

RFP 126DA005

Health Examinations and Drug Screening



Regional Transportation District

Contracting and Procurement

1660 Blake St.
Denver, CO 80202

Regional Transportation District

RFP 126DA005

Health Examinations and Drug Screening

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1. CONTRACT AWARD

FORM OF THE CONTRACT

RTD Contract Number RFP 126DA005

ISSUED BY

Regional Transportation District
1660 Blake St., Denver, Colorado 80202 - 1399
Notices to: Eva Boyd, Contract Administrator

CONTRACTOR

TBD
TBD
Notices to: TBD, Contract Representative

Invoices: Submit invoices as stated in the Section entitled, "Statement of Contract Cost," Invoicing.

Products/Services: Health Examinations and Drug Screening

Contract Cost: TBD

Type: Fixed Price

Effective Date: The Effective Date of this Contract is July 20, 2026, or the last date of execution by RTD of the Signature Page, whichever is later.

Period of Performance: Subject to the Termination provision of the Contract, performance shall commence as of the Effective Date (or in the event that RTD provides a Notice to Proceed to the Contractor, the Period of Performance shall commence on the date of the Notice to Proceed) and shall continue for 5 years (subject to the exercise of any option periods).

This Contract consists of: (1) Contract Award and Signature Page(s); (2) Statement of Contract Cost; (3) Scope of Work (provided in Solicitation); (4) Terms and Conditions; (5) Contract-Specific Documents and Requirements; and (6) Attachments. These Contract Documents constitute the entire Contract between the parties.

2. STATEMENT OF CONTRACT COST

2.1. Term

Subject to the Termination provision of the Contract, Period of Performance shall commence as of the Effective Date (or in the event that RTD provides a Notice to Proceed to the Contractor, the Period of Performance shall commence on the date of the Notice to Proceed) and shall continue for 5 years.

2.2. Additional Option to Extend

RTD has the unilateral right and option to extend the Period of Performance beyond the expiration of the Period of Performance described above, including all available option periods. This option may be exercised more than once, but the extensions may not exceed a total of 6 calendar months. During such extensions, pricing for services and/or supplies will be based on the pricing established for the Period of Performance immediately preceding the extension. RTD may exercise this option to extend by written notice to the Contractor.

2.3. Compensation

- A. This is a fixed-price Contract with a maximum price not to exceed TBD, within which price Contractor agrees to complete the Work as per the Contract Documents. Compensation for Work shall be on a fixed price per unit of supplies ordered and for installation of such equipment, if required, and/or on a fixed price per hour for services in accordance with the negotiated pricing schedule included with this Statement of Contract Cost. Payments shall be made in accordance with the Invoicing terms included with this Statement of Contract Cost.
- B. All prices, rates and costs shall be inclusive of all fees associated with the Contractor's efforts, including but not limited to salaries, benefits, expenses, overhead, administration, profits, and outside consultant fees. No hourly charges shall exceed any hourly rates identified in this Statement of Contract Cost or Contract amendment. Contractor shall not invoice separately for mileage, travel time, parking expenses or any other miscellaneous charges.
- C. RTD shall not pay the Contractor for any Work performed or for any cost incurred by the Contractor or subcontractors prior to the Period of Performance, unless those costs are incurred pursuant to RTD written notice to proceed and the costs are directly related to deliverable items set forth in the Scope of Work. RTD shall not be required to pay any amount in excess of the Contract Cost, unless the Contractor has secured a written amendment to this Contract providing for such increase.

2.4. Discounts

If a prompt-payment discount is negotiated, its terms will be specifically identified in this Statement of Contract Cost. For purposes of earning such discount, payment shall be deemed tendered as of the date such payment is placed in the U.S. Mail.

2.5. Invoicing (Monthly)

- A. Not later than ten days following the end of each calendar month within the Period of Performance, the Contractor shall submit an invoice covering Work performed over the preceding month.
1. Invoices shall include:
 - a. The Contractor's legal name;
 - b. The Contract number;
 - c. The Purchase Order number;
 - d. The period covered by the invoice;
 - e. The work order(s), if any, covered by the invoice;
 - f. The total Contract Cost;
 - g. The total amount due on the invoice, specifying amount of supplies and services, respectively, due under the invoice, and all documentation; and
 - h. All other information specifically required by the Scope of Work.
 2. Contractor shall submit the following with its invoices:
 - a. A Monthly Progress Report detailing all Work accomplished during that month. Monthly Progress Reports shall be in narrative form, brief and informal in content, but shall include:
 - i. A quantitative description detailing all Work performed and percentage of completion by phases of the Scope of Work and required deliverable items;
 - ii. Identification of any current or anticipated problems which may impede Contractor's performance and the proposed corrective action; and
 - iii. A brief discussion of the Work to be performed during the next monthly reporting period.
 3. Submit invoices to:
AP.Department@RTD-Denver.com

2.6. Payment

- A. Payment to the Contractor shall be made upon RTD's determination that all Work submitted for payment has been performed and all information and documentation required under the invoice and work order, if any, has been submitted. Payment will be made to the Contractor within 30 days after RTD approval of submitted invoices.

1. Prompt Payment of Subcontractors. The Contractor agrees that:

- a. It shall pay its subcontractor(s) any undisputed amounts for the satisfactory performance of their Work within seven days of the Contractor's receipt of payment from RTD for such Work;
- b. Within 30 days after a subcontractor's Work has been satisfactorily completed and accepted by RTD's Project Manager or by the Contractor, whichever is earlier, the Contractor shall make full payment to the subcontractor of any retainage the Contractor has kept related to such subcontractor's Work, unless a claim is filed against the subcontractor related to such Work;
- c. Failure to comply with the above may give RTD just cause to impose one or more of the following penalties, until the required payment(s) to the Contractor's subcontractor(s) is satisfied, unless RTD has given prior written approval to the Contractor for the delay or postponement of payment(s): (1) withhold payments to the Contractor; (2) assess sanctions against the Contractor; (3) assess the subcontractor's indirect or consequential damages against the Contractor; (4) disqualify the Contractor from future bidding on RTD contracts *as non-responsible*; (5) enforce the payment bond against the Contractor; (6) pay the subcontractor(s) directly and deduct this amount from any retainage owed to the Contractor; (7) *provide notice of default to the Contractor, stating the potential for termination or suspension of the Contract*, in whole or in part; (8) issue a stop-work order until the subcontractor(s) is paid, which order shall constitute an unauthorized delay under the Contract that could result in liquidated damages against the Contractor. Unless approved by RTD, the Contractor's failure to comply with this Section is a material breach of the Contract; and

- d. It shall ensure that tiered subcontractors comply with this Section and that they insert provisions (a) and (b) of this Section into all lower-tiered subcontractor agreements.
2. For locally funded contracts with an SBE goal, see the SBE Contract Requirements' provisions on prompt payment of SBE subcontractors, which include monthly reporting requirements.

2.7. Cost Detail

Please refer to the Attachments.

3. SCOPE OF WORK

Please refer to the Attachments.

4. GENERAL TERMS AND CONDITIONS

4.1. DEFINITIONS

Unless otherwise defined in this Contract, capitalized terms shall have the meanings ascribed to them. The following definitions shall apply throughout the Contract:

Contract. This agreement, specifically consisting of the documents described in "Documents Forming the Contract" and any amendments to the Contract.

Contractor. The individual, firm, company, corporation, partnership, or association entering into this Contract with RTD. The Contractor shall be identified on the Contract Award and Signature Page(s). Wherever used in this Contract, the term "Contractor" shall also refer to the Contractor's employees, agents, subcontractors, and any designated representative, whose authority to act on the Contractor's behalf shall be delegated in writing.

RTD. The Regional Transportation District, a political subdivision of the State of Colorado. Whenever used in this Contract, the terms "Regional Transportation District" or "RTD" shall include RTD's General Manager, subject to limitations of authority established by RTD's Board of Directors, and, if so designated, the Contract Administrator or Project Manager.

Work. The work and services to be performed by the Contractor for RTD's benefit pursuant to this Contract as detailed in the Scope of Work and other Contract Documents, including all administrative, deliverables, design, documentation, engineering, equipment, installation, labor, legal, management, manufacturing, materials, supervision, testing, verification, and any other duties and services, professional or otherwise, to be furnished and provided by the Contractor as required

by the Contract, including all efforts necessary or appropriate to achieve final acceptance of the Work contemplated by the Contract.

