



Rio Metro Regional Transit District New Mexico Rail Runner Express

Commuter Rail Operations & Maintenance

REQUEST FOR PROPOSALS

RMRTD Procurement No. 2021-03

Issued: March 29, 2021

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EXHIBITS

- Exhibit A Shared Use Contracts
- Exhibit B Track Charts, Time Tables, Geometry Report
- Exhibit C Train Schedules
- Exhibit D Train Consists & Passenger Counts
- Exhibit E Rolling Stock & Equipment Inventory
- Exhibit F SSPP, PTCSP

REQUEST FOR PROPOSALS

For

Commuter Rail Operations & Maintenance

**Rio Metro Regional Transit District
New Mexico Rail Runner Express**

RMRTD Procurement No. 2021-03

Issue Date: **March 29, 2021**

Proposal Due Time/Date: **May 14, 2021, 12:00 p.m. MDT**

Pre-proposal Conference: **April 9, 2021, 10:00 a.m. MST**

Rio Metro Regional Transit District
809 Copper Ave., NW, Albuquerque, New Mexico 87102
Phone: (505) 247-1750, Fax: (505) 247-1753

1.0 INTRODUCTION

1.1 Purpose of Request for Proposals

The Rio Metro Regional Transit District (RMRTD), in cooperation with the New Mexico Department of Transportation (NMDOT) invites individuals and firms (Offerors) to submit proposals for the operation and maintenance of commuter rail trains, facilities and supporting services between Belen, New Mexico and Santa Fe, New Mexico, in accordance with the specifications contained in this request for proposal (RFP) and attached supporting exhibits. This RFP contains specific requests for information.

The purpose of this procurement is to select a qualified firm that will deliver these services in accordance with the requirements put forth in this RFP.

Contingent upon RMRTD and NMDOT satisfaction with the performance of the Contractor and acceptance of project deliverables under a Contract negotiated for services described in this RFP, RMRTD may consider extending or renewing the Contract. The initial contract will cover a period of five (5) years from date of execution with provisions for up to three (3) one year extensions.

This procurement must be in conformance with the New Mexico State Procurement Code.

1.2 Scope of Procurement

The scope of the procurement shall encompass the Scope of Services defined in Appendix 6.9 of this solicitation and any extensions or renewals thereof, as part of a multi-year contract.

1.3 Procurement Manager

The RMRTD has designated a Procurement Manager who is responsible for the conduct of this procurement. The Procurement Manager is:

Kim Monjaras
Procurement Officer
809 Copper Ave., N.W.
Albuquerque, N.M. 87102
Phone: 505-247-1750, Fax: 505-247-1753
E-mail: kmonjaras@mrcog-nm.gov

Any inquiries or requests regarding this procurement should be submitted to the Procurement Manager in writing. Offerors may contact ONLY the Procurement Manager regarding the procurement. Other RMRTD employees do not have the authority to respond on behalf of the RMRTD.

1.4 Definitions

This section contains definitions and abbreviations that are used throughout this RFP.

"Close of Business" means 5:00 PM local time.

"Contract" means a written agreement for the procurement of items of tangible personal property or services.

"Contractor" means a successful Offeror who enters into a binding contract.

"Determination" means the written documentation of a decision by the Procurement Manager or Procurement Officer including findings of fact supporting a decision. A determination becomes part of the procurement file.

"Desirable" The terms "may", "can", "should", "preferably", or "prefers" identifies a desirable or discretionary item or factor (as opposed to "mandatory").

"Evaluation Committee" means a body appointed by the RMRTD Executive Director to evaluate Offeror's proposals.

"Evaluation Committee Report" means a document prepared by the Procurement Manager and the Evaluation Committee for submission to the Executive Director for contract award. It contains all written determinations resulting from the procurement.

"Finalist" is defined as an Offeror whose offer complies with all the mandatory specifications of this RFP and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

"Mandatory" The terms "must", "shall", "will", "is required", or "are required", identify a mandatory

item or factor (as opposed to “desirable”). Failure to comply with a mandatory item or factor will result in the rejection of the Offerors proposal.

"Offeror" is any person, corporation, or partnership who submits a proposal.

"Procurement Manager" means the person or designee authorized by the Executive Director of RMRTD to manage and administer procurements and contracts.

"Procurement Officer" means the person or designee designated by the RMRTD to oversee all RMRTD procurement.

"Request for Proposals" or "RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals.

"Responsible Offeror" means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.

"Responsive Offer" or "Responsive Proposal" means an offer or proposal that conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity or delivery requirements.

1.5 Background Information

The RMRTD is working with the NMDOT to re-solicit proposals to continue commuter rail service in New Mexico. In 2005 the Mid-Region Council of Governments (MRCOG), in conjunction with the NMDOT, solicited proposals to provide Passenger Rail Services between Belen, New Mexico and Santa Fe, New Mexico. A contract was awarded and initial service began in 2006, with eventual full service between Belen and Santa Fe.

The Rio Metro Regional Transit District (RMRTD) is a Regional Transportation District formed in

2005, and has replaced MRCOG as the responsible entity in contracting for and providing commuter rail service. The NMDOT's primary responsibility for the rail system is to plan, build, and maintain a statewide transportation network which will serve the social and economic interest of our citizens in a productive, cost-effective innovative manner.

The rail corridor is a shared use facility supporting mixed-use traffic including commuter rail, freight transport and long-haul intercity passenger rail service. Interagency joint use agreements have been executed among and between NMDOT, the BNSF Railway Company, the National Railroad Passenger Corporation (Amtrak) and the Santa Fe Southern Railway for the purpose of delineating service rights, dispatching priorities and maintenance responsibilities of the participating entities.

RMRTD completed installation of Wabtec's I-ETMS positive train control and received conditional certification from the Federal Railroad Administration in December 2020.

A copy of this solicitation and related appendices and exhibits may be found at the following websites:

<http://www.riometro.org>

<http://www.mrcog-nm.gov>



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2.0 CONDITIONS GOVERNING PROCUREMENT

This section of the RFP contains the schedule for the procurement, describes the major procurement events and the conditions governing the procurement.

2.1 Sequence of Events

The Procurement Manager will make every effort to adhere to the Procurement Schedules shown in this RFP. The time frames shown however may be subject to change at the discretion of the RMRTD.

Issue RFP – March 29, 2021
Pre-Proposal Conference – April 9, 2021 10:00 am MST
Questions Deadline – April 28, 2021 12:00 pm MDT
Proposals Due – May 14, 2021 12:00 pm MDT
Evaluation Committee – May 19-21, 2021
Oral Interviews (If Necessary) – May 27-28, 2021
Best and Final Offers – May 31, 2021
Rio Metro Board Approval – June 18, 2021
Notice to Proceed – July 9, 2021
Start Date – September 21, 2021

2.2 Explanation of Events

2.2.1 Pre-Proposal Conference

A non-mandatory pre-proposal conference is scheduled for April 9, 2021, 10:00 a.m. MST to be held via virtual meeting (***In order to receive the virtual meeting participation information potential Offerors must complete and submit Appendix 6.1 Acknowledgement of RFP receipt as contained herein by April 7, 2021 12:00pm MDT. Meeting information will be emailed to all potential Offerors at the email listed on their Appendix 6.1 – Acknowledgement of RFP submittal***). Potential Offerors are encouraged to submit written questions in advance of the conference to the Procurement Manager designated herein. The identity of the organization submitting the question(s) will not be revealed. All written questions received beforehand will be addressed at the conference. A public log will be kept of the names of potential Offerors that attend the pre-proposal conference. In conjunction with the pre-proposal conference, site visits / territory tours may be scheduled for the week of April 12-16,

2021 upon request submitted to the Procurement Manager.

2.2.2 Deadline to Submit Additional Questions

Potential Offerors may submit additional written questions as to the intent or clarity of this RFP until 14 calendar days (April 30, 2021, 12:00 p.m. MDT) prior to the proposal submittal date. All written questions must be addressed to the Procurement Manager

2.2.3 Notification of Written Responses and Amendments

In order to receive notification of written responses to written questions and solicitation amendments, if any, potential Offerors must complete and submit Appendix 6.1 Acknowledgement of RFP Receipt as contained herein. The Acknowledgement of RFP Receipt may be hand-delivered, electronically mailed, returned by facsimile, registered or certified mail to the Procurement Manager. Offerors **must include an email address** on the Acknowledgement of Receipt. The Acknowledgement of RFP Receipt must be received at least 21 calendar days (April 23, 2021, 12:00 p.m. MDT) prior to the proposal submittal date in order for a potential Offeror to be placed on the procurement distribution list.

2.2.4 Procurement Distribution List for Written Responses and Amendments

Only Offerors who submit the Acknowledgement of RFP Receipt as provided in Appendix 6.1 will be included on the procurement distribution list. Written responses to written questions and any solicitation amendments, if any, will be **emailed** to all potential Offerors whose organization appears on the procurement distribution list.

2.2.5 Submission of Proposal

All proposals must be received by the Procurement Manager or designee no later than the time on the date shown on the cover page of this Request for Proposals. Proposals received after this deadline will not be accepted. The date and time will be recorded on each proposal as it is received. Proposals must be addressed and

delivered to the Procurement Manager at the address listed in Section 1.3. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the name of the procurement on the cover sheet. Proposals submitted by fax or electronic mail will not be accepted.

A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to Section 13-1-116 NMSA 1978, the contents of any proposal shall not be disclosed to competing Offerors prior to contract award.

2.2.6 Proposal Evaluation

An Evaluation Committee will evaluate proposals. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. The Offerors SHALL NOT initiate discussions. Potentially responsive proposals are proposals that are reasonably susceptible of being made responsive.

2.2.7 Selection of Finalists

The Procurement Manager will provide the list of finalists to the Executive Director. The Procurement Manager will notify the finalist Offerors of their selections. Only finalists will be invited to participate in the subsequent steps of the procurement. The final schedule for the oral presentations (if necessary) will be determined at this time.

