision, covenant, or condition of this agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

### **35. TITLES AND HEADINGS FOR CONVENIENCE ONLY**

As used throughout this Contract, titles and headings of sections are for convenience only, and shall not be used to aid in interpretation of the provisions contained herein.



### **36. COMPENSATION**

The Contractor shall be compensated for work in performance of the contract and per the agreed upon fees. The Contractor shall include as part of his invoice a list of all subcontractors and the amounts to be paid to each of the subcontractors from this invoice. HCTD will require specific payment reporting criteria for all payments made to subcontractors and will provide additional information and forms upon selection as the awarded firm.

### **37. PROMPT PAYMENT**

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from the Hill Country Transit District. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Hill Country Transit District. This clause applies to both DBE and non-DBE subcontracts and must be included in contracts between the Hill Country Transit District, the prime contractor, subcontracts, and sub-recipients.

### **38. RETAINAGE**

The prime contractor agrees to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Hill Country Transit District. This clause applies to both DBE and non-DBE subcontracts.

### **39. MINORITY OWNED FINANCIAL INSTITUTIONS**

In accordance with the requirements of 49 CFR Part 26, and grant agreements between HCTD and the Department of Transportation (DOT), to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions. Information regarding financial institutions may be obtained on-line from the Federal Reserve at <https://www.fdic.gov/regulations/resources/minority/mdi.html>

### **40. NON-DISCRIMINATION**

The contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this

contract, which may result in the termination of this contract or such other remedy as 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 solicitations as non-responsible

#### **41. GRATUITIES**

It shall be unethical for any person to offer, give, or agree to give any HCTD officer or former HCTD officer, or for any HCTD officer or former HCTD officer to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation therefore.

#### **42. FUNDING**

Funds for payment have been provided through HCTD budget approved by the Board of Directors for this fiscal year only. State of Texas statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. Therefore, anticipated orders or other obligations that may arise past the end of the current HCTD fiscal year shall be subject to budget approval.

#### **43. FEDERAL FUNDS**

HCTD is a recipient of federal funds from the Federal Transit Authority (FTA) and as a recipient of federal funds specific clauses and certifications must be included in any contract that involves the disbursement of federal funds. If federal dollars will be utilized under this contract, Contractor must adhere to the clauses and certifications if applicable. All required clauses and certifications will be included if applicable.

#### **44. PROCUREMENT OF RECOVERED MATERIALS**

If federal dollars are utilized for this project all contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

#### **45. SILENCE OF SPECIFICATIONS**

The apparent silence of the specifications as to any detail or to the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.

## **INSURANCE REQUIREMENTS**

Contractors performing work on HCTD's behalf shall provide HCTD a certificate of insurance or a copy of their insurance policy(s) evidencing the coverage and coverage provisions identified herein within ten (10) days of request from HCTD. Contractors shall provide HCTD evidence that all subcontractors performing work on the project have the same types and amounts of coverage as required herein or that the subcontractors are included under the Contractor's policy. Work shall not commence until insurance has been approved by HCTD.

All insurance companies and coverage must be authorized by the Texas Department of Insurance to transact business in the State of Texas and must have a A.M. Best's rating A-VI or greater.

Listed below are the types and minimum amounts of insurances required and which must be maintained during the term of the contract. HCTD reserves the right to amend or require additional types and amounts of coverage or provisions depending on the nature of the work.

### **COMMERCIAL GENERAL LIABILITY:**

Covering Bodily Injury/Property Damage, Products/Completed Operations and Personal Advertising Injury

- Per occurrence .....\$1,000,000
- General Aggregate ..... \$2,000,000
- Products/Completed Aggregate ..... \$2,000,000
- Personal Advertising Injury per occurrence ..... \$1,000,000

### **BUSINESS AUTO LIABILITY**

to include coverage for:

- Owned/Leased vehicles
- Non-owned vehicles
- Hired vehicles
- Combined Single Limit ..... \$1,000,000

### **WORKERS' COMPENSATION EMPLOYERS' LIABILITY**

Texas Statutory Limits with Employer's Liability limits per occurrence:

- Each accident ..... \$1,000,000
- Disease Policy Limits ..... \$1,000,000
- Disease each employee..... \$1,000,000

**ADDITIONAL INSURED:**

The Commercial General Liability and Business Automobile Liability policies shall be endorsed to name HCTD, its directors and employees as additional insured regarding Bidder's operations in performance of this Contract.

**WAIVER OF SUBROGATION:**

The Workers' Compensation and Employers' Liability policies shall be endorsed to provide a waiver of subrogation in favor of HCTD, its officers, directors and employees.

**COVERAGE PRIMARY:**

Such insurance as is provided therein shall be primary and non-contributing with any other valid and collectible insurance available to HCTD. The limits of liability required above may be provided by a single policy of insurance or by a combination of primary, excess or umbrella policies. But in no event shall the total limits of liability available for any one occurrence or accident be less than the amounts required herein.

**NO COMMENCEMENT WITHOUT COVERAGE:**

The Contractor shall not commence work at the site under this Contract until he/she has obtained all required insurance and until such insurance has been approved by HCTD. Contractor shall not allow any subcontractor to commence work until all similar required insurance has been obtained and approved. Approval of the insurance by HCTD shall not relieve or decrease the liability of the Bidder hereunder.

**CERTIFICATES:**

Certificate of Insurance evidencing insurance coverage as required shall be furnished to the Purchasing Manager prior to commencement of work and within ten (10) calendar days after the date of Notice of Award. CERTIFICATES SHALL BE PROVIDED BY CONTRACTOR AND ANYONE INVOLVED IN THE PERFORMANCE OF WORK UNDER THIS CONTRACT (not otherwise included under Bidder's coverage), INCLUDING ALL SUBCONTRACTORS. All certificates from Bidder and any subcontractors must be issued reflecting HCTD as the certificate holder. All Certificates of Insurance shall reflect the Hill Country Transit District project number. Failure to furnish the required certificates of insurance within the time allowed shall not be considered cause for modification of any contractual time limits. All policies of insurance presented, as proof of compliance with the above requirements shall be on forms and with insurance companies approved by HCTD. All such insurance policies shall be provided by insurance companies having a Best's rating of A-VI rating or greater as shown in the most current issue of A.M. Best's Key Rating Guide. Policies of insurance issued by insurance companies not rated by Best's or have a

Best's rating lower than A-VI will not be accepted as complying with the insurance requirements of the Contract unless such insurance companies are approved in writing prior to the award of the Contract. Certificate of Insurance shall contain transcripts from the proper office of the insurer, evidencing in particular those insured, the extent of the insurance, the location, and the cancellation clause as required below.

**NO LAPSE OR CANCELLATION:**

The Contractor and any subcontractor shall not cause any insurance to be canceled nor permit any insurance to lapse. All insurance policies shall not be canceled, reduced, restricted, or limited until thirty (30) days after HCTD has received written notice. In the event of cancellation or lapse of insurance, the Contractor shall notify HCTD immediately and unless otherwise directed by HCTD, shall cease work until evidence of acceptable insurance coverage is supplied to HCTD.

**BREACH:**

Failure to maintain insurance coverage as required herein shall constitute a material breach and default.