4.2. DOCUMENTS FORMING THE CONTRACT

This Contract consists of the following documents and any amendments (collectively, "Contract Documents"), as applicable:

- Contract Award and Signature Page(s);
- Statement of Contract Cost;
- Scope of Work/Technical Specifications;
- Terms and Conditions, including:
 - the General Terms and Conditions,
 - Terms and Conditions that supplement the General Terms and Conditions ("Supplemental Terms and Conditions"), if any,
 - Special Provisions/Alterations prescribed herein to the Terms and Conditions ("Special Provisions/Alterations"), if any, and
 - Federally Required Terms and Conditions, if applicable; and
- Contract-Specific Documents and Requirements ("Contract-Specific Documents"), including:
 - Insurance and Bond Requirements,
 - Key Personnel Document,
 - Completed Certifications, and
 - SBE Contract Requirements, if applicable; and
- Exhibits (other than those documents already listed above).

4.3. CONTRACT ORDER OF PRECEDENCE

In the event of inconsistency among any provisions of this Contract, the inconsistency shall be resolved by giving precedence in the following descending order, as applicable:

1. Amendments to the Contract, if any;
2. Special Provisions/Alterations, if any;
3. Federally Required Terms and Conditions, if applicable;
4. Contract-Specific Documents;
5. Contract Award and Signature Page(s);
6. Supplemental Terms and Conditions, if any;

7. General Terms and Conditions;
8. Statement of Contract Cost;
9. Scope of Work/Technical Specifications; and
10. Exhibits (other than those documents already listed above).

Unless expressly agreed by RTD in the form of a Special Provision/Alteration prescribed herein or Contract amendment, any agreement, license, provision, or other document not listed above but made a part of this Contract shall be deemed an Exhibit for purposes of determining Contract order of precedence.

4.4. RTD CONTRACT ADMINISTRATION

- A. **General Manager.** RTD's General Manager shall be identified by name on the Contract Award and Signature Page(s). The General Manager shall have the sole authority, subject to monetary limitations established by the Board of Directors, to enter into, amend or terminate this Contract, and these duties may not be delegated except by written instrument authorized by the General Manager or RTD's Board of Directors.
- B. **Letter of Delegation.** RTD's General Manager may designate person(s) to act in his or her behalf in the general administration of this Contract. The General Manager's delegation of duties must be made in writing ("Letter of Delegation") with a copy delivered to the Contractor. Any General Manager Letter of Delegation shall include the extent of delegation of authority and any limitations on such authority. The General Manager may issue one or more Letters of Delegation and may at any time issue a new Letter of Delegation replacing the person(s) previously named.
- C. **Contract Administrator.** The General Manager may designate a Contract Administrator, who shall be identified in a Letter of Delegation and on the Contract Award and Signature Page(s), to assist in the general administration of this Contract. Any such Letter of Delegation shall describe the extent of the Contract Administrator's duties, but, unless further express delegation from the General Manager is provided, the Contract Administrator does not have the authority to enter into, amend or terminate this Contract. In the Contract Documents and solicitation, the Contract Administrator may also be referred to as the Contracting Officer, Purchasing Agent, Buyer, or the like.
- D. **Project Manager.** The General Manager may designate a Project Manager, who shall be identified in a Letter of Delegation, to administer the Work for RTD. Any such Letter of Delegation shall describe the extent of the Project Manager's

duties, but, unless further express delegation from the General Manager is provided, the Project Manager does not have the authority to enter into, amend or terminate this Contract.

4.5. EFFECTIVE DATE, PERIOD OF PERFORMANCE

- A. **Effective Date.** The Effective Date of this Contract is specified on the Contract Award and Signature Page(s). The Contract shall be effective until Contract closing. This Contract shall be considered closed after all Work has been accepted by RTD, RTD has received all necessary Closing Documents, and the Contractor has received final payment, provided however that certain terms and conditions shall, by their nature, survive closing of this Contract.
- B. **Period of Performance.** Performance shall commence as of the date specified in a notice to proceed or, if there is no notice to proceed, the Effective Date. The Period of Performance is specified on the Contract Award and Signature Page(s).

4.6. OPTIONS

RTD shall have the option to extend this Contract in accordance with the option terms, if any, negotiated on the Statement of Contract Cost. RTD shall give notice to the Contractor at least 60 days prior to the expiration of the Contract if RTD intends to exercise the next option. The Contractor's receipt of preliminary notice does not commit RTD to exercise an option to extend. RTD may exercise the option provision more than once, but the total extension of performance under the Contract shall not exceed the total number of option terms negotiated. If RTD exercises the option to extend, the Contract shall be amended to include the option provisions.

4.7. CONSIDERATION

- A. In consideration of the Contractor's satisfactory performance of the Work in full compliance with the Contract, RTD shall pay the Contractor in accordance with the Statement of Contract Cost.
- B. RTD shall not pay the Contractor for any Work performed prior to the Period of Performance.
- C. RTD shall not be required to pay any amount in excess of the Contract Cost, unless the Contractor has secured a written amendment to this Contract providing for such increase.

4.8. INVOICING AND PAYMENT

Invoicing and payment procedures are detailed in the Statement of Contract Cost.

4.9. CONTRACT CLOSING PROCEDURES AND FINAL PAYMENT

- A. **Contract Closing Procedures.** Upon Contractor's satisfactory performance of the Work in full compliance with this Contract, or upon termination of this Contract, whether for convenience or default, RTD shall provide the Contractor with the following Closing Documents: the Contractor's Release and the Contractor's Assignment of Refunds, Rebates, Credit and Other Awards.
- B. **Final Payment.** Prior to final payment under the Contract, and as a condition precedent to final payment, the Contractor shall execute and deliver all Closing Documents to RTD.

4.10. ACCESS TO RECORDS AND REPORTS

- A. For a period of the longer of three years or such other time as required by another provision in this Contract following Contract closing, the Contractor shall maintain, preserve and make available to RTD and any of its authorized representatives access at all reasonable times to any books, documents, papers and records of Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions.
- B. The Contractor shall maintain and RTD shall have the right to examine and audit all records and other evidence sufficient to reflect properly all prices, costs, or rates negotiated and invoiced in performance of this Contract. This right of examination shall include inspection at all reasonable times of the Contractor's offices engaged in performing the Contract.
- C. If this Contract is completely or partially terminated, the Contractor shall make available, for a period of the longer of three years or such other time as required by another provision in this Contract after any resulting final termination settlement, the records relating to the Work completed up to the date of termination. The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this Contract until such appeals, litigation, or claims are finally resolved.
- D. The Contractor shall insert this Article in all subcontracts under this Contract and require subcontractor compliance with this Article.

4.11. PERFORMANCE OF WORK

- A. Scope of Work. The Contractor shall provide RTD with the Work set forth in the Scope of Work, as may be amended by change order or Contract amendment.

- B. Notice to Proceed. The Contractor shall not commence performance of Work nor incur any costs for which Contractor intends to seek reimbursement until the date specified in a notice to proceed or, if there is no notice to proceed, the Effective Date.
- C. Work Orders. If RTD specifies in writing that this Contract is a work-order contract, the Contractor shall not perform any Work except pursuant to a valid, fully executed work order, which shall be in a form prescribed by RTD. Each such work order shall be subject to the terms and conditions of this Contract. Any work order issued must contain a detailed summary of the Work to be performed, the projected cost for such Work, cost breakdown, completion date, an agreed-upon delivery schedule, and any other relevant information. To be valid, a work order must be signed by RTD and the Contractor; however, RTD and the Contractor shall not execute any work order if the cost authorized by the work order, when added to the cost of all previously executed work orders, will result in expenditures in excess of the total consideration set forth on the Statement of Contract Cost, as may be amended by Contract amendment.
- D. Costs Incurred by Contractor. The Contractor shall immediately notify RTD whenever it appears that costs necessary to perform the Work required will exceed the amount authorized by the Statement of Contract Cost. If the Work is performed pursuant to work order, the Contractor shall notify RTD whenever it appears that costs necessary to perform Work under any work order will exceed the amount authorized by the work order. The Contractor shall not incur any costs in excess of authorized amounts without written authorization from RTD. If RTD authorization is not forthcoming, the Contractor shall not be obligated to continue performance of the Work beyond the authorized amount. Nothing contained in this Contract shall allow the Contractor to exceed the total consideration set forth on the Statement of Contract Cost, as amended.
- E. Time of Performance.
1. The Contractor shall complete the phases of Work in accordance with the agreed-upon Work schedule included in the Scope of Work or work orders, if any. The Work schedule shall include allowances for time required for RTD review and approval and for approvals of jurisdictional authorities. The Contractor shall not exceed the agreed-upon Work schedule, except for reasonable cause and immediate notice to RTD of delay or potential delay.