2.2.8 Oral Presentation by Finalists

Finalist Offerors may be required to present their proposals to the Evaluation Committee. The Procurement Manager will schedule the time for each Offeror presentation. All Offeror presentations will be held via virtual meeting (***Meeting information will be emailed to finalists at the email address listed on their Appendix 6.1 – Acknowledgment of RFP Receipt submittal***) Each presentation will be limited to 30 minutes with an additional 45 minutes for questions and answers. Electrical outlets and a projection screen will be available; however, all Offerors selected for Oral Interviews

must provide their own equipment.

2.2.9 Best and Final Offers from Finalists

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers.

2.2.10 Contract Negotiations

The contract will be negotiated with the most advantageous Offeror. Terms and conditions of the Contract will be similar to that which is incorporated in Appendix 6.8 of this RFP. In the event that mutually agreeable terms cannot be reached within a reasonable time, the RMRTD reserves the right to negotiate a contract with the next most advantageous Offeror without undertaking a new procurement process.

2.2.11 Contract Award

The contract shall be awarded to the **Offeror** whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP. Contract is not valid until signed by the Executive Director of the RMRTD.

2.2.12 Protest of Award

An Offeror who has submitted a responsive Offer on this RFP may protest the award of a contract resulting from the RFP. The protest must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. The protest period will begin on the day following contract award and will end at the close of business on the following fifteenth calendar day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the Procurement Officer. The protest must be delivered to the Procurement Officer:

Kim Monjaras, Procurement Officer
Rio Metro Regional Transit District
809 Copper Ave., N.W.
Albuquerque, New Mexico 87102

Protests received after the statutory deadline will not be accepted.

2.3 General Requirements

This procurement will be conducted in accordance with RMRTD Procurement Policy and the New Mexico Procurement Code.

The RMRTD requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror concerns must be promptly brought to the attention of the Procurement Manager.

2.3.1 Acceptance of Conditions Governing the Procurement

Offerors must indicate their acceptance of the "Conditions Governing the Procurement" and the "Special Federal Provisions" sections in the letter of transmittal.

Submission of a proposal constitutes acceptance of the evaluation factors contained in Section 5 of this RFP.

2.3.2 Incurring Cost

Any cost incurred by the Offeror in preparation, transmittal, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.

2.3.3 Prime Contractor Responsibility

Any Offeror awarded a contract as a result of this RFP will be solely responsible for fulfillment of the contract with RMRTD. The RMRTD will make contract payments to only the prime contractor.

2.3.4 Subcontractors

Intended use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified on the Subcontractor List included in Appendix 6.3. The prime contractor shall be solely responsible for the entire performance of the contract whether or not subcontractors are identified in the proposal or used in the performance of the contract.

2.3.5 Amended Proposals

An Offeror may submit an amended proposal

before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. The RMRTD personnel will not merge, collate, or assemble proposal materials.

2.3.6 Offeror Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request signed by the Offeror's duly authorized representative addressed to the Procurement Manager.

2.3.7 Proposal Offer Firm

Responses to this RFP will be considered firm for ninety (90) calendar days after the due date for receipt of proposals.

2.3.8 Disclosure of Proposal Contents

The proposals will be kept confidential until a contract is awarded. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for the material that is proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements.

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. See Section 3.2 of this RFP for specific instructions.

Confidential data is normally restricted to confidential financial information concerning the Offerors organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, 57-3A-1 to 57-3A-7 NMSA 1978. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the Procurement Officer shall examine the Offerors request and make a written

determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

2.3.9 No Obligation

This procurement in no manner obligates the RMRTD to purchase any services or tangible personal property or the use of any proposed professional services until a valid written contract is awarded and approved by the appropriate authorities.

2.3.10 Termination of RFP

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the RMRTD determines such action to be in the best interest of the RMRTD.

2.3.11 Sufficient Appropriation

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Sending written notice to the contractor will affect such termination. The contractor will accept the RMRTD's decision as to whether sufficient appropriations and authorizations are available as final.

2.3.12 Governing Law

The laws of the state of New Mexico shall govern this procurement and any agreement with Offerors that may result.

2.3.13 Basis for Proposal

Only information supplied by the RMRTD in writing through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.

2.3.14 Contract Terms and Conditions

The contract between the RMRTD and a contractor will include language similar to that put forth in Appendix 6.8 of this RFP and will follow the format specified by the RMRTD. The RMRTD,

however, reserves the right to negotiate with a successful Offeror provisions in addition to those contained in this RFP.

2.3.15 Approval of Contractor Personnel

Personnel and major subcontractors proposed in the Contractor's written proposal to the procuring agency are considered material to any work performed under this RFP and subsequent contract.

During the course of this procurement and after the contract has been signed, no changes of management personnel or major subcontractor will be made by the Contractor without prior written consent of the Procurement Manager. Replacement of any Contractor personnel or major subcontractor, if approved, shall be with personnel or subcontractors of equal ability, experience and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive immediately upon receiving assignments. Approval of the replacement personnel or major subcontractor shall not be unreasonably withheld.

The RMRTD shall retain the right to request the removal of any of the Contractor's personnel at any time.

2.3.16 Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation shall not be deemed an opportunity to amend the Offerors proposal.

2.3.17 Offeror Qualifications

The Procurement Manager may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The Procurement Manager will reject the proposal of any Offeror who is not a responsible Offeror or fails to submit a responsive offer as defined in Sections 13-1-83 and 13-1-85 NMSA 1978.

2.3.18 Right to Waive Technical Irregularities

The Procurement Manager reserves the right to waive technical irregularities. The Procurement

Manager also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the mandatory requirements and/or doing so does not otherwise materially affect the procurement. This right is at the sole discretion of the RMRTD.

2.3.19 Project Team Prohibited Activities

RMRTD employees or RMRTD committee or board members or volunteers are prohibited from participating directly or indirectly in the preparation of this procurement when the employee knows that the individual or any member of the individual's family has a financial interest in the business seeking or obtaining a contract.

2.3.20 Notice – Civil and Criminal Penalties

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

2.3.21 RMRTD Rights

The RMRTD reserves the right to accept all or a portion of the proposal of an Offeror selected for award.

2.3.22 Right to Publish

Throughout the duration of this procurement process and contract term, potential Offerors and contractors must secure from the RMRTD written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent contract. Failure to adhere to this requirement may result in disqualification of the Offerors proposal or termination of the contract.

2.3.23 Ownership of Proposals

All documents submitted in response to this RFP shall become the property of the RMRTD. If desired, Offerors not selected for award of a contract may pick up any technical or user documentation submitted at the RMRTD office within a fifteen-day period following the protest period.

2.3.24 Electronic Mail Address Required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). **Offeror must have a valid e-mail address to receive this correspondence.**

2.3.25 Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. If accepted by such means, the Offeror acknowledges and accepts full responsibility to insure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Offerors possession and the version maintained by the RMRTD, the version maintained by the RMRTD shall govern.

2.3.26 Campaign Contribution Disclosure

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective Contractor seeking to enter into a Contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. Certification is required as provided in Appendix 6.4 of this solicitation.

2.3.27 Insurance

The contract between the RMRTD and contractor will include insurance requirements similar to those represented in Appendix 6.8 of this solicitation. The RMRTD, however, reserves the right to negotiate with a successful Offeror provisions in addition to those contained in the RFP.

2.4 Special Federal Provisions

This procurement may be supported in part or in whole from time to time with federal and state funds. The RMRTD requires that all Offerors agree to be bound by the Special Federal Conditions contained in this RFP in Appendix 6.8.

3.0 RESPONSE FORMAT AND ORGANIZATION

3.1 Number of Responses

Offerors shall submit only **one** proposal for this RFP.

3.2 Number of Copies

Offerors shall deliver one original, 7 identical copies, and two digital copies. Digital copies shall include one complete copy and one copy without "Proprietary" information in PDF format to the location specified herein on or before the closing date and time for receipt of proposals.

3.3 Proposal Format

All proposals must be typewritten on standard 8 1/2 x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section. Pages shall be single spaced with a font of no less than number 10.

Proposals shall not exceed 100 pages; single sided excluding front and back covers. Cover or transmittal letters will be included in the page count.

3.3.1 Proposal Organization

The proposal must be organized and indexed in the following format and must contain, as a minimum, all listed items in the sequence indicated.

- Tab 1 Proposal Form (Appendix 6.2)
- Tab 2 Project Understanding
- Tab 3 Individual Qualifications
- Tab 4 Company Experience/Safety Record
- Tab 5 Response to Scope of Services (Appendix 6.9)
- Tab 6 Price
- Tab 7 Certifications
 - Appendix 6.3 Subcontractor List
 - Appendix 6.4 Campaign Disclosure
 - Appendix 6.5 Restrictions on Lobbying
 - Appendix 6.6 Affirmative Action (EEOC)
 - Appendix 6.7 Buy America

Within each section of the proposal, Offerors shall address the items in the order noted herein. All forms provided in the RFP must be thoroughly completed and included in the appropriate tabbed section of the proposal. The Subcontractor List and four certifications are required to insure that an Offeror has completed a responsive proposal.

Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

3.3.2 Proposal Form

Each proposal must contain - as the first item in the organized and indexed sequence – the fully executed Proposal Form, as presented in Appendix 6.2. Failure to provide the form with complete information indicated to be inserted may result in rejection of the proposal as non-responsive.



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4.0 SPECIFICATIONS

Offerors should respond in the form of a thorough narrative to each specification. The narratives along with required supporting materials will be evaluated and awarded points accordingly.

4.1 Project Understanding

Offerors shall provide a narrative statement of their general understanding of the proposed work. The description must include a broad-spectrum overview of the proposed approach and specialized problem solving skills that may be required in order to provide commuter rail service in the corridor.

4.2 Individual Qualifications

Offerors shall provide a general description of individual qualifications and associated administrative and technical resources that will be applied to this work effort. This description also shall include specific experiences and relevant education and licensure for each of the key individuals named in the proposal.