## **BIDDER'S QUESTIONNAIRE**

**1. Name of Bidder ("Business", herein):**

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**2. Doing Business As (other business name if applicable):**

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**3. Federal Tax ID Number:**

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**4. Business Mailing Address (include City/State/Zip Code):**

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**5. Business Email Address:**

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**6. Business Telephone Business Fax Number:**

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**7. Business Type:**

Individual  Partnership  Corporation  Joint Venture

**8. Number of Years in Business:**

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**9. Annual Gross Revenue for the past three years (M = Millions):**

\$1M or Less  \$1M-\$5M  \$5M-\$10M  \$10M-\$16M  \$16M+

**10. Number of Employees:**

100 or Less  101-500  501-750  751-1,000  1,001+

**11. Is Business a DBE Firm?**

Yes No

**12. Is Business Owned by Minority Ethnicity?**

Yes No

**13. Ethnic Group:**

Black American Asian Pacific American Hispanic American  
Subcontinent Asian American Native American White/Caucasian Other

**14. Woman Owned?**

Yes No

**15. Veteran Owned**

Yes No

**16. Type of Work Performed:**

Construction Wholesale/Distributor Manufacturing Professional Service Retail  
General/Technical Service

**17. Has the Business, or any officer or partner thereof, failed to complete a contract?**

Yes No

**18. Is any litigation pending against the Business?**

Yes No

**19. Has the Business ever been declared "Not Responsible"?**

Yes No

**20. Has the Business been debarred, suspended, proposed for debarment, and declared ineligible, voluntarily excluded or otherwise disqualified from bidding, proposing or contracting?**

Yes No

**21. Has the Business ever been a defaulter, as principal, surety or otherwise?**

Yes No



**22. Has the government or other public entity requested or required enforcement of any of its rights under a surety agreement on the basis of a default or in lieu of declaring the Business in default?**

Yes No

**23. Is the Business in arrears upon a contract or debt?**

Yes No

**24. Are there any proceedings pending relating to the Business' responsibility, debarment, suspension, voluntary exclusion or qualification to receive a public contract?**

Yes No

**25. Have liquidated damages or penalty provisions been assessed against the Business for failure to complete the work on time or for any other reason?**

Yes No

**26. If a "yes" response is given to questions 17-25, please provide a detailed explanation including dates, references to contract information, contacts, etc. (attach additional pages as necessary). HCTD reserves the right to inquire further with respect thereto.**

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**27. List the name and business address of each person or each entity which has a 10% or more ownership or control interest in the Business (attach additional pages as necessary).**

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I, individually and on behalf of the business named above, do by my signature below certify that the information provided in this questionnaire is true and correct. I understand that if the information provided herein contains any false statements or any misrepresentations: 1) HCTD will have the grounds to terminate any or all contracts which HCTD has or may have with the business; 2) HCTD may disqualify the business named above from consideration for contracts and/or 3) HCTD may have grounds for initiating legal action under federal, state or local law. ***Note: This questionnaire is also a certification form; the information requested will be used to determine small business status as per 13 CFR Part 121. Additionally, this information will allow HCTD to report the amount of subcontracting activity for HCTD.***

**Printed Name**

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**Title**

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**Signature of Owner**

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**Date**

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**Email Address**

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*(Owner, GENERAL MANAGER, President, Majority Stockholder or Designated Representative)  
Questions about this document should be directed to the Procurement Manager*

**NON-COLLUSION AFFIDAVIT**

*This affidavit must be completed and submitted with the bid/proposal*

The authorized representative for bidder / Contractor, \_\_\_\_\_, being first duly sworn, deposes and says that he or she is of the party making the foregoing bid, that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

\_\_\_\_\_  
Signature of Authorized Company Representative

\_\_\_\_\_  
Name and Title of Authorized Company Representative

\_\_\_\_\_  
Date

Subscribed and sworn to before me on \_\_\_\_\_(Date)

\_\_\_\_\_  
(Notary Seal)

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

## CONFLICT OF INTEREST QUESTIONNAIRE

### For vendor or other person doing business with local governmental entity

**This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

**1. Name of person who has a business relationship with local governmental entity.**

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**2. Check this box if you are filing an update to a previously filed questionnaire.**

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

**3. Name of local government officer with whom filer has employment or business relationship.**

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Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire? Yes No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity? Yes No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more? Yes No

D. Describe each employment or business relationship with the local government officer named in this section.

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Signature of person doing business with the governmental entity

Date

**Prohibition of Contracts with Companies Boycotting Israel**  
***This form must be completed and submitted with the bid/proposal***

*House Bill 89, effective September 1, 2017, amended the Texas Government Code to add Chapter 2270, Prohibition of Contracts with Companies Boycotting Israel.*

*Effective September 1, 2017, a state agency and a political subdivision (which includes a transportation authority) may not enter a contract with a company for goods or services unless the contract contains a written verification from the company that; (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of the contract.*

*“Boycott Israel” is defined to mean refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.*

*“Company” is defined to mean a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.*

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"I, \_\_\_\_\_(Name of certifying official), the \_\_\_\_\_ (title or position of certifying official) of \_\_\_\_\_(name of company), verifies that (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of the Contract. This section does not apply if the Company is a sole proprietor, a non-profit entity or a governmental entity; and only applies if: (i) the Company has ten (10) or more fulltime employees and (ii) this Contract has a value of \$100,000.00 or more to be paid under the terms of this Contract.

\_\_\_\_\_  
Signature of Certifying Official

Title:

Date:

## STANDARD CONTRACTUAL TERMS & CONDITIONS

### Administration

This Contract is between HCTD and the Contractor who will be responsible for providing the goods and/or performing the services described herein. HCTD is not party to defining the division of work between the Contractor and its Subcontractors, if any, and the Specifications and/or Scope of Work has not been written with this intent.

Contractor represents that it has or will obtain all duly licensed and qualified personnel and equipment required to perform hereunder. Contractor's performance under this Contract may be monitored and reviewed by HCTD Procurement Officer. Reports and data required to be provided by Contractor shall be delivered to HCTD Procurement Officer. Questions by Contractor regarding interpretation of the terms, provisions, and requirements of this Contract shall be addressed to HCTD Procurement Officer for response.

### Notification of Delay

Contractor will notify HCTD Procurement Officer as soon as Contractor has, or should have, knowledge that an event has occurred which will delay delivery or start-up of services. Within five days, Contractor will confirm such notice in writing furnishing as many details as is available.

### Request for Extension

Contractor agrees to supply, as soon as such data are available, any reasonable proofs that are required by HCTD Procurement Officer to make a decision of any request for extension. HCTD Procurement Officer will examine the request and any documents supplied by Contractor and will determine if Contractor is entitled to an extension and the duration of such extension. HCTD Procurement Officer will notify Contractor of the decision in writing. It is expressly understood and agreed that Contractor will not be entitled to damages or compensation and will not be reimbursed for losses on account of delays resulting from any cause under this provision.

### Contract Changes

Any proposed change in the contract will be submitted to HCTD for its prior written approval and HCTD will make the change by a Change Order if agreed upon by both parties in writing. Each written Change Order will expressly include any change in the Contract price or delivery schedule. No oral order or conduct by HCTD will constitute a Change Order unless confirmed in writing by HCTD.