2. If the Contractor exceeds the Work schedule or fails to timely submit required Work as set forth on the Work schedule, RTD shall have the right to withhold payment, assess reasonable damages caused by the late submittal, and/or terminate this Contract in accordance its Termination provisions.
3. The Contractor shall immediately inform RTD of any delay in the Work that threatens to extend any deadline or timeframe set forth in the work orders or Work schedule.

F. Safety.

1. The Contractor shall be responsible for safety related to all aspects of the Work. The Contractor shall obtain all health, fire, and other relevant safety regulations, work practices, and procedures prescribed by law and by RTD and shall ensure that the Contractor's employees and subcontractors' employees are notified of, understand, and abide by them at all times. Unless otherwise agreed in this Contract, and at no cost to RTD, the Contractor shall provide all required personal protective equipment and other equipment required for the safe performance of the Work. If the Contractor fails to remedy any breach of this paragraph or fails to comply with any safety directive of RTD immediately after receipt of written notice, RTD may enter the Work site and effect such measures as may be necessary to secure compliance, in addition to any other remedies provided to RTD by this Contract. RTD shall have the right to deduct from any payment due to the Contractor an amount sufficient to reimburse RTD for securing such compliance.
2. The Contractor shall promptly report all accidents, safety incidents, injuries, and environmental incidents to RTD and to government authorities as required by law.
3. At any reasonable time, RTD may inspect a Work site and appropriate records regarding the Contractor's safety procedures and statistics to ascertain compliance with the safety requirements of this Contract. Neither the existence nor exercise of such right by RTD shall relieve the Contractor of its responsibility for compliance with, and for monitoring compliance by the Contractor and its subcontractors with, the safety requirements of this Contract.

4. The Contractor shall stop Work when an imminent hazard to persons, property, or the environment is identified and shall immediately notify RTD that Work has stopped, providing the reasons for stopping the Work and an estimate of when the Work will resume. The Contractor shall take all appropriate measures to abate the imminent hazard and limit the duration of the stoppage of Work. The Contractor shall coordinate efforts with RTD to mitigate the effect of the stoppage of Work.
5. The Contractor shall ensure all of its employees and subcontractors' employees understand their right to stop Work at any time they feel there is an unsafe condition or unsafe behavior in place that could harm them, others, property, or the environment. The Work shall not resume until all appropriate measures to abate the hazards have been implemented.
6. Notwithstanding any other provision of this Contract, RTD has the right to immediately suspend the performance of the Work if RTD, in its sole judgment, determines that any employee of the Contractor or subcontractors is failing to comply with RTD safety requirements or applicable safety laws and regulations while performing the Work, or if the safety of RTD employees or patrons is at risk or RTD operations are at risk. The suspension will continue until RTD notifies the Contractor that the suspension is lifted. The Contractor acknowledges that RTD has no obligation to lift the suspension until RTD is satisfied that the Contractor will comply with the Contract requirements. RTD shall not be liable for any delays in the completion of the Work that result from an RTD suspension under this paragraph.

4.12. CHANGE ORDERS AND CONTRACT AMENDMENTS

Change Orders. RTD may at any time, by written order, and without notice to sureties, if any, make changes within the general scope of this Contract to the description of Work to be performed; the time allowed for performance; or the place of performance.

Contract Amendments. Any change, including a change described in the preceding paragraph, that causes an increase or decrease in the cost to perform the Work; increases the time allowed for performance of any part of the Work under this Contract by greater than 30 days; or otherwise materially affects any terms or conditions of this Contract shall not be effective unless made by written instrument signed by RTD's General Manager and the Contractor.

4.13. QUALITY OF WORK

- A. The Contractor shall perform the Work in accordance with all applicable federal, state and local laws, rules, regulations, and ordinances, as well as with the prevailing standard of practice normally exercised in the performance of work of a similar nature in Colorado, and shall bear all costs of such compliance. The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all Work.
- B. Neither RTD's review, approval, or acceptance of, nor payment for, the Work required under this Contract shall operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to RTD in accordance with applicable law for all damages to RTD caused by the Contractor's negligent performance of any of the Work furnished under this Contract.
- C. If the Contractor is required to correct or re-perform defective or nonconforming Work, it shall be at no cost to RTD, and any Work corrected or re-performed by the Contractor shall be subject to this Article to the same extent as Work initially performed. If the Contractor fails or refuses to correct or re-perform Work, RTD may, by contract or otherwise, have an alternative contractor correct or re-perform the defective or nonconforming Work, and RTD shall charge to the Contractor the cost occasioned to RTD for the alternative contractor work or make an equitable adjustment in the Contract Cost. If defective or nonconforming Work is not required by RTD to be corrected or re-performed, RTD shall nevertheless make an equitable adjustment in the Contract Cost.

4.14. WARRANTY

- A. Contractor expressly warrants that all Work covered by this Contract shall conform to the Scope of Work upon which this Contract is based and shall conform to the prevailing standards of practice normally exercised in Colorado for the performance of work of a similar nature and under similar circumstances. Inspection, acceptance and use of the Work shall not affect the Contractor's obligation under these warranties, and such warranties shall survive inspection, acceptance and use. Any inspection, acceptance or payment for Work by RTD shall not constitute a waiver by RTD of any warranties. These warranties shall run to RTD, its successors, and assigns.
- B. Contractor represents and warrants that it has sufficiently informed itself in all matters affecting the performance of the Work, the furnishing of the Work, or

any others material items specified in the Scope of Work. All personnel assigned by the Contractor to perform the Work shall be capable, skilled, qualified and competent to perform such Work. RTD may require Contractor to remove from the Work any employee, agent, or representative of Contractor that RTD deems incompetent, careless, or negligent.

- C. Contractor further represents and warrants that the prices negotiated for this Contract are a complete and correct statement of Contractor's prices for furnishing the Work and are not less favorable than those currently extended to any other customer for the same or like work in equal or smaller amounts.
- D. The surety for the faithful performance bond, if any, required by this Contract is liable on its bond for all obligations of the Contractor, including warranty provisions.

4.15. PROFESSIONAL REQUIREMENTS

- A. Certification, Registration, and Licensing. The Contractor and all persons performing Work under this Contract on behalf of the Contractor shall be certified, registered or licensed as may be required by applicable state and federal laws governing the particular field of Work required or as may otherwise be required by the Contract.
- B. Professional Associations. The Contractor may, with the prior written consent of RTD, join with it in the performance of this Contract any other duly licensed or registered contractors with whom it may in good faith enter into an association. In the event there is a dissolution of a professional association, other than by death of a member, RTD shall designate which former member shall continue with the Work and may make all payments thereafter due in connection with the Work directly to the person or persons so designated and without being required to look to the application of payments as among former members. In the event of the death of one member of an association, the surviving member or members of the association, as an association, shall succeed to the rights and obligations of the original association under the Contract.
- C. Subcontractors and Consultants. If consulting services are to be performed by professionals in the Contractor's employ, then such services must currently be and have been regularly a service of the Contractor's organization. In the event the Contractor does not have certain professional consultants and consulting services as part of its regular staff and services, such consulting services shall be performed by practicing professional consultants. All professional consultants,

staff or practicing, must be retained for the life of the project, provided however that acceptable replacements must be approved in writing by RTD. Prior to designating a professional to perform any consulting services, the Contractor shall submit the name of such professional, together with a résumé of his or her training and experience in work of like character and magnitude of the project being contemplated, to RTD and receive approval in writing from RTD.

4.16. KEY PERSONNEL AND CONTRACTOR REPRESENTATIVES

- A. Key Personnel. The personnel listed in the Contractor's response to this solicitation are considered to be essential to the Work. Prior to removing any key personnel from Contract Work, the Contractor shall notify RTD within 14 days of such proposed removal and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the Contract. The Contractor shall not remove key personnel without the written consent of RTD by Contract amendment.
- B. The Contractor Representative(s). The Contractor may designate one or more representatives to administer this Contract and to have overall direction and control over the Work to be performed by the Contractor. Any representative(s) so designated under this provision shall personally supervise and control the Work to be performed by the Contractor. The Contractor shall notify RTD of the names and contact information of any designated Contractor representatives.