4.3 Company Experience / Safety Record

Offerors shall provide a narrative to include the previous experience of the company. This narrative must demonstrate directly-related involvement of the company for each of the tasks identified in Appendix 6.9, Scope of Services. The company's safety record also must be detailed to include a ten-year overview of train accidents, accident fatalities, accident injuries, employee on-duty casualties, and other calamities or significant incidents as well as any claims made in connection therewith.

4.4 Response to Scope of Services

For each of the five (5) tasks identified in Appendix 6.9, Scope of Services, Offerors shall provide a detailed description of the key personnel and resources, the organization of these personnel and resources and significant issues for mobilizing within approximately ten (10) weeks from the Notice to Proceed (NTP).

4.5 Price

Offerors shall include a narrative and complete the pricing worksheet which is presented in Appendix 6.15.

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5.0 EVALUATION

5.1 Evaluation Point Summary

The following is a summary of evaluation factors with point value assigned to each. These factors, along with the general requirements, will be used in the evaluation of Offeror proposals.

<u>Evaluation Factor</u>	<u>Points</u>
1. Project Understanding	10
2. Individual Qualifications	20
3. Experience/Safety Record	20
4. Response to Scope of Services	20
5. Price	<u>30</u>
SUBTOTAL	100

The evaluation of Price for each responsive Offeror's proposal will be conducted as described in Appendix 6.15

5. Oral Interview (if necessary)	30
6. Best & Final Offers (if necessary)	<u>20</u>
TOTAL AVAILABLE	150

5.2 Evaluation Process

The evaluation process will follow the steps listed below:

5.2.1 Proposal Compliance

All Offeror proposals will be reviewed for compliance with the mandatory requirements stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.

5.2.2 Contacting Offerors

The Procurement Manager may contact the Offeror for clarification of the response as specified in Section 2.2.6.

5.2.3 Finalist Selection

Responsive proposals will be evaluated on the factors in this Section that have been assigned a point value. The responsible Offerors with the highest scores will be selected as finalist Offerors based upon the proposals submitted. Finalist Offerors may then be asked to participate in Oral Interviews. At the conclusion of the Oral Interviews, additional points may be awarded in accordance with this Section. The Evaluation Committee may then make a recommendation to the RMRTD Executive Director for award or solicit best and final offers from any or all of the finalists.

5.2.4 Best and Final Offers

If Best and Final Offers are solicited, the Evaluation Committee will award additional points in accordance with this Section and then make a final recommendation for award to the RMRTD Executive Director. The Offeror providing the most advantageous proposal to the RMRTD, taking into consideration the evaluation factors herein, will be recommended for contract award. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

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**APPENDIX 6.1
ACKNOWLEDGEMENT OF RFP RECEIPT FORM**

**REQUESTS FOR PROPOSALS
RFP#: 2021-03**

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that he/she has received a complete copy, beginning with the title page and table of contents, and ending with Appendix 6.15.

The acknowledgement of receipt should be signed and returned to the Procurement Manager. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal for the procurement checked below, will receive copies of all Offeror written questions and the RMRTD's written responses to those questions as well as RFP amendments, if any are issued. Additionally, only potential Offerors who return this form completed by April 7, 2021 at 12:00pm MDT will receive the participation information for the non-mandatory pre-proposal conference being held on April 9, 2021 at 10:00am MDT

Firm / Individual	_____	_____
Represented by	_____	Title _____
Phone No.	_____	Fax No. _____
E-mail Address	_____	_____
Address	_____	_____
State/Zip Code	_____	_____
Signature *	_____	Date _____

* For e-mail transmittal only type name if different from "Represented by" above. All others must provide a formal signature.

This name and address will be used for all correspondence related to the Request for Proposals.

Firm does does not (**check one**) intend to respond to this Request for Proposals.

Return to: Kim Monjaras, Procurement Officer
809 Copper Ave., NW, Albuquerque, NM 87102
Phone: 505-247-1750, Fax: 505-247-1753
E-mail: kmonjaras@mrcog-nm.gov

**APPENDIX 6.2
PROPOSAL FORM**

**REQUESTS FOR PROPOSALS
RFP#: 2021-03**

To: Rio Metro Regional Transit District
809 Copper Ave., NW
Albuquerque, NM 87102
Attn: Kim Monjaras

Proposing Organization								
Mailing Address								
RMRTD/State/Zip Code								
Head of Organization								
Title								
Telephone Number		Fax Number						
Proposal Contact Person								
Title								
Telephone Number		E-Mail Address						
Contract Signatory Authority								
Title								
Telephone Number								
Tax/Legal Status	<input type="checkbox"/>	Corporation	<input type="checkbox"/>	For Profit	<input type="checkbox"/>	Not-for-Profit	<input type="checkbox"/>	Government
	<input type="checkbox"/>	Individual						
Federal ID Number				State ID Number				

1. I (We) am submitting on the procurement.
2. I (We) accept the Conditions Governing the Procurement stated in Section 2.3.1.
3. I (We) acknowledge receipt of any and all amendments to this RFP, Nos. _____ to _____ .

Signature of Officer _____ Date _____

**APPENDIX 6.3
SUBCONTRACTOR LIST**

**REQUESTS FOR PROPOSALS
RFP#: 2021-03**

Business Name	Contact Name	Address	Phone #	Description of Work	DBE Y/N

APPENDIX 6.4 CAMPAIGN CONTRIBUTION DISCLOSURE

REQUESTS FOR PROPOSALS

RFP#: 2021-03

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable public official” means any person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-

law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

“Prospective contractor” means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

Name(s) of Applicable Official(s) if any:

Russell Walkup	Debbie O'Malley	Michael Quezada	Charlene Pyskoty
Isaac Benton	Diane Gibson	Brook Bassan	Cynthia Borrego
Don Harris	Lawrence Rael	Jerah Cordova	Jim Winters
Jack S. Torres	Bob Tyler	Jim Owen	David Dornburg
Charles Griego	Donald Lopez	Michael Meek	Charles Eaton,

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____
 Relation to Prospective Contractor: _____
 Date Contribution(s) Made: _____
 Amount(s) of Contribution(s) _____
 Nature of Contribution(s) _____
 Purpose of Contribution(s) _____

 Signature Date

 Title (position)

-OR-

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE TO AN APPLICABLE PUBLIC OFFICIAL BY ME, A FAMILY MEMBER OR REPRESENTATIVE:

 Signature Date

 Title (Position)

APPENDIX 6.5
CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING

REQUESTS FOR PROPOSALS
RFP#: 2021-03

(To be submitted with each bid or offer exceeding \$100,000)

I, _____, hereby certify on
(name and title of official)

behalf of _____ that;
(name of Contractor)

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

Executed this _____ day of _____, 20____.

By _____
(Signature of authorized official)

(Title of authorized official)

**APPENDIX 6.6
 CERTIFICATION REGARDING
 AFFIRMATIVE ACTION/EQUAL EMPLOYMENT OPPORTUNITY
 AND NONDISCRIMINATION
 AHRO Form CC 2**

**REQUESTS FOR PROPOSALS
 RFP#: 2021-03**

The Bidder hereby acknowledges and agrees to abide by the Special Provisions for Affirmative Action/Equal Employment Opportunity and Nondiscrimination and all other provisions, regulations and/or requirements of the Owner for Affirmative Action/Equal Employment Opportunity and Nondiscrimination.

The Bidder has participated with any agency in a previous contract or subcontract subject to any Equal Employment Opportunity and Nondiscrimination in Employment requirements.	Yes <input type="checkbox"/> No <input type="checkbox"/>
Compliance reports were required to be filed in connection with such contract or subcontract.	Yes <input type="checkbox"/> No <input type="checkbox"/>
The Bidder has filed all compliance reports due under applicable instructions. If answer to this statement is "No", explain in detail on reverse side of this certification.	Yes <input type="checkbox"/> No <input type="checkbox"/>

The Bidder has submitted a copy of this Certification to the RMTD/MRCOG Human Rights Office, 809 Copper NW, Albuquerque, NM 87102.

 Company Name of Bidder Telephone Number

 Signature FAX Number

 Printed Name E-Mail Address

 Title Date

Address:

APPENDIX 6.7
CERTIFICATION OF BUY AMERICA
REQUESTS FOR PROPOSALS
RFP#: 2021-03

(To be submitted with each bid or offer exceeding \$100,000)

Certificate of Compliance

The Contractor, _____, certifies to the best of its knowledge and belief, that it and its principals will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Executed this _____ day of _____, 20__.

By _____
(signature of authorized official)

(title of authorized official)

Certificate of Non-Compliance

The Contractor, _____, certifies to the best of its knowledge and belief, that it and its principals cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2) as amended and the applicable regulations in 49 C.F.R. 661.7.

Executed this _____ day of _____, 20__.

By _____
(Signature of authorized official)

(Title of authorized official)

DRAFT CONTRACT

APPENDIX 6.8

REQUEST FOR PROPOSALS

RFP#: 2021-03

CONTRACT TERMS AND CONDITIONS

RIO METRO REGIONAL TRANSIT DISTRICT

and

[NAME OF CONTRACTOR]

This Contract (“Contract”) is made and entered by and between the Rio Metro Regional Transit District (RMRTD), a New Mexico political subdivision created pursuant to the Regional Transit District Act, Sections 73-25-1 through 73-25-18, NMSA 1978, _____ (“Contractor”), herein collectively referred to as “Parties.” This Contract shall be effective beginning on September 21, 2021 and terminating on September 20, 2026 unless the term is extended pursuant to the provisions contained in this Contract

RECITALS

WHEREAS, the RMRTD issued a Request for Proposals (RFP) for “Commuter Rail Operations & Maintenance,” RFP #_____, dated _____; and

WHEREAS, the Contractor submitted its proposal dated _____ in response to the RFP, of which the required General Conditions and Special Federal Provisions and related certifications are incorporated herein by reference; and

WHEREAS, the RMRTD desires to engage the Contractor to render certain services in connection therewith, and the Contractor is willing to provide such services.