### Instructions by Unauthorized Third Persons

In accordance with subsection 5-4, Contract Changes, of the solicitation, HCTD Procurement Officer or his or her authorized representative are the only persons authorized to make changes within the general scope of the Contract.

Any instructions, written or oral, given to Contractor by someone other than HCTD Procurement Officer or his or her authorized representative, which are considered to be a change in the Contract, will not be considered as an authorized Contract change. Any action on the part of Contractor taken in compliance with such instructions will not be grounds for subsequent payment or other consideration in compliance with the unauthorized change.

### Cost or Price Analysis

HCTD reserves the right to conduct a cost or price analysis for any purchase. HCTD may be required to perform a cost analysis when competition is lacking for any purchase. Sole source procurements which result in a single Bid being received will be subject to a cost analysis which will include the appropriate verification of cost data, the evaluation of specific elements of costs and the projection of data to determine the effect on Bid prices. HCTD may require a Pre-Award Audit and potential Contractors shall be prepared to submit data relevant to the proposed work which will allow HCTD to sufficiently determine that the proposed price is fair, reasonable, and in accordance with Federal, State and local regulations. Procurements resulting in a single Bid will be treated as a negotiated procurement and HCTD reserves the right to negotiate with the single Contractor to achieve a fair and reasonable price. If a negotiated price cannot be agreed upon by both parties, HCTD reserves the right to reject the single Bid. Contract change orders or modifications will be subject to a cost analysis.

### Lack of Funds

If expected or actual funding is withdrawn, reduced, or limited in any way prior to the expiration date set forth in this Contract or in any amendment hereto, HCTD may, upon written notice to Contractor, terminate this Contract in whole or in part. Such termination shall be in accordance with HCTD's rights to terminate for convenience or default.

### Force Majeure

The timely receipt of HCTD's requirements is essential. If the requirements are not received on time in accordance with the delivery schedule, HCTD may cancel the unfilled portion of the contract for cause, purchase substitute requirements elsewhere, and recover from Contractor any increased costs, thereby incurred together with all resulting incidental and consequential damages. HCTD may also terminate for cause, purchase substitute requirements elsewhere and recover costs and damages for breach of Contractor obligations.

The Contractor shall be entitled to a reasonable extension of time from HCTD for the delays caused by damage to Contractor's and/or HCTD's property caused by fire, lightning, earthquakes, tornadoes, and other extreme weather conditions or acts of nature, power failures, riots, acts of civil or military authorities of competent jurisdiction, strikes, lockouts, and any other industrial, civil or public disturbances beyond the control of the Contractor and its subcontractors causing the inability to perform the requirements of this Contract. Any delay other than ones mentioned above shall constitute a breach of Contractor's contractual obligations.



### Taxes, Licenses, Laws, and Certificate Requirements

Contractor shall maintain and be liable for all taxes, fees, licenses, and costs as may be required by federal, state, and local laws, rules, and regulations for the conduct of business by Contractor and any subcontractors and shall secure and at all times maintain any and all such valid licenses and permits as may be required to provide the services or supplies under this Contract. If for any reason, Contractor's required licenses or certificates are terminated, suspended, revoked, lapsed, or in any manner modified from their status at the time this Contract becomes effective, Contractor shall immediately notify HCTD in writing of such condition.

Contractor will give all notices and comply with all federal, state, local and HCTD laws, ordinances, rules, regulations, standards, and orders of any public authority bearing on the performance of the Contract, including, but not limited to, the laws referred to in these General Provisions of the Contract and the other Contract Documents. If the Contract Documents are at variance therewith in any respect, any necessary changes shall be adjusted by appropriate modification. Omission of any applicable laws, ordinances, rules, regulations, standards or orders by HCTD in the Contract Documents shall be construed as an oversight and shall not relieve the Contractor from his obligations to meet such fully and completely. Upon request, Contractor shall furnish to HCTD certificates of compliance with all such laws, orders and regulations. Contractor shall be responsible for obtaining all necessary permits and licenses required for performance under the Contract.

Applicable provisions of all federal, state, and local laws, and of all ordinances, rules, and regulations shall govern any and all claims and disputes which may arise between person(s) submitting a Bid response hereto and HCTD, by and through its officers, employees and authorized representatives, or any other persons, natural and otherwise, and lack of knowledge by any Contractor shall not constitute a cognizable defense against the legal effect thereof.

### Defective Work, Materials or Services

When and as often as HCTD determines that the work, materials, or services furnished under the Contract are not fully and completely in accordance with any requirement of the Contract, it may give notice and description of such non-compliance to Contractor. Within seven (7) calendar days of receiving such written notification, Contractor must supply HCTD with a written detailed plan which indicates the time and methods needed to bring the work, materials, or services within acceptable limits of the Contract. HCTD may reject or accept this plan at its discretion. In the event this plan is rejected, the work, materials, or services will be deemed not accepted and returned to Contractor at Contractor's expense. This procedure to remedy defects is not intended to limit or preclude any other remedies available to HCTD by law, including those available under the Uniform Commercial Code.

### Assignment

Contractor shall not assign any interest, obligation, or benefit under or in this Contract or transfer any interest in the same, whether by assignment or notation, without the prior written consent of HCTD. If an assignment is approved, this Contract shall be binding upon and inure to the benefit of the successors of Contractor. This provision shall not prevent Contractor from pledging any proceeds from this Contract as security to a lender. An assignment may be conditioned upon the posting of bonds, securities and the like by the assignee and the assignee must assume the written

Contract and be responsible for the obligations and liabilities of Contractor, known and unknown, under this Contract and applicable law.

HCTD may assign its rights and obligations under the Contract to any successor to the rights and functions of HCTD or to any governmental agency to the extent required by applicable laws or governmental regulations, or to the extent HCTD deems necessary or advisable under the circumstances.

### Indemnification and Hold Harmless

To the maximum extent permitted by law, and except to the extent caused by the sole negligence of HCTD, and except to the extent caused by decisions, omissions or actions made in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner which is believed to be in the best interests of HCTD, Contractor shall indemnify, defend, and hold harmless HCTD, their appointed officials, officers, agents, and employees, from and against any and all claims, suits, actions, losses, costs, penalties, and damages of any kind or nature whatsoever arising out of, in connection with, or incident to the services provided by or on behalf of Contractor, including, but not limited to, reasonable attorney fees, expert expenses and costs of litigation. In addition, Contractor shall, at HCTD's option, assume the defense of HCTD and its officers and employees in all legal or claim proceedings arising out of, in connection with, or incident to such indemnified services, and shall pay all defense expenses, including reasonable attorney's fees, expert fees, and costs incurred by HCTD on account of such litigation or claims. This indemnification obligation shall include, but is not limited to, all claims against HCTD by an employee or former employee of Contractor or its subcontractors, and Contractor, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects HCTD only, under any industrial insurance act, other than the Worker's Compensation Act, the Disability Benefit Act, or other employee benefit act of any jurisdiction, which would otherwise be applicable in the case of such claim. This indemnification obligation shall also obligate Contractor to protect, indemnify, defend, and save harmless HCTD, their appointed officials, officers, officials, agents, and employees from any and all claims or lawsuits alleging a violation of a third party's copyright or patent rights arising out of, or in connection with, Contractor's provision of services under this Contract. Notwithstanding anything provided in this Subsection, HCTD retains the right to provide its own defense against any suits, claims, or actions, and to assess any costs of such defense to Contractor, including reasonable attorney's fees, expert witness fees, and court costs.