4.17. WORK OVERSIGHT BY RTD

- A. RTD shall have the right to review at all reasonable times any Work. The extent and character of the Work shall be subject to the general oversight, supervision, direction, control, and approval of RTD.
- B. Upon substantial completion of the Work, the Contractor shall submit the Work for RTD's review and RTD shall notify the Contractor of its acceptance or rejection. If approved, RTD shall provide to the Contractor written approval for any or all portions of the Work. RTD shall have the right to reject any Work that is not consistent and compatible with the Scope of Work. If RTD rejects any Work, RTD shall promptly notify the Contractor in writing of the grounds for rejection and offer suggestions for correcting the problem. RTD shall re-review and comment on the revised Work within a reasonable period of time.
- C. Any approval, review, inspection, direction or instruction by RTD, or any party on behalf of RTD, in respect to the Work relates only to the results RTD desires to

obtain and shall in no way affect the Contractor's independent contractor status or obligation to perform in accordance with this Contract.

4.18. OWNERSHIP OF MATERIALS AND DOCUMENTS

- A. RTD-Furnished Materials. RTD shall make available to the Contractor, to the extent permitted by law, all materials and information collected, compiled, or developed by RTD staff, consultants, planning organization, or municipalities necessary to perform under this Contract. All such material furnished to the Contractor shall be used by it only in connection with the performance of this Contract, and title to such material shall at all times remain in RTD. Upon termination or completion of this Contract, all such material shall be returned promptly to RTD.
- B. Subject Data Created or Supplied by the Contractor or Consultants.
 - 1. The term "Subject Data" used in this Article means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Contract. "Subject Data" includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include but are not limited to computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. "Subject Data" does not include financial reports, cost analyses, and similar information incidental to Contract administration.
 - 2. All Work required under this Contract, including Work in electronic form, prepared by the Contractor and the Contractor's consultants is Subject Data for use solely with respect to the Work. To the extent permitted by law, RTD shall be deemed the owner of all Subject Data created under this Contract. Furthermore, the Contractor assigns to RTD the entire right, title, and interest in and to copyrights in all Subject Data and all works based upon, derived from, or incorporating the Subject Data; all copyright applications, registrations, extensions, or renewals relating to all Subject Data and all works based upon, derived from, or incorporating the Subject Data; and all moral rights or similar rights with respect to the Subject Data throughout the world.

3. The Contractor retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to the Contractor including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by the Contractor under the Contract, whether incorporated in the Work or necessary to use the Work (collectively, "Contractor Property"). The Contractor Property shall be licensed to RTD as set forth in this Contract or an RTD-approved license agreement (i) entered into as an Exhibit to this Contract; (ii) obtained by RTD from the applicable third-party vendor; or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.
4. If a court of competent jurisdiction finds the Contractor to be the owner of any Subject Data created under this Contract, RTD shall automatically be granted a perpetual nonexclusive, royalty-free, and irrevocable license to reproduce and use, and permit others to reproduce and use solely for RTD's internal use, all Subject Data created under this Contract solely for the purposes of performing the Work or for future alterations or additions to the Work. The Contractor shall obtain similar nonexclusive licenses from the Contractor's consultants consistent with this Contract. RTD may assign and license its rights under this license. If and upon the date the Contractor is adjudged in default of this Contract, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting RTD to authorize other similarly credentialed professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Subject Data solely for purposes of completing, using and maintaining the Work or for future alterations or additions to the Work.
5. In addition, the Contractor grants to RTD (and to recipients of the Work distributed by or on behalf of RTD) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work. Such license applies only to those patent claims licensable by the Contractor that are necessarily infringed by the Work alone, or by the combination of the Work with anything else used by RTD.
6. Whether or not the Contractor is under contract with RTD at the time, the Contractor shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by RTD, to enable RTD

- to secure patents, copyrights, licenses and other intellectual property rights related to the Work. The Parties intend the Work to be works made for hire. The Contractor assigns to RTD and its successors and assigns the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work and all works based on, derived from, or incorporating the Work.
7. Any unilateral use by RTD of the Subject Data for completing, using, maintaining, adding to or altering the Work shall be at RTD's sole risk and without liability to the Contractor and the Contractor's consultants, provided however that if RTD's unilateral use occurs for completing, using or maintaining the Work as a result of the Contractor's breach of this Contract, nothing in this Article shall be deemed to relieve the Contractor of liability for its own acts or omissions or breach of this Contract.
- C. Indemnification. The Contractor shall indemnify and save and hold harmless RTD, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any violation by the Contractor of proprietary rights, copyrights, or rights of privacy arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any materials furnished by either party under this Contract.

4.19. INSURANCE AND BOND REQUIREMENTS

The Contractor shall maintain in full force and effect insurance in the amounts and coverages defined in the section entitled "Insurance and Bond Requirements" herein. The Contractor shall maintain any bonds required by applicable state or federal law regulating the particular field or profession. Bonds specifically required by RTD under this Contract are set forth herein.

4.20. HOLD HARMLESS

- A. The Contractor shall defend, indemnify, and hold harmless RTD, its directors, managers, employees, agents and assigns from and against any and all claims, suits, demands, damages, liabilities, settlements, and court awards including costs, expenses, and reasonable attorneys' fees, to the extent such claims are caused, in whole or in part, by any act or omission of, or breach of contract by, the Contractor, its employees, agents, subcontractors or assignees arising from, related to, in connection with, or in any way involving the performance of this Contract, but not to the extent such claims are caused solely by any act or omission of, or breach of contract by RTD, its directors, managers, employees,

agents, or other contractors or assignees, or other parties not under the control of or responsible to the Contractor.

- B. The Contractor shall give RTD immediate written notice of any suit or action filed or of any claim made against the Contractor, its employees, agents, subcontractors or assignees arising from, related to, in connection with or in any way involving the performance of this Contract. The Contractor shall immediately furnish to RTD copies of all pertinent papers received by the Contractor. If the amount of the liability claimed exceeds the amount of the Contractor's insurance coverage against such claim, the Contractor shall authorize and direct the Contractor's counsel and the Contractor's insurer(s), if any, to collaborate and cooperate with RTD representatives in settling or defending such claim.
- C. The duties, obligations, rights, and remedies provided by the Contract shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.
- D. If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable under the Contract.
- E. Notwithstanding any other provision of this Contract to the contrary, no term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended.

4.21. TERMINATION

- A. For Convenience. RTD may, by giving at least 14 days' written notice to the Contractor, terminate this Contract, or suspend performance under this Contract, in whole or in part and at any time for RTD's convenience. The Contractor shall be compensated solely for Work satisfactorily performed prior to the effective date and time of termination or suspension. The Contractor shall have no right to recover lost profits on the balance of the Work or any other measure of damages.
- B. For Default. RTD may declare default in the Contractor's performance of any term of this Contract by giving seven days' written notice to the Contractor specifying with particularity the basis for such default. The Contractor shall deliver a response in writing to RTD within five days of Contractor's receipt of RTD's default notice, setting forth a reasonable proposal to cure or to prevent

repetition of the default. If the Contractor fails to timely respond to the notice of default, fails to cure the default, or if the default occurs again on any Work performed (or which should have been performed) during the remainder of the Contract term (including options), RTD shall have the right to terminate this Contract in whole or in part for default by written notice. RTD is not required to provide subsequent written notices of default for recurring instances of default already brought to the attention of the Contractor in a written notice. In the event of termination for default, the Contractor shall be compensated solely for Work satisfactorily performed prior to the effective date and time of termination. RTD may proceed with the Work by contract or otherwise, and the cost to RTD of completing the Work shall be charged to the Contractor or deducted from any sum due the Contractor. If after termination for default it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for RTD's convenience.

- C. Suspension of Work. RTD may suspend the Contractor's performance of the Work by giving the Contractor seven days' written notice. Upon Contractor's receipt of notice of suspension of Work, the Contractor shall perform no further Work, and RTD will not be required to reimburse the Contractor for any costs incurred subsequent to Contractor's receipt of notice of suspension and prior to RTD's notice to resume Work, if any. Suspension of Work may be in whole or in part, as specified by RTD. The Contractor shall continue to submit invoices for Work performed prior to Contractor's receipt of notice of suspension of Work. If after six months of suspension RTD has not given the Contractor notice to resume Work, the Contractor is entitled to request in writing that RTD either (1) amend the Statement of Contract Cost or (2) terminate the Contract pursuant to the "For Convenience" provision of this Article. If suspension for more than six months is not due in any part to the fault of the Contractor, RTD shall be required to amend or terminate the Contract. No amendment to the Statement of Contract Cost shall be made under this Article if suspension, delay, or interruption of the Work is due to the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Contract.