NOW, THEREFORE, in consideration of the premises and mutual obligations herein, the Parties hereto do mutually agree as follows:

Section 1. Miscellaneous Representations

A. The Contractor is licensed or otherwise authorized to conduct the business activities described in this Contract by all governmental agencies having jurisdiction over the Contractor, and the Contractor has the experience and expertise to perform the work or services required in this Contract.

B. The RMRTD has the right and power to enter into this Contract.

C. The RMRTD has primary responsibility to manage and operate the New Mexico Rail Runner Express (“NMRX”) commuter rail service between Belen and Santa Fe New Mexico.

D. The New Mexico Department of Transportation (NMDOT) owns the rail rolling stock and the railway including track, crossings and related appurtenances.

Section 2. Scope of Services

A. The Contractor shall personally perform the Services (“Services”) specified in Appendix 1 through Appendix 6 in a satisfactory and proper manner, and shall provide all necessary personnel, materials, and facilities and perform all matters necessary or incidental to the Services as determined by the RMRTD. Services are fully defined in the following appendices attached hereto:

- (1) Appendix 1: Definitions and General Service Responsibilities
- (2) Appendix 2: Train Operations Responsibilities
- (3) Appendix 3: Maintenance of Equipment & Facilities Responsibilities
- (4) Appendix 4: Maintenance of Way Responsibilities
- (5) Appendix 5: PTC / Dispatch / Communications Responsibilities
- (6) Appendix 6: Additional Services
- (7) Appendix 7: Pricing

B. Staffing. The RMRTD designates Terry Doyle as the RMRTD Project Manager for this Contract. The Contractor shall keep the RMRTD Project Manager fully informed on all aspects of its performance of the Services. The RMRTD Project Manager will review and approve the Contractor’s invoices prior to payment. In the absence of the Project Manager, the RMRTD Director shall serve as Project Manager.

C. Contractor designates _____ as the Contractor’s General Manager. The Contractor’s General Manager shall transmit all work products and invoices to the RMRTD Project Manager and shall attend meetings as requested by the RMRTD. The Contractor’s General Manager shall direct the technical aspects of the Services and shall provide all additional qualified personnel to perform its obligations under this Contract. The Contractor shall not change the appointment of its General Manger or designated key personnel until approved in writing by the RMRTD.

D. None of the work or Services covered by this Contract, other than work and subcontractors identified in Contractors proposal, shall be subcontracted without the prior approval of RMRTD. Any work or Services subcontracted hereunder shall be specified by written agreement and shall be subject to each provision of this Contract.

Section 3. Total Contract Price.

A. The Base Contract pricing includes the amounts described in Appendix 7 Pricing plus applicable taxes. The total contract price for the first two (2) years shall not exceed _____ inclusive of applicable taxes. The contract price for years three, four, and five, shall be based on Appendix 7 Pricing, allowing reasonable cost of living escalations and Additional Services as described in Appendix 5. No Services or purchases may occur on any of the elements in the Base Contract Pricing without a specific work authorization from the RMRTD.

B. The Option Contract pricing for Additional Services applies to options detailed in

Appendix 6 Additional Services and shall not exceed _____ for the first two (2) years of this contract. No Services or purchases may occur on any of the elements in Appendix 6 without a specific work authorization from the RMRTD.

Section 4. Compensation and Method of Payment.

A. Mobilization. Pursuant to Appendix 6 Pricing, compensation for Mobilization shall be _____ Mobilization payments shall be made in ___ payments of _____. The Contractor shall invoice the RMRTD thirty (30) calendar days after the Notice To Proceed (NTP) for the mobilization payment.

B. Basic Operations and Maintenance. The Contractor shall invoice the RMRTD on the first day of each month for basic operations and maintenance, beginning on the first day of the month following the Maintenance Start Date and Service Start Date. The first day of the month invoices shall include: 1/12 of the annual Management Fee in Appendix 7 Pricing; 1/12 of the Annual Maintenance Fee in Appendix 7 Pricing, 1/12 of the Annual PTC / Dispatch / Communications Fee, 1/12 of the Hosting/Help Desk Fee, and the applicable Train Hour, Locomotive, Coach and Cab Mile and other Rates from Appendix 7 Pricing for the billing period. In the event that the maintenance responsibilities differ from those described in Appendix 7, the compensation will be negotiated based on the rates included in Appendix 7.

C. Variable Operations, Maintenance and Other Services. Contractor shall invoice RMRTD on the tenth (10th) day of the month for all additional items in Appendix 6 Additional Services, including a reconciliation of the first day of the month invoice to the actual Hours and Miles operated in the previous month.

D. Method of Payment. The RMRTD shall pay the costs identified herein upon receipt of invoices substantially in the form agreed to by RMRTD and Contractor. Payment will be made to the Contractor after verification and approval by the RMRTD of the invoice and within the time period prescribed by State statute.

E. Annual Compensation Adjustment. The Contractor shall receive an annual compensation adjustment based on the Consumer Price Index for All Urban Consumers U.S.-All Items CUUR0000SA0 for the prior year. The first adjustment will be effective starting on July 1, 2023, and thereafter on each successive July 1st, the beginning of RMRTD's fiscal year. The adjustment will be based off the change in the referenced CPI index for the month of May as compared to the same month of the previous year up to a maximum of 3%. At no time shall the annual adjustment be negative or exceed 3%.

F. Adjustment of Level of Service. Any adjustments in the level of Service provided hereunder will be determined by the RMRTD and effectuated in writing. Such adjustments may result in a need to adjust compensation, which may occur with written consent of both Parties.

Section 5. Time of Performance

The Services described herein shall commence on September 21, 2021 and shall be effective for a five (5) year period unless the time for completion is extended by the RMRTD pursuant to Option to Extend Term in Section 6.

Section 6. Option to Extend Term

A. RMRTD may extend the term of this Contract for an additional three (3) years in one (1) year increments by written notice to the Contractor. If feasible, RMRTD shall give the Contractor a preliminary written notice of its intent to extend at least sixty (60) days before the Contract expires. The preliminary notice does not commit RMRTD to an extension, and any absence of notice shall not affect the validity of any exercise of the option to extend the term of this Contract.

B. If RMRTD exercises this option to extend the term of the Contract, the extended Contract shall be considered to include this option provision.

C. The total duration of the Agreement, including all amendments and all options to extend as specified in this Section, shall not exceed eight (8) years, or such other extension as the parties and applicable law allow.

Section 7. Independent Contractor

The Contractor, its employees and its subcontractors are not considered to be employees of RMRTD or NMDOT for any purpose whatsoever. The Contractor is considered an independent contractor at all times in the performance of the Services described herein. The Contractor further agrees that it, its employees and its subcontractors are not entitled to any benefits from RMRTD or NMDOT under the provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of RMRTD or NMDOT.

Section 8. Personnel, Materials, Equipment, and Facilities

A. The Contractor represents that it has or will secure at its own expense, all personnel, materials, and facilities required in performing all of the Services specified herein. Such personnel shall not be employees of nor have any contractual relationship with RMRTD.

B. The Contractor shall determine and control the means and methods of performing Services provided under this Contract. All Services required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the Services shall be fully qualified and shall be authorized or permitted under state and local law to perform such Services.

C. None of the work or the Services covered by this Contract shall be subcontracted without the prior written approval of RMRTD. Any work or Services subcontracted hereunder shall be specified by written agreement and shall be subject to each provision of this Contract.

Section 9. Insurance

A. Contractor Furnished Insurance.

(1) The Contractor shall provide and maintain, at all times during the term of this Contract and extended terms thereof, the following types of insurance protecting the interest of the RMRTD and the Contractor with limits of liability not less than those specified below.

(a) Workers' Compensation Insurance providing benefits as required under the Workers' Compensation Act of New Mexico.

(b) Employers Liability Insurance with limits of liability of not less than \$2,000,000 each accident, \$2,000,000 for each employee for disease. The insurance must be endorsed with a Waiver of Subrogation Endorsement, waiving the carrier's right of recovery under subrogation or otherwise from the RMRTD or the New Mexico Department of Transportation (NMDOT).

Comprehensive Automobile Liability Insurance or its equivalent, covering all owned, hired, and non-owned vehicles used in conjunction with the Work performed under this Contract with limits of liability of not less than \$5,000,000 combined single limit for bodily injury and property damage per occurrence.

(c) Contractor's Pollution Legal Liability (CPL) Insurance. Contractor shall procure and maintain at their sole cost and expense CPL insurance in an amount of at least \$10,000,000, with a \$50,000 deductible. RMRTD shall be responsible for the payment of any claims up to the deductible amount.

(2) With respect to the risks covered by the insurance policies required to be purchased by the Contractor under the terms of this Section, the Contractor shall tender the defense and coverage of a claim for any such risk to the insurer issuing to the Contractor the insurance policy under this Section, before tendering the defense and coverage of any such claim to the RMRTD, the NMDOT or the issuer of a comprehensive general liability policy purchased pursuant to this Contract.

(3) Commercial General Liability Insurance. The following Commercial General Liability Insurance shall be required when the Contractor performs any capital maintenance or replacement project that exceed 130% of the average annual maintenance budget for the prior three years and during any period of construction or capital improvement activities (as described in Exhibit A to the BNSF/NMDOT Joint Use Agreement). The insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000. Coverage must be purchased on a post 1998 ISO occurrence or equivalent and include coverage for, but not limited to the following:

1. Bodily Injury and Property Damage

2. Personal Injury and Advertising Injury
3. Fire Legal Liability
4. Products and completed operations

The policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

1. The employee and workers compensation related exclusions in the policy shall not apply with respect to claims related to RMRTD or NMDOT employees
2. The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
3. Any exclusions related to the explosion, collapse and underground hazards shall be removed.
4. No other endorsements limiting coverage may be included on the policy.

The cost of all deductibles, premiums, assessments or other reasonable costs incurred by the Contractor related to the Commercial General Liability Insurance purchase pursuant to this section shall be paid by RMRTD, notwithstanding any other term of this Contract to the contrary.