### Applicable Law and Forum

All work done pursuant to any contract resulting from this RFP will be governed by and construed according to the regulations of the Federal Transit Administration and the laws of the State of Texas. Further, the successful Contractor shall abide by all federal, state, and local laws, codes, and ordinances governing any areas(s) in which a service is rendered and shall have all required permits, licenses, agreements, tariffs, bonding, and insurance required by same. No claims for additional payment shall be approved for changes required to comply with any such requirements. Any actions arising here from shall be filed in the County of San Saba, Texas and the Federal Transit Administration if applicable.

### Attorney Fees

In the event either party shall engage the services of an attorney or other professional due to the default of the other party, the defaulting (non-prevailing) party shall pay all legal costs and fees, including attorney's fees, incurred by the non-defaulting (prevailing) party in enforcing its rights.

## HCTD Employees Ethics

Hill Country Transit District has implemented a policy regarding Employees Ethics. These policies shall apply to HCTD employees involved in procurement. It is a breach of ethical standards for any HCTD employee to participate directly or indirectly in a procurement when the employee knows:

- The employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement;
- A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
- Any other person, business, or organization with whom the employee or any member of employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement. In addition, any persons acting as members of an evaluation committee for any procurement shall, for the purposes of the procurement, be bound by conditions of this Section. Throughout the bid/proposal evaluation process and subsequent contract negotiations, offerors shall not discuss or seek specific information about this procurement, including but not limited to, the contents of submissions, the evaluation process or the contract negotiations, with members of any evaluation committee, HCTD Board of Directors, or other HCTD employees other than the designated HCTD Procurement Department staff.

## Conflicts of Interest and Non-Competitive Practices

- A. Conflict of Interest – Contractor by entering into this Contract with HCTD to perform or provide work, services, or materials, has thereby covenanted that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest, which conflicts in any manner or degree with the work, services, or materials required to be performed and/or provided under this Contract and that it shall not employ any person or agent having any such interest. In the event that Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such interest to HCTD and take action immediately to eliminate the conflict or to withdraw from this Contract, as HCTD may require.
- B. Contingent Fees and Gratuities – Contractor, by entering into this Contract with HCTD to perform or provide work, services, or materials, has thereby covenanted:
1. No person or selling agency except bona fide employees or designated agents or representatives of Contractor has been or will be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and
  2. No gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by Contractor or any of its agents, employees, or representatives, to any official, member or employee of HCTD or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.

### Conflicts of Interest – Current and Former Employees

HCTD seeks to eliminate and avoid actual or perceived conflicts of interest and unethical conduct by current and former HCTD employees in transactions with HCTD. Consistent with this policy, no current or former HCTD employee may contract with, influence, advocate, advise, or consult with a third party about a HCTD transaction, or assist with the preparation of Bids submitted to HCTD while employed by HCTD or within one (1) year after leaving HCTD's employment, if he/she participated in determining the work to be done or process to be followed while a HCTD employee.

Furthermore, no member, officer, or employee of HCTD during their tenure or for two (2) years thereafter will have any financial interests, direct or indirect, in this Contract or the proceeds thereof.

### Other Public Agency Orders

Other federal, state, county, and local entities may utilize the terms and conditions established by this Contract. HCTD does not accept any responsibility or involvement in the purchase orders or contracts issued by other agencies.

### Severability

Whenever possible, each provision of this Contract shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal, or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid, and enforceable and have the intent and economic effect as close as possible to the invalid, illegal, and unenforceable provision.

### Non-waiver of Breach

No action or failure to act by HCTD shall constitute a waiver of any right or duty afforded to HCTD under the Contract; nor shall any such action or failure to act by HCTD constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by HCTD in writing.

### Use of HCTD's Name in Contractor Advertising or Public Relations

HCTD reserves the right to review and approve all HCTD-related copy prior to publication. Contractor will not allow HCTD-related copy to be published in Contractor's advertisements or public relations programs until submitting HCTD-related copy and receiving prior written approval from HCTD Procurement Officer or HCTD Board Chair. Contractor will agree that published information on HCTD or its program will be factual, and in no way imply that HCTD endorses Contractor's firm, service, or product.

## **SPECIFIC CONTRACTUAL TERMS & CONDITIONS**

### Contract

A Contract shall be issued referencing this solicitation. Contract shall define and authorize the work by Contractor based on the negotiated fees agreed to by HCTD. The Contract(s) issued by HCTD may reflect agreed to modification of Contract terms, funding, or other matters subject to subsection 5-4, Contract Changes.

### Contract Documents and Precedence

The documents constituting the Contract between HCTD and Contractor are intended to be complementary so that what is required by any one of them shall be as binding as if called for by all of them. In the event of any conflicting provisions or requirements within the several parts of the Contract Documents, the following order of precedence shall be applied:

- 1) Any required federal, state or local regulations that may not be altered by HCTD;
- 2) Contract;
- 3) Contract amendments;
- 4) Results of negotiations;
- 5) Solicitation and all issued addenda and approved equals;
- 6) Any optional federal regulations elected by HCTD as expressly set forth herein;
- 7) Clarifications of and amendments to Contractor's proposal as accepted by HCTD; and
- 8) Contractor's proposal and Attachments, and all clarifications and amendments issued prior to contract award.

### Contract Term

The term of the Contract shall be effective with the issuance of the Notice to Proceed. The Contract Term is defined in Section 2, Scope of Work.

### Payment Procedures

Payments for services rendered and expenses incurred shall be made after presentation of Contractor's proper invoices. Such invoices shall be computed in accordance with the fee schedule agreed to by HCTD and Contractor, and incorporated into the final contract, and are due and payable within thirty (30) days of receipt of a correct invoice as agreed upon by HCTD. The monthly amount payable is based on the annual management fee payable. Contractor also agrees to supply, with each invoice, additional information as may be requested by HCTD.

HCTD may, at any time, conduct an audit of any and/or all records kept by the Contractor for this project. Any overpayment uncovered in such an audit may be charged against the Contractor's future invoices. HCTD may withhold payment for services it believes were improper, failed to meet with project specifications, or are otherwise questionable.

Invoices should be submitted to:

[hctdap@takethehop.com](mailto:hctdap@takethehop.com)

### Advance Payment Prohibited

No advance payment shall be made for the work furnished by Contractor pursuant to this Contract.

### Prompt Payment to Subcontractors

The Contractor is required to pay each first tier Subcontractor for all work that the Subcontractor has performed to the satisfaction of HCTD, no later than thirty (30) calendar days after the Contractor has received payment from HCTD for that work, and each tier of Subcontractors must likewise pay the next lower tier of Subcontractors within thirty (30) calendar days after receiving payment. If this Contract provides for retainage, the Contractor must remit to each first-tier Subcontractor its share of any retainage within thirty (30) days after receipt of such retainage from HCTD, and each tier of Subcontractors must likewise remit retainage to the next lower tier of Subcontractors within thirty (30) calendar days after receiving payment. If this Contract does not provide for retainage, then neither Contractor nor any Subcontractor may withhold retainage from a Subcontractor. The requirements of this paragraph must be stated in all of the Contractor's subcontracts.