4.22. EXCUSABLE DELAY

- A. The Contractor shall not be in default by reason of any failure in performance of this Contract in accordance with its terms (including any failure by the Contractor to make progress in the execution of the Work, which endangers such

performance) if such failure arises out of unforeseeable causes beyond the control and without the fault or negligence of the Contractor, provided that the Contractor shall within five days of the start of any such failure, potential delay, or default notify RTD in writing of the causes of the failure, potential delay, or default and the related facts. Such causes may include, but are not restricted to, acts of God or of public enemy, acts of government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

- B. If failure to perform is caused by the failure of a subcontractor to perform or make progress, and if such failure arises out of unforeseen causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be deemed to be in default, unless:
 - 1. The Work to be furnished by the subcontractor was obtainable from other sources at a price acceptable to RTD;
 - 2. RTD has ordered the Contractor in writing to procure such Work from such other sources; and
 - 3. The Contractor fails to comply with such order.
- C. Upon request of the Contractor, RTD shall ascertain the facts and extent of a failure to perform. If RTD determines that any failure to perform is excusable under this Article, RTD may revise the schedule of Work, subject to RTD's rights under the Article entitled "Termination."

4.23. DISPUTES

- A. Except as otherwise provided in this Contract, any dispute arising under this Contract concerning a question of fact that is not disposed of by agreement shall be decided by RTD's General Manager or his or her delegate. Contractor will be notified of the decision in writing. To the extent allowable by law, any such decision shall be final, conclusive, and not subject to judicial review unless shown to be fraudulent, capricious, arbitrary, or so grossly erroneous as to imply bad faith.
- B. This Article does not preclude judicial consideration of questions of law. Nothing in this Contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

- C. All costs, expenses and attorney fees of the Contractor of any appeal, suit or claim brought by the Contractor shall be paid by the Contractor.
- D. Unless otherwise directed by RTD, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.

4.24. PROHIBITED INTERESTS

A. The Contractor's Interest

- 1. The Contractor shall not knowingly perform any act that would conflict in any manner or degree with the performance of Work under this Contract. The Contractor shall not knowingly employ any person when such employment would cause such a conflict.
- 2. Wherever the Contractor prepares or assists RTD in the preparation of a statement of work, work program, or system specifications to be used in a competitive procurement by RTD, the Contractor will be ineligible to supply the same in connection with such procurement. The Contractor may otherwise compete for RTD business on an equal basis with other parties.
- 3. These restrictions shall apply until the closing of the Contract and with respect to any future change orders or Contract amendments.

B. Officials and Employees Not To Benefit

- 1. No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Contract or to any benefit arising from it.
- 2. No employee of RTD or any member of its governing body shall have any personal or financial interest, direct or indirect, in this Contract or any contract executed subsequently in connection with this Contract during his or her tenure or for one year thereafter. No director, officer, employee, or agent of RTD shall be interested in any contract or transaction with RTD except in his or her official representative capacity.

C. Gratuities

- 1. This Contract and any other RTD contract with the Contractor may be terminated by written notice if RTD determines that the Contractor, its agent, or another representative:
 - a. Offered or gave a gratuity to a director or employee of RTD; and,

- b. Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

D. **Termination; Remedies.** If this Contract is terminated due to breach of this Article, RTD is entitled to pursue the same remedies as in a termination for default. RTD shall not, however, be required to provide the Contractor with opportunity to cure the default.

4.25. BANKRUPTCY

If the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish to RTD, by certified mail, notification of the bankruptcy within five days of the initiation of the proceedings relating to bankruptcy filing. Such notice shall include (i) the date on which the bankruptcy petition was filed, (ii) the identity of the court in which the bankruptcy petition was filed, and (iii) a listing of contract numbers for all RTD contracts against which final payment has not been made. This obligation remains in effect until the closing of the Contract.

4.26. NOTICES

Unless otherwise specified in this Contract, notices required to be given by RTD or the Contractor under this Contract must be provided in writing and delivered by e-mail, facsimile, hand delivery or by U.S. Mail, first class, postage pre-paid, to the party representatives identified on the Contract Award and Signature Page(s). Notices sent by first class mail shall be deemed to have been received five days after having first been placed in the mail. Notice shall not be deemed given if not provided in the manner prescribed in this Article.

4.27. APPROPRIATIONS

All obligations of RTD under this Contract that require funding are subject to prior annual appropriations of monies expressly made by the Board of Directors of RTD for the purposes of this Contract. Nothing in this Contract shall be construed by either the Contractor or RTD as a multiple fiscal year obligation as described by Article X, Section 20 of the Colorado Constitution. If funding is not appropriated by the Board of Directors, RTD may terminate or modify the Contract as required. Additional funding to the Contract will be accomplished by a Contract amendment. No legal liability on the part of RTD for any payment may arise for performance under this Contract beyond the current funding year, until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability.

4.28. SMALL-BUSINESS ENTERPRISES

The Contractor shall cooperate with RTD with regard to maximum utilization of minority-owned businesses and/or small-business enterprises ("SBEs") and will use its best efforts to ensure that minority-owned businesses and SBEs have the maximum

practicable opportunity to compete for subcontract Work under this Contract. When no SBE participation goal is set under the Contract, but the Contractor utilizes SBE subcontractor(s), the Contractor may, but is not required to, submit the following information to RTD's Small Business Office: the names of RTD-certified SBE subcontractor(s) that have performed Work under the Contract; a description of the Work performed by the SBE subcontractor(s); and an itemization or summary of the payments made to the SBE subcontractor(s) for Work under the Contract.

4.29. CONFIDENTIALITY

- A. In this Article, "Information" means all information relating to RTD that is supplied by or on behalf of RTD (whether before or after the Effective Date of this Contract), either in writing, orally or in any other form, directly or indirectly, from or pursuant to discussions with the Contractor or which is obtained through observations made by the Contractor, including all work products, deliverables, analyses, compilations, studies and other documents, whether prepared by or on behalf of RTD, which contain or otherwise reflect or are derived from such information.
- B. The Contractor shall maintain the confidentiality of any Information, except that Information may be disclosed or provided by the Contractor:
 - 1. to directors, officers, employees, consultants and agents of the Contractor, including accountants, legal counsel and other advisors;
 - 2. to any subcontractors to the extent such Information is necessary for the performance by the subcontractor of its obligations under this Contract; or
 - 3. to the extent:
 - a. it is required to disclose such Information pursuant to federal, state or local law or by any subpoena or similar legal process or by any federal, state or local authority exercising jurisdiction over the Contractor;
 - b. RTD confirms in writing that such Information is not required to be treated as confidential; or
 - c. such Information is or comes into the public domain otherwise than through any disclosure prohibited by this Contract; and

provided that, in the cases of paragraphs B.1., B.2, and B.3 above, the persons to whom such disclosure is made will be informed of the confidential nature of such Information and will so receive such Information subject to the same or similar requirements to maintain confidentiality as contained in this Contract.

- A. The Contractor understands that any documents that it creates, supplies to RTD or for which the Contractor acts as custodian for RTD under this Contract are subject to public inspection and copying under the Colorado Open Records Act, C.R.S. § 24-72-201, et seq., unless exempt from public disclosure by law. The Contractor agrees that if it considers any such documents to be exempt from public disclosure, it will mark each such document as exempt, identifying the specific provision of law under which the Contractor is claiming exemption of such document from public disclosure. The Contractor further agrees that if a Colorado Open Records Act request is filed with RTD seeking disclosure of any documents created by the Contractor, supplied to RTD, or held by the Contractor for RTD under this Contract, the Contractor will, if necessary, assist RTD in responding to the request by locating any documents requested and providing them to RTD within 24 hours, unless otherwise agreed in writing by RTD. The Contractor agrees to hold RTD harmless and, at RTD's option, indemnify and provide legal defense for RTD from all claims and demands, including paying all attorneys' fees, asserted against RTD that result from (i) the Contractor's failure to supply documents to RTD or (ii) from RTD's refusal to make public any documents the Contractor has designated as exempt. The Contractor also agrees that, if any action is filed in court seeking disclosure of exempt documents, RTD may deposit the documents with the court and the Contractor will defend in court its designation of the information as exempt from disclosure.
- B. The Contractor shall not use RTD technology, data or Information to perform an illegal act, nor share any password or account access provided exclusively to the Contractor. The Contractor shall not attempt to use or obtain access codes in an unauthorized manner or from another user. The Contractor shall not allow non-employees to access RTD computer systems, unless otherwise specifically allowed by RTD.
- C. The Contractor acknowledges that the faithful compliance with this Article is necessary to protect RTD and that any action inconsistent with this Article or with any RTD policy and procedure will cause RTD irreparable and continuing harm. Therefore, the Contractor consents to RTD obtaining a court order to enjoin any action inconsistent with the provisions of this Article without RTD having to post any bond or security for such order.