(4) RMRTD reserves the right, upon providing written notice to the Contractor, to require the Contractor obtain a Commercial General Liability Insurance Policy ("CGL Policy") to cover work performed by the Contractor pursuant to this Contract. The requirement to purchase a CGL Policy under this subsection 4 is separate and apart from any requirement to purchase a Commercial General Liability Policy under subsection 3, Contractor Furnished Insurance. Purchase of a CGL Policy is subject to availability and mutually agreeable terms and conditions negotiated between RMRTD and the Contractor.

(5) Certificate of Insurance. Before commencing this Contract, the Contractor shall provide Certificates of Insurance satisfactory to the RMRTD, or as and when the RMRTD may direct, copies of the actual insurance policies, to the following: RMRTD, 809 Copper Avenue NW, Albuquerque, New Mexico 87102. Said Certificates of Insurance and insurance policies must provide evidence that insurance, as required in Paragraph A, and all subparagraphs to A above, is in force, stating policy number, dates of expiration, and limits of liability, and any additional endorsements required by this Contract. The Contractor shall furnish RMRTD with Certificates of Insurance, substantially the same as attached hereto in Exhibit B, and shall deliver said certificates to the Project Manager, RMRTD Regional Transit District, 809 Copper Ave., N.W., Albuquerque, New Mexico 87102. All insurance certificates shall provide that thirty (30) days written notice be given to the Project Manager before a policy is canceled, materially changed, or not renewed. Documents establishing the continuation or replacement of insurance shall be received by RMRTD no less than thirty (30) days prior to the expiration of the insurance coverage.

(6) Approval of Forms and Companies. All coverage described in this Contract shall be in a form and content satisfactory to the RMRTD. No Party subject to the provisions of this

Contract shall violate or knowingly permit to be violated any of the provisions of the policies of insurance described herein. All insurance shall be provided by insurance companies with a Best's Rating of A or better, or satisfactory to the RMRTD.

(7) Additional Insured endorsement. The insurance policy or policies providing liability coverage and as otherwise required above shall be endorsed to name the RMRTD, NMDOT and the BNSF, their officers, directors, employees and assigns as additional insureds.

(8) Notice of Cancellation or Material Change. Policies and certificates shall specifically provide a thirty (30) day notice of cancellation, non-renewal, or material change to be sent to the RMRTD Project Manager.

(9) Subcontractors. If any of the part of the Work is sublet, the Contractor shall require any and all subcontractors performing Work under this Contract to carry insurance of the types and with limits of liability as are required by this Contract and to add as additional insureds RMRTD, NMDOT and BNSF. In the event that a subcontractor is unable to furnish adequate insurance as required under the subcontract, the Contractor shall add the subcontractor as an additional insured by endorsement to the Contractor's insurance policy or obtain a written waiver of the insurance requirement from RMRTD. The Contractor shall obtain and furnish to the RMRTD Certificates of Insurance evidencing subcontractors' insurance coverage.

(10) Multiple Policies. The limits of liability as required above may be provided by a single policy of insurance or a combination of primary, excess, or umbrella liability policies; but in no event shall the total limit of liability for any one occurrence or accident be less than the policy limits required in paragraph 9(A)(1) above.

(11) Deductibles, Premiums, and Assessments. The Contractor has the sole responsibility for all premiums, deductibles and assessments and shall have no recourse against the RMRTD or the NMDOT for payment of any premiums, deductibles, or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of the Contractor, except as otherwise provided pursuant to Sections 9(A)(1)(d), 9(A)(3) and 9(4) of this Contract.

(12) No Release. The carrying of the above-described coverage shall in no way be interpreted as relieving the Contractor of any responsibility or liability described herein or under any applicable law, statute, regulation or order.

B. RMRTD/NMDOT Furnished Insurance.

(1) Through a combination of insured and self-insured insurance programs, the RMRTD through the NMDOT, at its sole expense, will provide and maintain in force an insurance program to provide the following insurance coverage. The program shall be for the benefit of RMRTD, NMDOT, BNSF and the Contractor and all subcontractors included in the Contractor's proposal as detailed below. The Contractor shall be entitled to the same limits and types of insurance coverage under the program as the RMRTD and the NMDOT or as

a named insured. Other interests, including requests by the Contractor to add additional parties or additional subcontractors as major subcontractors, will be covered by the program at the sole discretion of the RMRTD and NMDOT, so long as it does not adversely affect the interests of the RMRTD or the NMDOT. Such insurance will cover Personal Injury, Bodily Injury and Death, FELA, property damage and include public liability, seepage and pollution coverage and blanket contractual coverage arising out of the performance of the Contract. The Contractor hereby agrees to be bound by the terms of coverage contained in such insurance policies or self-insurance programs. Contractor will be provided with copies of all policies as soon as they become available.

(a) Commercial General Liability Insurance. Through a combination of insurance and self-insurance, the RMRTD or NMDOT will furnish, at its sole cost and expense, a commercial general liability program that meets the requirements of this Contract and the BNSF operating agreement. The RMRTD agrees to provide the Contractor prior to the Turn Over Date and at all times subsequent to the Turn Over Date, with a minimum \$323,000,000, or such greater amount as may be set by the United States Congress as the limit of liability in relation to commuter related accidents, and as presently set forth in 28 U.S.C. § 28103 commercial general liability insurance coverage from insurance companies reasonably acceptable to the Contractor through a combination of insurance and self-insurance. The RMRTD through the NMDOT may utilize Self Insurance Retention (SIR) as part of the insurance program. Any SIR created by the RMRTD or NMDOT shall be in full compliance with New Mexico State law, rules, and regulations, and shall be administered and funded in a manner consistent with industry standards. To the extent there is any SIR, the RMRTD or NMDOT agrees to pay the amount of the SIR.

(b) All Risk Property Insurance. The RMRTD will procure and maintain, at its sole cost and expense, all risk property insurance covering real and personal property of the Contractor used in the provision of Services and the real and personal property of the RMRTD and the NMDOT, including, but not limited to, railroad equipment, rolling stock, and right-of-way improvements against all risk of physical damage customarily covered in a railroad property insurance policy.

(c) At the end of the term of the Contract, if it is determined that the Agency Furnished Insurance does not cover completed operations the Parties will determine and agree to appropriate tail insurance coverage including limits of insurance.

(2) Waiver of Rights. The RMRTD waives their rights of subrogation and recovery against the Contractor, its director, officers, employees, agents, assigns, subcontractors, insurers and sureties for physical loss or damage to the property covered by the insurance. The Contractor waives any and all right of subrogation and recovery against the RMRTD and the NMDOT, their directors, officers, employees, agents, assigns, or other contractors and subcontractors engaged in Services under this Contract to recover physical loss or damage to the property covered by insurance.

(3) Certificates and Policies: All RMRTD furnished insurance coverage outlined above will be either written by insurance companies approved by the RMRTD or shall be self-

insured and shall name the Contractor and Major Subcontractors as additional insureds. The RMRTD will provide appropriate Certificates of Insurance or self-insurance evidencing the coverage outlined above and evidencing the adequacy of any self-insured portion thereof. Such Certificates will contain a requirement that prior to cancellation or modification of the insurance, the Contractor will be provided 30 days' notice by the insurance company. All insurance shall be provided by insurance companies whose financial position is equal to Best's rating of A or better.

(4) Termination/Modification of the insurance Program. The RMRTD through the NMDOT reserves the right to terminate or to modify the insurance program or any portion thereof including a modification of the insurance requirements for Contractor. To exercise this right, the RMRTD will provide 90 days advance written notice to the Contractor. The Contractor shall make every reasonable effort to obtain appropriate insurance coverage prior to the expiration of the 90 days' notice period. Reasonable direct and indirect costs incurred by the Contractor in obtaining the terminated or modified replacement insurance coverage will be reimbursed by the RMRTD, upon receipt of a proper invoice. Written evidence of such acquired insurance shall be provided to the RMRTD prior to the effective date of the termination or modification of the insurance program. If no insurance is available or the RMRTD fails to pay any amount of the SIR, then the Contractor may terminate the Contractor's obligations under this Contract and the RMRTD shall pay for Services rendered to date and an equitable adjustment for Contractor costs associated with the termination of the Contract. In no event will either party be compelled to provide Services hereunder without insurance.

(5) Assignment of Return Premiums. The RMRTD will be responsible for the payment of all premiums associated with the insurance program and will be the sole recipient of any dividends and premiums generated by the insurance program. In consideration of the RMRTD provision of said coverage, the Contractor agrees to irrevocably assign to and for the benefit of the RMRTD, all return premiums, premium refunds, premium discounts and dividends in connection with the insurance which the RMRTD herein agrees to provide.

(6) (6) Deductibles, Premiums and Assessments. The RMRTD/NMDOT has the sole responsibility for the payment of any premiums, deductibles or assessments and shall have no recourse against the Contractor for payment of any premiums or assessments for any deductibles.

(7) Claims Procedures. Claims procedures will be conducted in compliance with the NMDOT BNSF Joint Use Agreement and related Amendments. The RMRTD may engage a Third-Party Administrator (TPA) to administer and to pay all legitimate claims submitted under this insurance program. All costs of the TPA will be borne by the RMRTD. The TPA also may handle all defense claims. The Contractor shall follow the procedures detailed by the RMRTD or the TPA in the identification, evaluation, and submission of all claims under the insurance program which have been provided to it. Failure by the Contractor to follow the procedures may result in fines being assessed by the appropriate state agencies or commissions or default judgments from a lawsuit against the RMRTD, the NMDOT or the Contractor. The Contractor shall, at its own expense, be responsible for any judgments

arising out of the failure to follow these procedures. The RMRTD reserves the right to deduct from any monies due to the Contractor under this Contract any applicable fines or judgments that are assessed.