A delay in or postponement of payment to a Subcontractor requires good cause and prior written approval by HCTD Procurement Officer or his or her designee. The Contractor is required to include, in each subcontract, a clause requiring the use of appropriate arbitration mechanisms to resolve all payment disputes.

HCTD will not pay the Contractor for work performed unless and until the Contractor ensures that each Subcontractor has been promptly paid under all previous payment requests, as evidenced by the filing with HCTD of lien waivers (if applicable), canceled checks (if requested), and the Contractor's sworn statement that it has complied with the prompt payment requirements. The Contractor must submit a prompt payment affidavit, (form to be provided by HCTD) which identifies each Subcontractor and the date and amount of the last payment to such Subcontractor, with every payment request filed with HCTD, except for the first payment request.

Failure to comply with these prompt payment requirements is a breach of the Contract which may lead to any remedies permitted under law, including, but not limited to, Contractor debarment. In addition, Contractor's failure to promptly pay its Subcontractors is subject to the provisions of 2 C.F.R. part 180.

### Express Warranties for Services

Contractor warrants that the services shall in all material respects conform to the requirements of this Contract. Contractor warrants that qualified professional personnel with in-depth knowledge

shall perform the services in a timely and professional manner; and that the services shall conform to the standards generally observed in the industry for similar services. Contractor warrants that the services shall be in compliance with all applicable laws, rules, and regulations.

### Independent Status of Contractor

In the performance of this Contract, the parties shall be acting in their individual, corporate, or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship shall be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim or right, privilege or benefit, which would accrue to an employee.

### Notices

Any notice which is required to be given hereunder shall be deemed sufficiently given or rendered if such notice is in writing and is delivered personally or sent by certified mail, postage prepaid, return receipt requested, or by a national overnight courier service to the following addresses:

Hill Country Transit District  
P. O. Box 217 (*for Unites States Postal Service delivery only*)  
906 S. High Street (*for non-USPS delivery such as FedEx, UPS, or other delivery service*)  
San Saba, TX 76877

Any notice given hereunder by personal delivery or express mail shall be deemed delivered when received. Any properly addressed notice given herein by certified mail shall be deemed delivered when the return receipt therefore is signed, or refusal to accept the mailing by the addressee is noted thereon by the postal authorities. Either party may, at any time, change its address for the above purposes by sending a notice to the other party stating the change and setting forth the new address.

### Non-Disclosure of Data

Data provided by HCTD either before or after Contract award shall only be used for its intended purpose. Contractors, vendors, Contractors, and subcontractors shall not utilize or distribute HCTD data in any form without the prior express written approval of HCTD.

### Non-Disclosure Obligation

While providing the work required under this Contract, Contractor might encounter licensed technology, software, documentation, drawings, schematics, manuals, data, or other materials marked "Confidential," "Proprietary," or "Business Secret." Contractor shall, with regard to such information and material received or used in performance of this Contract, employ practices no less than those used for the protection of Contractor's own confidential information.

The Contract imposes no obligation upon Contractor with respect to confidential information which Contractor can establish that: a) was in the possession of, or was rightfully known by Contractor without an obligation to maintain its confidentiality prior to receipt from HCTD or a third party; b) is or becomes generally known to the public without violation of this Contract; c) is obtained by Contractor in good faith from a third party having the right to disclose it without an obligation of

confidentiality; or, d) is independently developed by Contractor without the participation of individuals who have had access to HCTD's or the third party's confidential information. Contractor may disclose confidential information if so required by law, provided that Contractor notifies HCTD that the third party of such requirement prior to disclosure.

### Public Disclosure Requests

Contracts shall be considered public documents and, with exceptions provided under public disclosure laws, will be available for inspection and copying by the public.

If a Contractor considers any portion of any documents which may be delivered to HCTD pursuant to this Contract to be protected under the law, Contractor shall clearly identify each such item with words such as "Confidential," "Proprietary," or "Business Secret." If a request is made for disclosure of any such document, HCTD will determine whether the document should be made available under the law. If the document or parts thereof are determined by HCTD to be exempt from public disclosure, HCTD will not release the exempted document. If the document is not exempt from public disclosure law, HCTD will notify Contractor of the request and allow Contractor five (5) days to take whatever action it deems necessary to protect its interests. If Contractor fails or neglects to take such action within said period, HCTD will release the document deemed subject to disclosure. By signing a Contract, Contractor assents to the procedure outlined in this paragraph and shall have no claim against HCTD on account of actions taken under such procedure.

### Ownership of Data

Subject to the rights granted Contractor pursuant to this Agreement, all right, title and interest in and to the data collected and developed during the performance of this contract shall at all times remain the sole and exclusive property of HCTD. Contractor shall surrender all such data to HCTD prior to submitting an invoice for final payment.

### Counterparts

This Contract may be signed in two (2) counterparts, each of which shall be deemed an original and which shall together constitute one (1) Contract.

### Contractual Relationships

No contractual relationship will be recognized under the Contract other than the contractual relationship between HCTD and Contractor.



## **FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS**

The Purchaser and Contractor agree and acknowledge:

### No Federal Government Commitment or Liability to Third Parties

Except as the Federal Government expressly consents in writing, the Recipient agrees that:

1. The Federal Government does not and shall not have any commitment or liability related to the Underlying Agreement, to any Third-Party Participant at any tier, or to any other person or entity that is not a party (FTA or the Recipient) to the Underlying Agreement; and
2. Notwithstanding that the Federal Government may have concurred in or approved any Solicitation or Third-Party Agreement at any tier that may affect the Underlying Agreement, the Federal Government does not and shall not have any commitment or liability to any Third-Party Participant or other entity or person that is not a party (FTA or the Recipient) to the Underlying Agreement.

### Access to Third-Party Contract Records

The Recipient agrees to require, and assures that each of its Subrecipients will require, its Third-Party Contractors at each tier to provide:

- A. The U.S. Secretary of Transportation and the Comptroller General of the United States, the state, or their duly authorized representatives, access to all Third-Party Contract records (at any tier) as required under 49 U.S.C. § 5325(g); and
- B. Sufficient access to all Third-Party Contract records (at any tier) as needed for compliance with applicable federal laws, regulations, and requirements or to assure.

### Changes to Federal Requirements

The Recipient agrees to include notice in each Third-Party Agreement that:

- A. Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and
- B. Applicable changes to those federal requirements will apply to each Third-Party Agreement and parties thereto at any tier.

### Civil Rights

The following Federal Civil Rights laws and regulations apply to all contracts.

- A. Federal Equal Employment Opportunity (EEO) Requirements. These include, but are not limited to: a. Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color,

religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity. b. Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

- B. Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
  - C. Nondiscrimination on the Basis of Age. The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.
  - D. Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and 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.
  - E. Equal Opportunity: The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency 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 Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.
- I. 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.