4.30. ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES

- A. RTD must comply with: 49 U.S.C. § 5301(d), which states the federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities; all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; 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; and 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.
- B. All Work provided by the Contractor for RTD under this Contract shall comply with the above-referenced laws as well as all other applicable federal, state and local regulations and directives and any subsequent amendments.

4.31. ENERGY CONSERVATION

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan, if any, issued in compliance with the Energy Policy and Conservation Act.

4.32. CLEAN WATER

- A. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq. Contractor agrees to report each violation to RTD and understands and agrees that RTD will, in turn, report each violation as required to assure notification to the appropriate EPA Regional Office or the appropriate Colorado Department of Public Health and Environment department.
- B. Contractor also agrees to include these requirements in each subcontract entered into for performance of Work under this Contract.

4.33. CLEAN AIR

- A. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401, et seq. Contractor agrees to report each violation to RTD and understands and agrees

that RTD will, in turn, report each violation as required to assure notification to the appropriate EPA Regional Office or the appropriate Colorado Department of Public Health and Environment department.

- B. Contractor also agrees to include these requirements in each subcontract entered into for performance

4.34. CIVIL RIGHTS

- A. 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, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, national origin, sex, age, or disability. In addition, Contractor agrees to comply with applicable federal implementing regulations.
- B. Equal Employment Opportunity.
1. Race, Color, National Origin, Sex. Contractor agrees to comply with all equal employment opportunity requirements of Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and federal transit laws at 49 U.S.C. § 5332, including any applicable implementing regulations.
 2. 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, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any federal implementing requirements.
 3. Disabilities. In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, 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 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, Contractor agrees to comply with any federal implementing requirements.
- C. Contractor also agrees to include these requirements in each subcontract entered into for performance of Work under this Contract.

4.35. INDEPENDENT CONTRACTOR

- A. The Contractor shall perform its duties under this Contract as an independent contractor and not as an employee of RTD. **Unless otherwise expressly provided in this Contract, neither the Contractor nor any agent or employee of the Contractor shall be an agent or representative of RTD. Neither the Contractor nor any agent or employee of the Contractor shall be an employee or servant of RTD. Nothing contained in the Contract Documents or otherwise creates any partnership, joint venture, or other association or relationship between RTD and the Contractor.** Any approval, review, inspection, direction or instruction by RTD or any party on behalf of RTD in respect to the Work of the Contractor shall relate to the results RTD desires to obtain from the Work, and shall in no way affect the Contractor's independent contractor status or obligation to perform the Work in accordance with the Contract Documents. The Contractor has no authorization, express or implied, to bind RTD to any agreements, liability, or understanding except as expressly set forth in this Contract.
- B. **The Contractor shall pay when due all federal and state taxes and contributions for Social Security, unemployment insurance, income withholding tax, and other taxes measured by wages paid to the Contractor's employees, as well as all sales, consumer, employment, use and similar taxes for the Work or portions of the Work provided by or through the Contractor or any subcontractor or vendor or relating to their operations or property. The Contractor acknowledges that the Contractor and its employees are not entitled to workers' compensation benefits or unemployment insurance benefits unless the Contractor or third party provides such coverage, and that RTD does not pay for or otherwise provide such coverage. The Contractor shall provide and keep in force workers' compensation (and provide proof of such insurance when requested by RTD) and unemployment compensation insurance in the amounts required by law, and shall be solely responsible for the acts of the Contractor, its employees and agents.**

4.36. SUCCESSORS AND ASSIGNS

The Contractor shall not assign rights or delegate duties under this Contract (or subcontract any part of the performance required) without the express, written consent of RTD. This provision shall not prohibit assignments of the right to payment to the

extent permitted by law, provided that RTD receives written notice of assignment adequate to identify the rights assigned. Such assignment shall not be valid until RTD receives the required notice, and the Contractor assumes this risk.

4.37. REASONABLENESS OF CONSENT OR APPROVAL

Whenever the approval or consent of RTD is called for under this Contract, RTD shall be entitled to consider public and governmental policy in reasonably granting or denying such approval. Subject to the foregoing, required approvals or consent shall not be unreasonably withheld.

4.38. NO THIRD PARTY BENEFICIARIES

This Contract shall inure to the benefit of and be binding only upon the parties and their successors and assigns. The enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to the parties to the Contract. No other person or entity shall have any claim or right of action as a Contract beneficiary; all such non-parties shall be incidental beneficiaries only.

4.39. EXTENT OF AGREEMENT

This Contract represents the entire agreement between RTD and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by RTD's General Manager and the Contractor.

4.40. COUNTERPARTS

This Contract may be executed in two or more counterparts, each of which shall be deemed an original having identical legal effect, and all of which together constitute the same instrument.

4.41. INTERPRETATION OF CONTRACT

In the event of any ambiguity, the Contractor's interpretation of any provision of this Contract shall not be binding on RTD unless that interpretation is one which has been furnished in writing by RTD. No alteration of or insertion into this Contract shall be binding on RTD unless expressly referenced in the section entitled "Special Provisions/Alterations" herein. No RTD employee or agent has the authority to waive, modify or alter any provision in this Contract.

4.42. SEVERABILITY

If any part of this Contract is held by any court of competent jurisdiction to be illegal or in conflict with any federal law or law of the State of Colorado, the validity of the remaining parts shall not be affected, and the rights and obligations of the Contractor and RTD shall be construed and enforced as if the Contract did not contain the invalid part.

4.43. AUTHORITY

Each person executing this Contract expressly represents and warrants that he or she has been duly authorized by one of the parties to execute the Contract and to bind the party to the Contract terms and conditions.

4.44. GOVERNING LAWS; JURISDICTION AND VENUE

The laws, regulations and rules of the State of Colorado govern the interpretation, execution and enforcement of this Contract without application of any choice of law rules that would apply the laws of any other state. Exclusive venue for any action related to performance of this Contract shall be the District Court of the City and County of Denver, State of Colorado.

4.45. WAIVER

The waiver of any breach of a Contract term shall not be a waiver of any other term, or of the same term upon subsequent breach.

4.46. ELECTRONIC SIGNATURES

This Contract may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed versions of an original signature, electronically scanned and transmitted versions of an original signature, and digital signatures.

5. CRIMINAL BACKGROUND CHECKS AND ACCESS BADGES

(CRIMINAL BACKGROUND CHECKS AND ACCESS BADGES TERMS AND CONDITIONS)

5.1. TERMS AND CONDITIONS

For each individual performing any portion of the Work, which portion of the Work requires the individual to have (i) direct access to RTD's critical information systems or confidential information, (ii) unaccompanied access to RTD secured facilities, or (iii) access to money or stored value cards, Contractor shall ensure that the individual (a) passes a criminal background check and (b) obtains an RTD access badge, each in accordance with the standards set forth in this Article. Contractor also shall ensure that the requirements in this Article are included in any subcontracts.

- A. Criminal Background Check. Contractor shall ensure that all criminal background checks required by this Article are completed. In order to pass a criminal background check, the individual's report shall not include any Disqualifying Offense, defined below. RTD believes all of the Disqualifying Offenses are job-related and consistent with business necessity for any individual performing any portion of the Work. If, after an individual review of (1) the nature and gravity of

the offense, (2) the time that has passed since the offense and/or completion of the sentence, and (3) the nature of the job held or sought, the Contractor concludes that it would like to employ an individual to perform any portion of the Work in conflict with these standards, the Contractor shall so notify RTD in writing of the rationale for this conclusion at least three business days prior to scheduling the individual to obtain an RTD access badge or begin the Work.