(8) Contractor. For the purposes of the Subsection B, entitled "RMRTD/NMDOT Furnished Insurance", the Contractor shall be deemed to include the contractor(s) who are awarded the operations and maintenance contract issued by RMRTD pursuant to the Request for Proposals for operations and maintenance, any subsidiaries or parent companies of the contractor and any Major Subcontractor(s) identified in the contractor's response to the RFP and subsequent contract as members of the operations or maintenance group. Any subcontractor added or hired by the Contractor after the approval and execution of the contract issued pursuant to the operations and maintenance RFP shall not be considered as the Contractor except by express written approval by RMRTD and NMDOT.

(9) Major Subcontractor(s). For the purposes of the Subsection B, entitled "RMRTD/NMDOT Furnished Insurance", Major Subcontractor is a subcontractor identified in the Contractor's response to the RFP as a member of the operations or maintenance group.

C. Indemnification Agreement.

(1) To the extent not covered by insurance, the Contractor agrees to indemnify and hold harmless and defend the RMRTD and the NMDOT, and all of their directors, officers, employees, agents or assigns for and against any and all claims, damages, losses, expenses, including attorney fees, fees or penalties (hereinafter collectively referred to as "Claims") to the percentage extent such claims are caused by malice, conscious disregard for the rights of others, fraud, or other intentional acts of the Contractor or any of its subcontractors, notwithstanding anything contained in this Contract to the contrary.

(2) To the extent not covered by the Agency Furnished insurance through no fault of RMRTD or NMDOT, the Contractor agrees to indemnify, hold harmless and defend the RMRTD and the NMDOT from and against any Claims arising with respect to any release of hazardous or toxic materials on the Service Property or with respect to any adverse environmental conditions or environmental impairments, but limited to the percentage extent to which it is created or caused by the Contractor, including its subcontractors or agents, in performing the Services under this Contract, notwithstanding anything contained in this Contract to the Contrary.

(3) To the fullest extent permitted by law, the Contractor shall release, indemnify, defend and hold harmless BNSF and BNSF's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees and agents (collectively, "indemnities") for, from and against any and all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments and expenses, including without limitation, court costs, attorneys' fees and costs of investigation, removal and remediation and governmental oversight costs) environmental or otherwise (collectively "liabilities") of any nature, kind or description of any person or entity directly or indirectly

arising out of, resulting from or related to, in whole or in part:

- (a) Activities and operations permitted or regulated by this Contract and the BNSF / NMDOT Joint Use Agreement including without limitation its environmental provisions;
 - (b) Any rights or interests granted pursuant to the BNSF / NMDOT Joint Use Agreement;
 - (c) The Contractor's occupation and use of the rail corridor including without limitation the Contractor's operation of commuter rail service and related activities;
 - (d) The environmental condition and status of the rail corridor caused by or contributed by the Contractor; or
 - (e) Any act or omission of the Contractor or its officers, agents, invitees, employees, or subcontractors, or anyone directly or indirectly employed by any of them, or anyone they control or exercise control over even if such liabilities arise from or attributed to, in whole or in part, any negligence of any indemnitee. The only liabilities with respect to which the Contractor's obligation to indemnify the indemnitee does not apply are liabilities to the extent proximately caused by the gross negligence or willful misconduct on an indemnitee.
- (4) To the fullest extent permitted by law, the Contractor agrees, regardless of any negligence or alleged negligence of any indemnitee, to indemnify and hold harmless the indemnitee against and assume the defense of any liabilities asserted against or suffered by any indemnitee under or related to the Federal Employer's Liability Act ("FELA") whenever employees of the Contractor or any of its agents, invitees, or subcontractors claim or allege that they are employees of any indemnitee or otherwise. This indemnity also shall extend, on the same basis, to FELA claims based on actual or alleged violations of any Federal, State or local laws or regulations, including but not limited to, the Safety Appliance Act, the Boiler Inspection Act, the Occupational Health and Safety Act, the Resource Conservation and Recovery Act, and any similar Federal or State statute
- (5) Upon written notice to BNSF, the Contractor agrees to assume the defense of any lawsuit or other proceeding brought against any indemnitee by any entity, relating to any matter covered by the BNSF/NMDOT Joint Use Agreement for which the Contractor has an obligation to assume liability for or save and hold harmless and indemnitee. The Contractor shall pay all costs incident to such defense, including but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments. The Contractor acknowledges and agrees that BNSF is expressly entitled to pursue the Contractor directly for any breach or violation of a Contractor requirement in this Contract.
- (6) The indemnity agreements shall not be construed as a waiver of the RMRTD's or NMDOT's governmental immunity. The indemnity agreements shall not be construed to prohibit the Contractor from seeking contribution or indemnity from any third party which may have caused or contributed to the event for which the Contractor indemnifies the RMRTD, provided, however, that the Contractor may not see contribution from BNSF.

(7) To the fullest extent provided by law, the RMRTD shall pay all costs associated with and indemnify, defend and insure the Contractor in accordance with Section 9(B) for the liabilities and indemnities contained in Sections 3, 4 and 5 above.

(8) The indemnification agreements shall survive the term of this Contract.

Section 10. Reports, Information and Ownership of Documents

A. Reports and Information. During the performance of this Contract and upon the completion or earlier termination of the services required under this Contract, the Contractor shall furnish to RMRTD such statements, records, reports, data and information as requested by RMRTD pertaining to matters covered by this Contract.

B. Release of Information. The Contractor shall not release any data, reports or other information of any nature whatsoever to any entity or person other than to RMRTD unless specifically authorized to do so in writing in advance by RMRTD.

C. Ownership and Use of Documents. The Contractor's work product produced pursuant to this Contract shall become the sole property of RMRTD. Such work product shall include but not be limited to reports, background data, drawings, calculations, technical data, data related specifically to this Contract, specifications, manuals and/or related documents.

D. Computer Program Licensing Contracts. RMRTD shall have the option to require (at RMRTD's cost) that the Contractor provide any and all computer licensing agreements necessary to permit RMRTD to use computer programs and data related to the services performed by Contractor under this Contract.

E. Future Use. RMRTD's use of computer programs and computer stored data developed under the requirements of this Contract for purposes other than the services required of Contractor as specified in this Contract shall be at RMRTD's risk, and Contractor shall be held harmless for such use. Contractor does not represent that the computer programs and computer data developed under this Contract are suitable for reuse under different conditions. This paragraph shall not apply to the performance of this Contract nor in instances where the Contractor is retained to perform subsequent services using the work product developed pursuant to this Contract.

F. Publication, Reproduction and Use of Materials. No materials or documents produced in whole or in part under this Contract shall be subject to copyright in the United States or in any other country. RMRTD shall have the unrestricted authority and right to copyright, publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials (hereafter "Materials") prepared under this Contract. The Contractor may use Materials created under this Contract as reference and research materials and as representations of the services performed under this Contract only after the Materials are completed and accepted by RMRTD, provided that such Materials shall not include RMRTD's confidential or proprietary information, to the extent RMRTD provides the

Contractor with notice that such materials are considered confidential or proprietary by RMRTD. RMRTD shall provide professional credit for Contractor in promotional materials for services rendered pursuant to this Contract, if requested in writing by Contractor.

Section 11. Establishment and Maintenance of Records

Records shall be maintained by Contractor in accordance with applicable law and requirements prescribed by RMRTD with respect to all matters covered by this Contract. Except as otherwise authorized by RMRTD, such records shall be maintained for a period of seven (7) years after receipt of final payment under this Contract.

Section 12. Audits and Inspections

At any time during normal business hours and as often as RMRTD may deem necessary, there shall be made available to RMRTD, the NMDOT, the Comptroller General of the United States, the State Auditor and any of their duly authorized representatives (collectively "Audit Parties") for examination all of the Contractor's records with respect to all matters covered by this Contract. The Contractor shall permit the RMRTD, or its authorized representatives, to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Contract. The Contractor shall maintain such records at its office and provide them to RMRTD at RMRTD offices in Albuquerque, New Mexico, within fifteen (15) days after receiving a written request for such records by RMRTD. In the event Contractor does not wish to make its books and records available at RMRTD offices, then Contractor shall pay reasonable travel and accommodation expenses for RMRTD staff or its duly authorized representatives to travel to Contractor's offices to conduct the audit. The Contractor shall comply with all applicable Federal regulations and guidelines regarding audits, including but not limited to, the provisions of the Single Audit Act of 1984 and all Amendments, and OMB Circular A-133.

Section 13. Changes

RMRTD may, from time to time, request changes in the Services to be performed hereunder. Such changes, including any increase or decrease in the amount of Contractor's compensation, that are mutually agreed upon by and between RMRTD and the Contractor shall be incorporated in written amendments to this Contract.

Notwithstanding anything contained herein to the contrary, whenever there is a change in any law, regulation, specification, policy, procedure, operating rule, or standard which in the aggregate increases or decreases the Contractor's cost of performance under this Contract, then Contractor and RMRTD shall enter into good faith negotiations for a contract amendment to reflect the increase or decrease in the cost of Contractor's performance.

Section 14. Suspension

A. Suspension of Work. RMRTD shall be entitled at any time to suspend, delay, or

interrupt all or any part of the Services required of the Contractor by this Contract. Such order shall be in writing and identified as a "Suspension of Work Order". The Contractor shall incur no further costs allocable to the Services during the period of suspension, delay, or interruption. The Contractor shall suspend work in a safe, orderly and reasonable manner and shall be reimbursed for all services performed up to the time of its receipt of the Suspension of Work Order; to the extent such services are accepted pursuant to this Contract.

B. Resumption of Work. In the event RMRTD cancels a Suspension of Work Order, the Contractor shall resume performing the Services in a timely manner and shall be entitled to an equitable adjustment in compensation but only if RMRTD determines that the Suspension of Work Order resulted in additional costs to Contractor in its performance of the Services and Contractor asserts a claim for such additional costs within thirty (30) days after the cancellation of the Suspension of Work Order.

Section 15. Termination

A. Termination by RMRTD for Cause, ten (10) day notice. If through any cause the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the Contractor shall violate any of the covenants, Contracts or stipulations of this Contract, RMRTD shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination and specifying the effective date thereof at least ten (10) days before the effective date of such termination.