- II. 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.
- III. 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.
- IV. 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.
- IV. Promoting Free Speech and Religious Liberty. The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

#### Incorporation of Federal Transit Administration (FTA) Terms

The provisions within 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 the current FTA Circular 4220 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

#### Energy Conservation

The Recipient agrees to, and assures that its Subrecipients will, comply with the mandatory energy

standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321 et seq., and perform

an energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. part 622, subpart C.

#### Veterans Preference

As provided in 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:

- A. Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a Third-Party Contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53; and
- B. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

#### False or Fraudulent Statements or Claims

- A. Civil Fraud. The Recipient acknowledges and agrees that:
  - I. Federal laws, regulations, and requirements apply to itself and its Underlying Agreement, including 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.
  - II. By executing the Underlying Agreement, the Recipient certifies and affirms to the Federal Government the truthfulness and accuracy of any claim, statement, submission, certification, assurance, affirmation, or representation that the Recipient provides to the Federal Government.
  - III. The Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, and other applicable penalties if the Recipient presents, submits, or makes available any false, fictitious, or fraudulent information.
- B. Criminal Fraud. The Recipient acknowledges that 49 U.S.C. § 5323(1)(1) authorizes the Federal Government to impose the penalties under 18 U.S.C. § 1001 if the Recipient provides a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation in connection with a federal public transportation program under 49 U.S.C. chapter 53 or any other applicable federal law.

#### Disadvantaged Business Enterprises

The recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is

required in all DOT-assisted prime and subcontracts:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- A. Withholding monthly progress payments;
- B. Assessing sanctions;
- C. Liquidated damages; and/or
- D. Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. §26.13(b).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

#### Fly America

The recipient agrees to comply with the air transportation requirements of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 – 301-10.143.

#### ADA Access

The Recipient agrees to comply with the following federal prohibitions against discrimination based on disability:

- A. Federal laws, including:
  - I. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities;
  - II. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities:
    - a. For FTA Recipients generally, Titles I, II, and III of the ADA apply; but
    - b. For Indian Tribes, Titles II and III of the ADA apply, but Title I of the

ADA does not apply because it exempts Indian Tribes from the definition of “employer;”

- III. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities;
  - IV. Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and
  - V. Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.
- B. Federal regulations and guidance, including:
- I. U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. part 37;
  - II. U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27;
  - III. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. part 1192 and 49 C.F.R. part 38;
  - IV. U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39;
  - V. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35;
  - VI. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36;
  - VII. U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630;
  - VIII. U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, subpart F;
  - IX. U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194;
  - X. FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609;
  - XI. FTA Circular 4710.1, “Americans with Disabilities Act: Guidance;” and
  - XII. Other applicable federal civil rights and nondiscrimination regulations and

guidance.

Special Notification Requirements for States

- A. Types of Information. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:
  - I. The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
  - II. The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
  - III. The amount of federal assistance FTA has provided for a State Program or Project.
- B. Documents. The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

Termination

All contracts in excess of \$10,000 must address termination for cause by the non-federal entity including the manner by which it will be effected and the basis for settlement.

Termination

- a. Termination for Convenience (General Provision) HCTD may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid for the work it has completed consistent with its contract requirements. No contract close-out costs and lost profits shall be paid to the Contractor. Termination will be effected by written notice at least ten (10) days prior to termination date. If the Contractor has any property in its possession belonging to HCTD, the Contractor will account for the same, and dispose of it in the manner HCTD directs.
- b. Termination for Default [Breach or Cause] 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, HCTD may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.  
If it is later determined by HCTD 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 Contractor, HCTD, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

- c. Opportunity to Cure HCTD in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) business days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.  
If Contractor fails to remedy to HCTD's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from HCTD setting forth the nature of said breach or default, HCTD shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude HCTD from also pursuing all available remedies against Contractor and its sureties for said breach or default.
- d. Waiver of Remedies for any Breach In the event that HCTD elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by HCTD shall not limit HCTD's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- e. Termination for Convenience of Default (Cost-Type Contracts) HCTD may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of HCTD or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from HCTD, or property supplied to the Contractor by HCTD. If the termination is for default, HCTD 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 HCTD and the parties shall negotiate the termination settlement to be paid the Contractor.  
If the termination is for the convenience of HCTD, the Contractor shall be paid as provided for in Section 7-13 (a).

#### Debarment and Suspension

The Recipient agrees to the following:

- A. It will comply with the following requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200.
- B. It will not enter into any "covered transaction" (as that phrase is defined at 2 C.F.R. §§ 180.220 and 1200.220) with any Third- Party Participant that is, or whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions, except as authorized by—
  - I. U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200;
  - II. U.S. OMB regulatory guidance, "Guidelines to Agencies on Government-wide



- III. Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180; and Other applicable federal laws, regulations, or requirements regarding participation with debarred or suspended Recipients or Third-Party Participants.
- C. It will review the U.S. GSA “System for Award Management – Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs,” if required by U.S. DOT regulations, 2 C.F.R. part 1200.
- D. It will ensure that its Third-Party Agreements contain provisions necessary to flow down these suspension and debarment provisions to all lower tier covered transactions.
- E. If the Recipient suspends, debars, or takes any similar action against a Third-Party Participant or individual, the Recipient will provide immediate written notice to the:
  - I. FTA Regional Counsel for the Region in which the Recipient is located or implements the Underlying Agreement;
  - II. FTA Headquarters Manager that administers the Grant or Cooperative Agreement; or
  - III. FTA Chief Counsel.

#### Never Contract with the Enemy

The Recipient agrees to the regulations implementing Never Contract with the Enemy in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered contracts, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

#### Resolution of Disputes, Breaches, or Other Litigation

##### A. FTA Interest

FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.

##### B. Notification to FTA; Flow Down Requirement

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third-Party Agreements and must require each Third-Party Participant to include an equivalent provision in its sub-agreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- I. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

- II. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
- III. Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

#### C. Federal Interest in Recovery

The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA's prior written concurrence.

#### D. Enforcement

The Recipient must pursue its legal rights and remedies available under any Third-Party Agreement or any federal, state, or local law or regulation.

#### E. Agency Process

Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of HCTD Board of Directors. This decision shall be final and conclusive unless within five (5) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to HCTD Board Chair. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The

decision of HCTD Board Chair shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by HCTD, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between HCTD and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Texas, San Saba County or Bell County.

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 HCTD or the 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.