The criminal background check shall, at a minimum, cover the previous seven years, and include the criminal record in the Colorado Bureau of Investigation database and shall be conducted by a licensed firm in accordance with applicable laws. Contractor shall maintain all records demonstrating the criminal background check results as confidential and, upon three business days' notice, shall make such records available to the RTD Project Manager at any time during the Contract term.

"Disqualifying Offense" is any conviction in any jurisdiction of any of the following criminal offenses.

1. ***Permanently Disqualifying Criminal Offenses***

- Espionage, Sedition, Treason;
- A federal crime of terrorism as defined in 18 U.S.C. 2332b(g);
- A crime involving a transportation security incident (A transportation security incident is a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area, as defined in 46 U.S.C. 70101. The term "economic disruption" does not include a work stoppage or other employee-related action not related to terrorism and resulting from an employer-employee dispute.);
- Improper transportation of a hazardous material under 49 U.S.C. 5124 or a comparable state law;
- Unlawful possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipping, transporting, import, export, storage of, or dealing in an explosive or explosive device;
- Murder in the first or second degree and manslaughter;
- Assault with intent to murder;

- Kidnapping in the first or second degree or hostage-taking;
- Rape or aggravated sexual abuse;
- Endangering Public Transportation, C.R.S. 18-9-115;
- Violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, et seq. ("RICO"), or a comparable state law, where one of the predicate acts found by a jury or admitted by the defendant is one of the crimes listed above.

2. ***Seven-Year Disqualification (seven years from the date of conviction)***

- Unlawful possession, use, sale, manufacture, purchase, distribution, receipt, transfer, shipping, transporting, delivery, import, export of, or dealing in a firearm or other weapon;
- Extortion;
- Dishonesty, fraud, or misrepresentation, including identity fraud (welfare fraud and passing bad checks do not constitute dishonesty, fraud or misrepresentation for purposes of this paragraph);
- Bribery;
- Smuggling;
- Immigration violations;
- Violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, et seq. ("RICO"), or a comparable state law, other than the violations of RICO listed above;
- Robbery;
- Distribution of, possession with intent to distribute, or importation of a controlled substance;
- Arson;
- Criminally negligent homicide and vehicular homicide;
- Assault in the first or second degree;
- False imprisonment;
- Enticement of a child or Internet luring of a child;

- Sexual assault, unlawful sexual contact, or sexual assault on a child;
- Burglary;
- Any offenses involving bribery or corrupt influences as a public servant.
- Violation of the Computer Fraud and Abuse Act, 18 USC § 1030 or Colo. Rev. Stat. §§ 18-5.5-101 – 102.

3. ***Five-Year Disqualification (five years from the date of conviction)***

- Reckless driving;
- Third-degree assault;
- Any driving offense involving the use of alcohol or drugs;
- Any violent crimes not listed above including but not limited to cruelty to animals;
- Any crimes involving theft, fraud or extortion not listed above;
- Any crimes involving sexual misconduct not listed above;
- Any crimes not listed above that are aggravated or involving domestic violence or exploiting minors;
- Any crimes involving firearms or weapons not listed above;
- Theft of public transportation services, C.R.S. § 18-4-802;
- Hindering transportation, C.R.S. § 18-9-114;
- Endangering public transportation, C.R.S. § 18-9-115 (misdemeanor conviction);
- Throwing missiles at vehicles, C.R.S. § 18-9-116;
- Any crimes involving alcohol or drugs not listed above.

- B. RTD Access Badge. Contractor shall submit to the RTD Project Manager all requests for badges required by RTD's Access Control procedures ("Access Badge"). Such requests shall include a certification that the individual has passed a criminal background check in accordance with this Article. Each individual performing Work must wear an Access Badge when present at any RTD secured facility. Contractor shall ensure that all Access Badges issued pursuant to the Contract are returned at the end of the Contract term. Contractor shall pay a replacement fee for any Access Badge that needs to be replaced.

6. CONTRACTORS KEY PERSONNEL

Refer to the Attachments.

7. INSURANCE & BOND REQUIREMENTS

7.1. General

All defined terms contained in this Section shall have the same meaning ascribed to them in the **Contract**.

The **Contractor** shall procure and maintain, and shall require that its subcontractors purchase and continuously maintain in full force and effect for the **Contract** period specified herein, all insurance policies specified in this Section. The **Contractor** shall forward updated certificates of insurance and endorsement(s) when policies are renewed or changed.

The insurance required hereunder shall not be interpreted to relieve the **Contractor** of any obligations under the **Contract**, and liability of **Contractor** under this Section shall not be limited to coverage provided under said insurance policies. The **Contractor** and its subcontractors shall remain solely and fully liable for all deductibles, self-insured retentions, and amounts in excess of the coverage actually realized.

7.2. Commercial General Liability Insurance

At all times during the performance of the **Contract**, the **Contractor** and its subcontractors shall have and maintain Commercial General Liability Insurance insuring against claims for bodily injury, property damage, personal injury and advertising injury. By its terms or appropriate endorsements such insurance shall include the following coverage: Bodily Injury, Property Damage, Fire Legal Liability, Personal Injury, Blanket Contractual, Independent Contractors, Premises Operations, Products and Completed Operations Hazard for a minimum of two (2) years following final completion of the Project or the applicable statute of limitations or statute of repose, whichever is greater. The policy cannot be endorsed to exclude cause of loss related to earth movement, explosion, collapse and underground exposures without the specific written approval of RTD, nor may the policy exclude or limit **Contractor's** or its subcontractors' liability for acts or omissions of any independent contractors or subcontractors, nor may the policy exclude work of any independent contractor or subcontractor; nor contain any conditions regarding when coverage is available for acts, omissions or work of a Contractor or subcontractor, nor may the policy limit coverage to a designated premises, nor may the policy exclude or limit coverage for liability arising from the Products and Completed Operations Hazard.

If any Work performed under this **Contract** is within fifty (50) feet of RTD's light rail or commuter rail alignment, then the **Contractor** and its subcontractors shall have and maintain ISO form CG 2417 1001 - Contractual Liability – Railroads.

If Commercial General Liability Insurance or other form with general aggregate limit and products and completed operations aggregate limit is used, then the aggregate limits shall apply separately to the Project, or the **Contractor** and/or its subcontractors may obtain separate insurance to provide the required limit which shall not be subject to depletion because of claims arising out of any other project or activity of the **Contractor** and/or its subcontractors. General Aggregate limit applies per construction Project.

The policy or policies must provide the following minimum limits of liability as follows:

A. Amount of Coverage:

- \$1,000,000 per occurrence
- \$2,000,000 aggregate

There shall be a separate minimum limit of liability for the Products/Completed Operations Hazard not included within the General Aggregate.

A. Amount of Coverage

- \$1,000,000 per occurrence
- \$2,000,000 aggregate

7.3. Commercial Automobile Liability Insurance

At all times during the performance of the **Contract**, the **Contractor** and its subcontractors shall have and maintain Automobile Liability Insurance insuring against claims for bodily injury and property damage arising out of the ownership, maintenance or use of all owned/leased as well as hired and non-owned vehicles. The Automobile Liability policies shall have minimum limits of liability as follows:

A. Amount of Coverage:

- \$1,000,000 combined single limit

7.4. Workers' Compensation and Employer's Liability Insurance

At all times during performance of the **Contract**, the **Contractor** and its subcontractors shall each have and maintain Workers' Compensation Insurance sufficient to meet its statutory obligations to provide benefits for their contractual and statutory employees with claims of bodily injury or occupational disease (including resulting death).

The **Contractor** and its subcontractors shall each provide Employer's Liability Insurance covering their legal obligation to pay damages because of bodily injury or occupational disease (including resulting death) sustained by their contractual and statutory employees with minimum limits of liability as follows:

A. Amount of Coverage:

- \$1,000,000 bodily injury by accident
- \$1,000,000 bodily injury by disease
- \$1,000,000 policy limit

7.5. Umbrella/Excess Liability

At all times during performance of the **Contract**, the **Contractor** and its subcontractors shall have and maintain Umbrella and Excess Liability insurance on a following form basis with limits of liability in a minimum amount as follows for a minimum of two (2) years following final completion of the Project or the applicable statute of limitations or statute of repose, with minimum liability limits as follows:

A. Amount of Coverage:

- \$5,000,000 per occurrence
- \$5,000,000 aggregate

This excess insurance shall follow form and be at least as broad as the **Contractor's** and/or its subcontractors primary Commercial General Liability (including additional insureds), Commercial Auto Liability, and Employer's Liability insurance. The above insurance levels may be met through any combination of primary insurance and excess liability/umbrella insurance so long as the total amount meets the stated minimum requirements.