Notwithstanding the above, the Contractor shall not be relieved of liability to RMRTD for damages sustained by RMRTD by virtue of any breach of this Contract by Contractor, and RMRTD may withhold any payment to the Contractor for the purposes of set-off until such time as the exact amount of damages due RMRTD from Contractor is determined.

B. Termination by RMRTD: twenty (20) day notice. RMRTD may terminate this Contract at any time by giving at least twenty (20) day notice **in writing** to the Contractor. Said twenty (20) days shall run from the day on which Contractor received said notice of termination. In the event this Contract is terminated by RMRTD as provided herein, the Contractor shall be paid an amount that bears the same ratio to the total compensation as the Services actually performed bear to the total Services of Contractor covered by this Contract, less payments of compensation previously made. If this Contract is terminated due to the fault of the Contractor, Paragraph A of this section hereof, relative to termination, shall apply.

C. Work Product. In the event of termination under the provisions of this section, all finished or unfinished documents, data, maps, studies, surveys, drawings, models, photographs and reports prepared by Contractor under this Contract shall, at the option of RMRTD, become the property of RMRTD, and the Contractor shall deliver such work product to RMRTD within thirty (30) days of receipt of the request of RMRTD.

D. Termination by Contractor: thirty (30) Day notice. The Contractor shall be entitled to terminate this Contract in the event of a default by RMRTD in the performance of any

covenant or Contract herein required to be performed by RMRTD and the failure of RMRTD to remedy such default for a period of thirty (30) days after receipt from the Contractor of written notice to remedy the same; provided, however, that no notice of termination, as above provided, shall be of any force or effect if RMRTD shall have remedied the default prior to receipt of the Contractor's notice of termination.

E. Non-Funding. The performance of this Contract is contingent upon the necessary appropriations and authorizations forthcoming for the performance of this Contract. If sufficient appropriations and authorizations are not made, this Contract may be terminated by RMRTD by giving notice to the Contractor. Such event shall not constitute an event default by RMRTD. All payment obligations of RMRTD shall cease upon the date of termination. RMRTD's decision as to whether sufficient appropriations are available or sufficient shall be binding on the Contractor and shall be final. The date of termination issued pursuant to this paragraph shall be the date a notice of termination is received by Contractor.

Section 16. Special Federal Provisions

This procurement may be supported in part or in whole from time to time with federal funds. Hence, Federal-Aid requirements and the following contractual clauses and certifications are applicable to this procurement.

Federal Clauses – All Contract Activities

A. Prohibition Against Use of Federal Funds for Lobbying

Neither the Contractor nor any subcontractor may use Federal assistance funds for publicity or propaganda purposes designed to support or defeat legislation pending before Congress. As a part of the solicitation, Certification of Restrictions on Lobbying, as attached hereto in Exhibit C, was required and is incorporated within the terms and conditions of this subsequent Contract.

B. Debarment and Suspension

The certification in this clause is a material representation of fact relied upon by RMRTD. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to RMRTD, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply and assures the compliance of each third-party contractor at any tier with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Government wide Debarment and Suspension (Nonprocurement)," 49 C.F.R. Part 29. The Contractor agrees to and assures that its third-party contractors will review the Excluded Parties Listing System (EPLS) at <https://www.sam.gov/> before entering into any contracts.

C. Notification Related to Fraud, Waste, Abuse, or Other Legal Matters

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify OVRTA / EORTA so that it can notify the Federal Government. 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. 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.

The Contractor agrees to include a similar notification requirement in subcontracts exceeding \$25,000 financed in whole or in part with federal assistance provided by FTA and must require each subcontractor to include an equivalent provision in its federally assisted subcontracts exceeding \$25,000.

D. Affirmative Action / Equal Employment Opportunity

The Contractor agrees to comply and assures the compliance of Affirmative Action / Equal Employment Opportunity. As a part of the solicitation, Certification of Affirmative Action / Equal Employment Opportunity compliance, as attached hereto in Exhibit C, was required and is incorporated within the terms and conditions of this subsequent Contract.

E. No Government Obligations to Third Parties

The Contractor acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this 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 Owner, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

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

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

impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 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. 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.

G. Access to Records and Reports

The Contractor shall comply with all requirements of 49 U.S.C. 5325 18 CFR 18.36 (i) 49 CFR 633.17. The Contractor agrees to provide the RMRTD, 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.

H. Federal Changes

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the RMRTD 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 the Contract.

I. Incorporation of Federal Transit Administration (FTA) Terms

All contractual provisions required by U.S. Department of Transportation, as set forth in FTA Circular 4220.1F and subsequent amendments 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 solicitation. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any RMRTD requests that would cause the RMRTD to be in violation of the FTA terms and conditions.

J. Energy Conservation Requirement

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

K. Buy America

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content. Contractor must submit the appropriate Buy America certification with all bids or offers on FTA-funded contracts exceeding \$100,000, except those subject to a general waiver. As a part of the solicitation, Buy America Certification, as attached hereto in Exhibit C, was required and is incorporated within the terms and conditions of this subsequent Contract.

K. Breaches and Dispute Resolutions

(1) Disputes. Disputes arising in the performance of the resulting Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the RMRTD, herein defined as the Rio Metro Procurement Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Rio Metro Procurement Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Rio Metro Procurement Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

(1) Performance During Dispute. Unless otherwise directed by RMRTD, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.

(2) Remedies. If any controversy or claim arising out of this Contract cannot be settled by the Parties directly, the Parties will submit the controversy or claim to mediation using a mediator mutually acceptable to the Parties or, if the Parties cannot agree on a mediator, a mediator chosen by each Party. If the Parties are unable, after a reasonable period of time, to produce through such mediation a mutually satisfactory resolution on the matter, the dispute will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the RMRTD is located.

(3) Right and Remedies. The duties and obligations imposed by this Contract and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the RMRTD 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.

L. Clean Air

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

M. Clean Water

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

N. Cargo Preference

The Contractor agrees to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.

O. Fly America

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

P. Access Requirements for Individuals with Disabilities

The Contractor shall, at all times, be in compliance with all statutory requirements imposed

by or pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990 at 49 CFR Parts 27, 37 and 38, as well as any additional requirements which may be placed into effect during this Contract.

Q. Drug and Alcohol Testing

The Contractor shall establish and maintain a drug and alcohol testing program that meets the Federal requirements for 49 CFR part 219 – Control of Drug and Alcohol.

R. Recycled Products

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

S. Disadvantaged Business Enterprise

(1) 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. A list of certified Disadvantage Business Enterprises can be obtained from the New Mexico State Highway and Transportation Department, Office of Equal Employment Opportunity Programs' website: <https://nmdot.dbesystem.com>. A separate contract goal has not been established for this procurement.

(2) 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 DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of the Contract, which may result in the termination of the Contract or such other remedy as deemed appropriate. Each subcontract that the Contractor signs with must include the assurance in this paragraph. (See 49 CFR 26.13(b).)

(3) The Contractor agrees to pay each subcontractor under the Contract for satisfactory performance no later than thirty (30) days from the receipt of each payment the Contractor receives from the RMRTD. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the RMRTD. This clause applies to both DBE and non-DBE subcontracts.

(4) If applicable, the Contractor is required to pay all retainage owed to each subcontractor for satisfactory completion of accepted work within thirty (30) days from the receipt of each payment the contractor receives from the RMRTD. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the RMRTD. This clause applies to both DBE and non-DBE subcontracts.

(5) The Contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of the Contract. For this purpose, as a part of the solicitation for this underlying Contract, the Contractor created and will maintain a subcontractors list, consisting of information about all DBE and non-DBE firms that will perform Services hereunder.

T. Civil Rights Compliance

(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 this underlying contract: Race, Color, Creed, National Origin.

(3) 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.

(4) 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.

(5) 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. 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.

U. Text Messaging While Driving

In accordance with Executive Order No. 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, 23 U.S.C.A. § 402 note, and DOT Order 3902.10, Text Messaging While December 30, 2009, the Contractor is encouraged to comply with the terms of the following Special Provision.

(1) Definitions. As used in this Special Provision:

(a) "Driving" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

(b) "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

(2) Safety. The Contractor is encouraged to:

(a) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving:

(i) Contractor owned or rented vehicles or Government-owned, leased or rented vehicles;

(ii) Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or

(iii) Any vehicle, on or off duty, and using an employer supplied electronic device.

(b) Conduct workplace safety initiatives in a manner commensurate with the Contractor's size, such as:

(i) Establishment of new rules and programs or re-evaluation of existing programs

to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(c) Include this Special Provision in its subcontracts with its subcontractors and third-party contracts and also encourage its subcontractors, lessees, and third-party contractors to comply with the terms of this Special Provision, and include this Special Condition in each subcontract, lease, and third-party contract at each tier financed with Federal assistance provided by the Federal government.

V. Contract Work Hours and Safety Standards Act

Overtime requirements – The Contractor or subcontractor contracting for any part of the Contract work greater than \$100,000 which may require or involve the employment of laborers or mechanics who are not exempt by the Fair Labor Standards Act (FLSA) shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

(1) Violation, liability for unpaid wages, liquidated damages - In the event of any violation of the clause set forth in this section, the Contractor and any subcontractor responsible shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph one of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages.

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

(3) Subcontracts - The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth herein.

Federal Clauses – Construction

A. Davis-Bacon and Copeland Anti-Kickback Acts

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, et seq. and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts over \$2,000 that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Contractor shall comply with both Acts (29 CFR 3.11) of which requirements are enumerated at 29 CFR 5.5(a) and are incorporated by reference in this Contract.

B. Bonding Requirements

(1) Performance and Payment Bonding Requirements (Construction)

The Contractor may be required to obtain performance and payment bonds for construction improvements exceeding \$100,000 under this Contract as follows:

(a) Performance Bonds

(i) The amount of performance bonds may be up to 100 percent of the construction cost, unless the RMRTD determines that a lesser amount would be adequate for the protection of the RMRTD.