#### Lobbying Restrictions

The Recipient agrees that neither it nor any Third-Party Participant will use federal assistance to influence any officer or employee of a federal agency, member of Congress or an employee of a member of Congress, or officer or employee of Congress on matters that involve the Underlying Agreement, including any extension or modification, according to the following:

- A. Laws, Regulations, Requirements, and Guidance. This includes:
  - I. The Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended;
  - II. U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. part 20, to the extent consistent with 31 U.S.C. § 1352, as amended; and III. Other applicable federal laws, regulations, requirements, and guidance prohibiting the use of federal assistance for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature; and
- B. Exception. If permitted by applicable federal law, regulations, requirements, or guidance, such lobbying activities described above may be undertaken through the Recipient's or Subrecipient's proper official channels.
- C. Political Activity. The Recipient agrees to comply with:
  - I. The Hatch Act, 5 U.S.C. chapter 15, which limits the political activities of state and local government agencies supported in whole or in part with federal assistance, including the political activities of state and local government officers

and employees whose principal governmental employment activities are supported in whole or in part with federal assistance;

- II. U.S. Office of Personnel Management regulations, “Political Activity of State or Local Officers or Employees,” 5 C.F.R. part 151; and
- III. 49 U.S.C. § 5323(l)(2) and 23 U.S.C. § 142(g), which limits the applicability of the Hatch Act, as follows:
  - a. The Hatch Act does not apply to nonsupervisory employees of a public transportation system, or any other agency or entity performing related functions, based upon the Award of federal assistance under 49 U.S.C. chapter 53 or 23 U.S.C. § 142(a)(2); but
  - b. Notwithstanding the preceding section 4(e)(3)(ii) of this Master Agreement, the Hatch Act does apply to a nonsupervisory employee if imposed for a reason other than the Award of federal assistance to its employer under 49 U.S.C. chapter 53 or 23 U.S.C. § 142(a)(2).

D. Lobbying and Disclosure Certification

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

Environmental Protection (Clean Air and Clean Water)

The Recipient agrees to comply with the regulations within the Clean Air Act (42 U.S.C. §§ 7401 - 7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 - 1388), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401 - 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251 - 1388). Violations must be reported to the 64 Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**Operations/Management Related Clauses**

Recycled Products

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 (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. part 247.

Transit Employee Protective Arrangement

As a condition of award of federal assistance appropriated or made available for FTA programs involving public transportation operations, the Recipient agrees to comply and assures that each

Third-Party Participant will comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

(1) U.S. DOL Certification. When its Award, the accompanying Underlying Agreement, or any Amendments thereto involve public transportation operations and are supported with federal assistance appropriated or made available for 49 U.S.C. §§ 5307 – 5312, 5316, 5318, 5323(a)(1), 5323(b), 5323(d), 5328, 5337, 5338(b), or 5339, or former 49 U.S.C. §§ 5308, 5309, 5312, or other provisions of law as required by the Federal Government, U.S. DOL must provide a certification of employee protective arrangements before FTA may provide federal assistance for that Award. The Recipient agrees that the certification issued by U.S. DOL is a condition of the Underlying Agreement and that the Recipient must comply with its terms and conditions.

(2) Special Warranty. When its Underlying Agreement involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The Recipient agrees that its U.S. DOL Special Warranty is a condition of the Underlying Agreement and the Recipient must comply with its terms and conditions.

(3) Special Arrangements for Underlying Agreements for Federal Assistance Authorized under 49 U.S.C. § 5310. The Recipient agrees, and assures that any Third-Party Participant providing public transportation operations will agree, that although pursuant to 49 U.S.C. § 5310, and former 49 U.S.C. §§ 5310 or 5317, FTA has determined that it was not “necessary or appropriate” to apply the conditions of 49 U.S.C. § 5333(b) to any Subrecipient participating in the program to provide public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate.

#### Charter Services Operations

The contractor agrees to comply with FTA’s Charter Service Regulations (49 CFR Part 604), which implement 49 U.S.C. 5323(d), protect private charter operators from unauthorized competition from FTA grant recipients.

#### School Bus Operations

The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under: 1. Federal transit laws, specifically 49 U.S.C. § 5323(f); 2. FTA regulations, “School Bus Operations,” 49 C.F.R. part 605; 3. Any other Federal School Bus regulations; or 4. Federal guidance, except as FTA determines otherwise in writing. If Contractor violates this School Bus Agreement, FTA may: 1. Bar the Contractor from receiving Federal assistance for public transportation; or 2. Require the contractor to take such remedial measures as FTA considers appropriate. When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities. The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

### Drug Use and Alcohol Program

The contractor agrees to comply with a drug and alcohol program that has a third party contractor(s) who perform safety-sensitive functions must comply with FTA's substance abuse management program under 49 C.F.R. part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." Under 49 C.F.R. § 655.4, Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

1. Operating a revenue service vehicle, including when not in revenue service;
2. Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
3. Controlling dispatch or movement of a revenue service vehicle;
4. Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. § 5311 and contracts out such services;
5. Carrying a firearm for security purposes. Additionally, third party contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

### Prohibition on certain telecommunications and video surveillance services or equipment

Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

- I. Procure or obtain;
- II. Extend or renew a contract to procure or obtain; or
- III. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
  - a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

- b. Telecommunications or video surveillance services provided by such entities or using such equipment.
- c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

#### Contract work Hours and Safety Standards Act

All contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts.

## TEXAS DEPARTMENT OF TRANSPORTATION (TxDOT) REQUIREMENTS

The Purchaser and Contractor acknowledge and agree

### 34 TAC §20.585 Debarment

The State of Texas, in order to protect the interests of the state may:

- A. Conduct an investigation upon a complaint regarding a contractor's acts and omissions in procurement or performance of that contract where the complaint may constitute cause for debarment;
- B. Cancel one or more of the contractor's active or pending contracts upon a complaint regarding the contractor's acts and omissions in procurement or performance of that contract where the complaint may constitute cause for debarment;
- C. Assess actual damages and costs incurred due to contractor's failure to perform as specified in the contract;
- D. Debar contractor for a specified period of time; and
- E. Take any other action authorized by law.

### §231.006 Family Code Child Support Obligation Certification

Under Section 231.006(d) of the Texas Family Code, the Sub-recipient certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified GRANT and acknowledges that this Agreement may be terminated and payment or grant funds may be withheld if this certification is inaccurate.

### §2252.903 Gov't Code Debts and Delinquencies Affirmations

Sub-recipient agrees that any payments due it under the Agreement shall be applied toward any debt or delinquency that is owed to the State of Texas.

### §444.190 Gov't Code Disaster Recovery Plan

In accordance with 13 TAC (Texas Administrative Code) §6.94(a)(9), Sub-recipient shall provide descriptions of its business continuity and disaster recovery plans.

### §2254.033 Gov't Code Disclosure of Prior State Employment

In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, RESPONDENT certifies that it does not employ an individual who has been employed by TxDOT or another agency at any time during the two years preceding the submission of the Response or, in the alternative, RESPONDENT has disclosed in its Response the following:

- A. The nature of the previous employment with TxDOT or the other agency;
- B. The date the employment was terminated; and
- C. The annual rate of compensation for the employment at the time of its termination.

### §2271.001 Gov't Code Entities that Boycott Israel

Pursuant to Section 2271.001 of the Texas Government Code, Sub-recipient certifies that either:

- A. It meets an exception criterion under Section 2271.002, or
- B. It does not boycott Israel and will not boycott Israel during the term of this Agreement. Subrecipient shall in a writing to TxDOT state any fact(s) that make it exempt from the boycott certification.

### Federal Executive Order 13224 Excluded Parties

Sub-recipient certifies that it is not listed on the prohibited vendors list authorized by Executive Order 13224, Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten



to Commit, or Support Terrorism”, published by the United States Department of the Treasury, Office of Foreign Assets Control.

§2155.077(a)(2) Gov't Code False Statements

Sub-recipient represents and warrants that all statements and information prepared and submitted in this document are current, complete, true and accurate. Submitting a false statement or material misrepresentation made during the performance of a contract is a material breach of contract and may void this agreement.