7.6. Professional Liability

When a **Contractor**, subcontractor, vendor or supplier has a professional designation or license and/or is providing professional services, at all times during the performance of this **Contract**, the **Contractor** and/ or subcontractors shall have and maintain a Professional Liability (Error and Omissions) policy. This insurance shall be maintained for the duration of the band for a minimum of two (2) years following completion of the **Contract** or the applicable statute of limitation or statute of repose, whichever is greater. The minimum limit for architects and engineers is \$5,000,000 per claim and in the aggregate and may be increased depending upon the nature of the services to be provided to RTD. The minimum limits of liability for other **Contractors** and/or subcontractors is:

A. Amount of Coverage:

- \$5,000,000 per claim
- \$5,000,000 aggregate

7.7. Cyber Risk Insurance

When a **Contractor**, subcontractor, vendor, supplier or any third-party will be using, storing or accessing private, confidential or protected information on behalf of RTD, at all times during the performance of this **Contract**, the **Contractor**, subcontractor, vendor, supplier or third-party shall have and maintain a Cyber Risk Insurance policy. This insurance shall be maintained for the duration of the **Contract** and a minimum of (2) two years following completion of the **Contract** with minimum limits of liability as follows.

A. Amount of Coverage:

- \$5,000,000 per occurrence
- \$5,000,000 aggregate

B. The policy shall include the following types of coverage:

- Security Breach – Liability
- Network Security & Privacy
- Media Liability
- Regulatory Defense & Penalties
- Privacy Breach Costs
- PCI Fines and Penalties
- Data Restoration Costs and Expenses
- Network Business Interruption
- Cyber Extortion and Terrorism
- Security Breach Expense
- Public Relations
- Business Income and Extra Expense
- Employee Privacy Liability

7.8. Endorsements, Waivers and Related Requirements

Prior to performing any Work, the **Contractor** shall furnish RTD with proof of insurance and a certificate of insurance for each of the **Contractor's** and each of its subcontractors' policies. All insurance policies required hereunder shall contain or be endorsed to contain the following provisions:

- A. The **Contractor** and its subcontractors shall request their insurance policies contain language requiring the insurer to provide RTD with 30 days' advance notice of cancellation of policies by Registered or Certified mail. Regardless, the **Contractor** and its subcontractors shall be responsible to immediately notify RTD in writing by email of any changes to, cancellations of or notices of an insurer's intent to not renew its insurance. Such notice shall be provided no later than 24 hours after the **Contractor** or any of its subcontractors receives notice of any changes, cancellations or notice of an insurer's intent to not renew. Failure to provide the notice shall be breach of the **Contract** and the **Contract** may be terminated. Any notice of changes, cancellation or intent to not renew shall be provided to the designated RTD Department or Division as provided herein. Such notice requirement does not waive the insurance requirements contained herein.
- B. For the insurance specified herein, RTD and its members, directors, officers, employees and agents shall be named as an additional insured (except Workers' Compensation). Coverage shall be provided by Forms CG 2038 (ongoing operations) and CG 2040 (completed operations) or by an alternative endorsement approved by RTD.
- C. For the insurance specified herein, the **Contractor's** and its subcontractors' insurance shall be primary and non-contributory insurance with respect to the **Contractor's** and its subcontractors' insurance for RTD and its members, directors, officers, employees and agents. **Contractor** and subcontractor policy/policies shall contain ISO Form 2001 04 13, or such other form or endorsement approved by RTD.
- D. The insurance specified herein shall contain an express waiver of subrogation in favor of RTD as by ISO form CG 2453 or CG 2404. The **Contractor** and its subcontractors and their agents and employees waive all rights of subrogation against RTD for any liability and workers' compensation claims they incur in relation to the **Contract** and agree to have all such policies appropriately endorsed with a Waiver of Subrogation endorsement.

- E. The insurance shall apply separately to each insured and additional insured party against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- F. The amount of insurance must be **at least** equal to the limits of liability required herein.

7.9. Acceptable Insurance Company

The insurance company providing any of the insurance coverage required herein shall have at a minimum an AM Best Key Rating of A, with a Financial Strength of VII or higher, (i.e., A VII, A VIII, A IX, A X, etc.) or equivalent from similar rating agency and shall be subject to prior approval by RTD. Each insurance company's rating as shown in the latest AM Best Key Rating Guide shall be fully disclosed and entered on the required certificate of insurance.

7.10. Premiums, Deductibles and Self-Insured Retentions

The **Contractor** and its subcontractors shall be responsible for payment of premiums for all of the insurance coverages required hereunder. The **Contractor** and its subcontractors further agree that for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which the **Contractor** and its subcontractors are responsible hereunder, the **Contractor** and its subcontractors shall be solely responsible for all deductibles and self-insured retentions. Any deductibles or self-insured retentions over \$25,000 in the **Contractor's** and its subcontractors' insurance must be declared and approved in writing by RTD prior to entry upon, above or adjacent to RTD property and prior to commencement of any Work under the **Contract**.

7.11. Certificate of Insurance

The **Contractor** will deliver to the designated RTD Department or Division a certificate of insurance with respect to each required policy to be provided by the **Contractor** and its subcontractors. The required certificates must be signed by the authorized broker or agent representative of the insurance company shown on the certificate and authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon. All endorsements, waivers, and related requirements described above shall be attached to the certificates of insurance when submitted to RTD. A certified, true and exact copy of each insurance policy (including renewal policies) required under this **Contract** shall be provided to RTD if so requested within three (3) days.

7.12. Maintenance of Coverage and Renewal Policies

No less than 21 calendar days prior to the expiration date of any policy to be provided by the **Contractor** and its subcontractors, the **Contractor** shall promptly deliver to

RTD proof of insurance required by the terms specified herein for at least the next twelve months after the expiration date of any policy. Such insurance may be either a renewal policy or a new policy or policies.

7.13. No Recourse

There shall be no recourse by any party, insurer, the **Contractor** or its subcontractors against RTD for the payment of premiums, deductibles, self-insured retentions or other amounts with respect to the insurance required from the **Contractor** or its subcontractors.

7.14. Failure to Provide or Maintain Insurance Coverages

The **Contractor's** failure to have or maintain, or failure to require its subcontractors to have or maintain, any of the insurance coverage required herein shall constitute a breach of the **Contract**. In addition to the remedies that RTD may have under the insurance specified herein, RTD may take whatever action is necessary to maintain the current policies in effect (including the payment of any premiums that may be due and owing by the **Contractor** or its subcontractors) or RTD may procure substitute insurance. The **Contractor** is responsible for any costs incurred by RTD in maintaining the insurance coverage required by the terms specified herein or providing substitute insurance. Such costs may be charged to the **Contractor** or may be deducted from any sums due and owing to the **Contractor**.

7.15. BOND REQUIREMENTS

None required.

8. SPECIAL PROVISIONS/ALTERATIONS SPECIAL TERMS

The following provisions from the Section entitled, General Terms and Conditions, have been specifically negotiated for this Contract and these provisions, as added or altered, shall supersede to the extent that they conflict with corresponding provisions contained in the Section entitled, General Terms and Conditions and any other conflicting specification required by the Contract Documents.

8.1. The following Articles are hereby modified as set forth below:

None.

8.2. The following Articles are hereby added:

None.

8.3. DELETED ARTICLES

The following provisions have been deleted in their entirety from the Section entitled, General Terms and Conditions:

None.

9. COMPLETED CERTIFICATIONS

Please refer to the Attachments.

Contractor’s Agreement

Contractor agrees to perform the Work identified above and on the continuation pages for the consideration stated herein and to otherwise perform according to the terms of the Contract. In executing this Contract, the Contractor warrants that it is familiar with the Scope of Work attached and that it is qualified to provide the associated level of effort required to successfully complete such tasks and that it can satisfactorily perform such tasks within the Contract Cost.

Award

Regional Transportation District hereby accepts your offer to perform the Work identified above and on the continuation pages, for the consideration stated above, and in accordance with the terms and conditions of the Contract.

FOR THE REGIONAL TRANSPORTATION DISTRICT

FOR [VENDOR NAME]

SIGNATURE

Debra A. Johnson

FULL NAME

General Manager and CEO

TITLE

DATE SIGNED

SIGNATURE

FULL NAME

TITLE

DATE SIGNED

Approved as to legal form for the Regional
Transportation District