§2155.004 Gov't Code Financial Participation Prohibited Affirmation

Under Section 2155.004(b) of the Texas Government Code, Sub-recipient certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified agreement/GRANT and acknowledges that this agreement may be terminated, and payment withheld if this certification is inaccurate.

§2252.152 Gov't Code Foreign Terrorist Organizations

Sub-recipient represents and warrants that is not engaged in business with Iran, Sudan, or a foreign terrorist organization as prohibited by Section 2252.152 of the Texas Government Code.

§2155.006 and 2261.053 Gov't Code Prior Disaster Relief Contract Violation

Under Sections 2155.006 and 2261.053 of the Texas Government Code, the Sub-recipient certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified agreement/GRANT and acknowledges that this agreement may be terminated and payment withheld if this certification is inaccurate.

Chapter 552, Gov't Code and §2252.907 Gov't Code Public Information Act

Information, documentation, and other material in connection with this Agreement may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the “Public Information Act”). In accordance with Section 2252.907 of the Texas Government Code, the Sub-recipient is required to make any information created or exchanged with the State pursuant to the Agreement and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

§2252.0012 Gov't Code Signature Authority

The Sub-recipient represents and warrants that the individual executing this Agreement is authorized to sign this Agreement on behalf of the Sub-recipient and to bind the Sub-recipient.

§2262.154 Gov't Code State Auditor's Right to Audit

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. The acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

§2155.077 Gov't Code Suspension and Debarment

Sub-recipient certifies that it and its principals are not suspended or debarred from doing business

with the State of Texas or federal government as listed on the State of Texas Debarred Vendor List as maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.

§2262.056 (b) Gov't Code Assignment

Sub-recipient shall not assign its rights under the Agreement or delegate the performance of its duties under the Agreement without prior written approval from the TxDOT. Any attempted assignment in violation of this provision is void and without effect.

§552.372 Gov't Code Contracting Information Responsibilities

In accordance with Section 552.372 of the Texas Government Code, Sub-recipient agrees to:

- A. preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to TxDOT for the duration of the Agreement,
- B. promptly provide to TxDOT any contracting information related to the Agreement that is in the custody or possession of the Sub-recipient on request of TxDOT, and
- C. on termination or expiration of the contract, either provide at no cost to TxDOT all contracting information related to the Agreement that is in the custody or possession of the Sub-recipient or preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to TxDOT. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code, may apply to the Agreement and the Sub-recipient agrees that the Agreement can be terminated if the Sub-recipient knowingly or intentionally fails to comply with a requirement of that subchapter.

§2155.0061 Gov't Code Human Trafficking Prohibition

Under Section 2155.0061 of the Texas Government Code, the Sub-recipient certifies that the individual or business entity named in the Agreement is not ineligible to receive the specified Agreement/GRANT and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

**Operations/Management**

§2260.004 Gov't Code Dispute Resolution

The Recipient agrees to the dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute under this Agreement.

**ATTACHMENT A – Vendor Checklist**

(Verification that all necessary documents are included)

This form must be completed and returned with the technical proposal. Failure to return this form may be cause for considering your proposal non-responsive.

	<u>Vendor Check-Off</u>	<u>HCTD Check-Off</u>
Cover Letter	_____	_____
Request For Proposal Cover Page	_____	_____
Attachment A: Vendor Checklist	_____	_____
Attachment B: Proposal Affidavit	_____	_____
Attachment C: Addendum Page	_____	_____
Attachment D: Price Proposal Form	_____	_____
Attachment E: TXDOT Form PTN-130 from <a href="https://www.txdot.gov/inside-txdot/forms-publications/forms/public-transportation.html">https://www.txdot.gov/inside-txdot/forms-publications/forms/public-transportation.html</a>	_____	_____

**ATTACHMENT B – Proposal Affidavit**

The undersigned hereby declares that he/she has carefully read and examined the Advertisement, the Scope and Terms, the Specifications, Warranty, and Quality Assurance Requirements, with all supporting certificates and affidavits, for the provision of services specified.

Signed: \_\_\_\_\_

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

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

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

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

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

**ATTACHMENT C – Addendum Page**

The undersigned acknowledges receipt of the following addenda to this RFP. (Include the number and date for each entry.)

Addendum Number	Dated _____
Addendum Number	Dated _____
Addendum Number	Dated _____
Addendum Number	Dated _____
Addendum Number	Dated _____
Addendum Number	Dated _____
Addendum Number	Dated _____

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**ATTACHMENT D – Price Proposal Form**

The undersigned hereby declares that he/she has carefully read and examined the Public Notice, the Request for Proposal, terms, and requirements, with all supporting certificates and affidavits, for services noted herein, and that he/she will enter into contract negotiations for said provision services, as specified, using the costs identified herein, as the basis for those contract negotiations. **Detailed cost information shall be attached and meet the requirements as described in the Proposal.**

<b>Contract Year:</b>	<b>Price</b>
January 1, 2022 – December 31, 2022	\$
January 1, 2023 – December 31, 2023	\$
January 1, 2024 – December 31, 2024	\$
<b>Total Initial Years</b>	
<b>Option Years:</b>	
January 1, 2025 – December 31, 2025	\$
January 1, 2026 – December 31, 2026	\$
<b>Total Option Years</b>	\$
<b>Total Initial Term and Option Years</b>	\$

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Official's Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

\_\_\_\_\_  
Telephone Number

**ATTACHMENT E – TxDOT Form PTN-130**

From <https://www.txdot.gov/inside-txdot/forms-publications/forms/public-transportation.html>

**Please note that the form can only be downloaded by using Microsoft Internet Explorer.**

Note: Procurement funding sources are both Federal and State.  
Third Party Procurement Contract Provisions based on type of solicitation are  
Operations/Management Related Clauses.

## **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.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_



## **Federal Changes**

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. Contractor's failure to so comply shall constitute a material breach of this contract.

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

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

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

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

**NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

(1) The Purchaser 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 Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

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

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

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

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

**Program Fraud and False or Fraudulent Statements or Related Acts.**

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and 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.

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

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

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

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

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

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

## **Civil Rights**

The following requirements apply to the underlying contract:

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

(2) **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:

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

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

(c) **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining

to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

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

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

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

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

## **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

### **Clause Language**

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

### **Disadvantaged Business Enterprises**

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is **\_6.9\_ %**. A separate contract goal has not been established for this procurement.

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

***{If no separate contract goal has been established, use the following}*** The successful bidder/offeree will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the **Hill Country Transit District**. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the Hill Country Transit District and contractor's receipt of the partial retainage payment related to the subcontractor's work.]**

e. The contractor must promptly notify **Hill Country Transit District**, whenever a DBE

subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of **Hill Country Transit District**.

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

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

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

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

## **Incorporation of Federal Transit Administration (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 4220.1E are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Hill Country Transit District requests which would cause Hill Country Transit District to be in violation of the FTA terms and conditions.

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

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

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

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



## **ACCESS TO RECORDS AND REPORTS**

### Flow Down

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

### Model Clause/Language

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

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

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

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

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

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

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

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