(ii) The RMRTD may require additional performance bond protection when construction costs are increased. The increase in protection may be equal to 100 percent of the increase in construction price. The RMRTD may secure additional protection by directing the Contractor to increase amount of the existing bond or to obtain an additional bond.

(b) Payment Bonds

(i) The amount of the payment bonds may equal: Fifty percent of the construction cost if the construction price is not more than \$1 million; Forty percent of the construction cost if the construction price is more than \$1 million but not more than \$5 million; or Two and one half million if the construction cost is more than \$5 million.

(ii) If the original construction cost is \$5 million or less, the RMRTD may require additional protection if the construction price is increased.

(2) Performance and Payment Bonding Requirements (Warranty of the Work and Maintenance Bonds)

(a) The Contractor warrants to the RMRTD that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by RMRTD, free from faults and defects and in conformance with the Contract documents. All work not so conforming to these standards shall be considered defective. If required by the Project

Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

(b) The work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the RMRTD.

C. Seismic Safety

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

D. Veterans Preference

As provided in 49 U.S.C. § 5325(k), to the extent practicable, the Contractor agrees and assures that it and its subcontractors 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 the contract.

This does not require the contractor 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.

Federal Clauses – Operations

A. Transit Employee Protective Requirements

The Contractor agrees to comply with the terms and conditions of the Special Warranty for the Urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. Department of Labor or any revision thereto. The Contractor also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

Section 17. General Conditions

A. Contract Interpretation.

(1) **Severability.** In the event any covenant, condition or provision herein is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provisions of this Contract shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either RMRTD or the Contractor in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Contract.

(2) **Waiver.** No provision of this Contract shall be deemed to have been waived by either party unless such waiver is in writing, signed by the party making the waiver and addressed to the other party, nor shall any custom or practice which may evolve between the parties in the administration of the terms of this Contract be construed to waive or lessen the right of either party to insist upon the performance of the other party in strict accordance with the terms of this Contract. Further, the waiver by any party of a breach by the other party or any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

(3) **Gender, Singular/Plural.** Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

(4) **Captions and Section Headings.** The captions, section headings, and table of contents contained in this Contract are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Contract.

(5) **Entire Contract.** This Contract represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Contract incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this contract, and all such conditions, understandings and agreements have been merged into this written Contract. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Contract.

(6) **Relationship of Contract Documents.** All documents attached to this Contract or incorporated into this Contract are complementary, and any requirement of one contract document shall be as binding as if required by all.

(7) **Exhibit Certificates, Documents Incorporated and Attachments.** Incorporation by Reference: All certificates, documents, exhibits, attachments, riders, and addenda referred

to in this Contract are hereby incorporated into this Contract by reference and made a part hereof as though set forth in full in this Contract to the extent they are consistent with its conditions and terms.

(8) **Applicable Law.** This Contract shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of RMRTD.

(9) **Successors.** All covenants, stipulations and agreements in this Contract shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.

(10) **Governmental Rights and Powers.** Nothing in this Contract shall be construed or interpreted as limiting, relinquishing, or waiving any rights of ownership enjoyed by RMRTD, or waiving or limiting RMRTD's control over the management, operations, or maintenance of its property, except as specifically provided in this Contract, or impairing, exercising or defining governmental rights and the police powers of RMRTD.

B. Ethics.

(1) **Conflict of Interest.** As a part of the solicitation, Certification of Campaign Contribution Disclosure as attached hereto in Exhibit C, was required, and is incorporated within the terms and conditions of this subsequent Contract. The Contractor has disclosed whether any member of the RMRTD Board of Directors, officer or employee of RMRTD, has or hereafter acquires any direct, indirect, legal, or beneficial interest in the Contractor or in any contract, lease, or agreement between RMRTD and the Contractor, or in any franchise, concession, right, or privilege of any nature granted by RMRTD to the Contractor in this Contract or otherwise.

(2) **Fair Dealing.** The Contractor covenants and warrants that the only person or firm interested in this Contract as principal (or principals) are named in this Contract and that no other person or firm has any interest in this Contract, and this Contract is entered into by the Contractor without collusion on the part of the Contractor with any person or firm, without fraud and in good faith. The Contractor also covenants and warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Contract, shall be, offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of RMRTD with a view toward securing this Contract or for securing more favorable treatment with respect to making any determinations with respect to performing this Contract.

B. Environmental.

(1) The Contractor, within sixty (60) days of Notice to Proceed (NTP), shall submit to the RMRTD for review and approval a policy and procedures manual and a guideline for handling and managing hazardous and toxic waste and material. This shall include, but is not limited to, spill prevention and control of hazardous and toxic material, medical waste handling,

hazardous materials or waste generators (not limited in size), and wetlands protection. The policy and procedures shall be developed in compliance with all applicable local, state and Federal environmental laws and regulations.

(2) The Contractor, within sixty (60) days of NTP, shall submit to the RMRTD for review and approval a formalized emergency/spill response team and chain of command plan for all applicable Service Property locations.

(3) Reporting and Record Keeping Requirements. The Contractor shall maintain and furnish to the RMRTD records regarding hazardous and toxic waste spills or releases required to be filed with the New Mexico Environment Department and any original or related environmental reports filed with the FRA or the U. S. Environmental Protection Agency (EPA).

C. Assignment and Subletting.

D. The Contractor shall not assign or otherwise transfer, in whole or in part, any of the rights granted in this Contract without the prior written approval of the RMRTD. Approvals, Consents and Notices.

(1) All notices, consents, and approvals required by this Contract shall be in writing and shall be given by registered or certified mail by depositing the same in the U.S. mail in the continental United States, postage prepaid, return receipt requested, or by personal delivery, or by facsimile transmission to the "FAX" number given below, provided that the completed transmission is electronically verified. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices shall be delivered as follows:

RMRTD: Terry Doyle
Director, Rio Metro RTD
Certified Mail: 809 Copper Ave., N.W.
Albuquerque, New Mexico 87102
Personal Delivery: Same as above
Telephone: (505) 247-1750 FAX Transmission: (505) 247-1753

Contractor:
Contractor Official:
Title:
Certified Mail:

Personal Delivery: Same as Above
Telephone: _____ FAX Transmission: _____
E-Mail Address: _____
With Copy To:
Telephone: _____ FAX Transmission _____

(2) If notice, consent or approval is given in any other manner or at any other place, it shall also be given at the place and in the manner specified above.

(3) The effective date of such notice, consent or approval shall be the date of the receipt as shown by the U.S. Postal Service Return Receipt, or the date personal delivery is certified, or the date of electronic verification of the facsimile transmission, unless provided otherwise in this Contract.

F. Non-Liability of Agents and Employees. No member, officer, agent, director, or employee of RMRTD or the Contractor shall be charged personally or held contractually liable by or to the other party under any term or provision of this Contract or because of any breach thereof or because of their execution or attempted execution of this Contract.

G. No Partnership or Agency.

Nothing contained in this Contract is intended or shall be construed in any respect to create or establish any relationship other than that of owner and contractor, and nothing herein shall be construed to establish any partnership, joint venture or association or to make the Contractor the general representative or agent of RMRTD for any purpose whatsoever.

H. Force Majeure.

Except as expressly provided in this Contract, neither RMRTD nor the Contractor shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations, other than payment of rentals, fees and charges hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of the public enemy, weather conditions and the results of acts of nature, riots, rebellion, sabotage, or any other similar circumstances for which it is not responsible or which are not within its control.

I. Forum Selection.

Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Contract shall only be brought in a state district court located in Bernalillo County, New Mexico or in a federal district court located in New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of either or both of said courts. The provisions of this section shall survive the termination of this Contract.

J. Compliance with Law.

The Contractor shall comply with all applicable laws, ordinances, regulations and procedures of federal, state, and local governments, including, but not limited to RMRTD rules. The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101) and federal regulations promulgated thereunder.

K. Patents and Trademarks.

Contractor represents that it is the owner or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its performance under this Contract. Contractor agrees to defend, indemnify and hold harmless RMRTD, pursuant to the Indemnification Agreement above, from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark, copyright, trade secret or proprietary right, or arising from any alleged or actual unfair competition or other similar claim arising out the performance of this Contract by Contractor. In the event a claim is made that the use of materials is such an infringement, the Contractor shall either procure for RMRTD the right to continue using such materials, make modifications resulting in the elimination of the infringement (and continue to meet the requirements of this Contract) or replace such material with non-infringing materials of a like functionality that meet the requirements of this Contract.

L. Savings.

RMRTD and Contractor acknowledge and agree that they have thoroughly read this Contract, including all exhibits thereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. RMRTD and Contractor further acknowledge that the Contract is the result of negotiations between them and that this Contract shall not be construed against either party by reason of that party's preparation of all or part of this Contract.

IN WITNESS WHEREOF, the Parties referenced herein have executed this Contract as specified below.

RIO METRO REGIONAL TRANSIT DISTRICT

By: _____ Date: _____
Director

CONTRACTOR

By: _____ Date: _____
Title: _____

New Mexico State Taxation and Revenue
Taxpayer I.D. Number: _____
Federal Taxation I.D. Number: _____

APPROVED AS TO LEGAL SUFFICIENCY

By: _____ Date: _____
RMRTD General Counsel

APPENDIX 6.9

REQUEST FOR PROPOSALS

RFP#: 2021-03

SCOPE OF SERVICES

Appendix 6.9

Scope of Services

1. Background

Starting in the fall of 2003, the New Mexico Department of Transportation (NMDOT) and the Mid-Region Council of Governments (MRCOG) began working on the implementation of commuter rail service between Belen and Bernalillo in central New Mexico. This segment was part of the first phase of a multi-phase project that resulted in the eventual expansion of service to Santa Fe. This project was and is a major transportation priority for the State and this region. The first segment of Phase I service began in July of 2006.

The NMDOT initially purchased six (6) cab and four (4) coach Bombardier Bi-Level cars delivered in 2005 and 2006. Five Motive Power MP36PH-3C locomotives were initially purchased for Phase I. An additional nine (9) coaches, three (3) cabs, and four (4) locomotives were purchased for Phase II service to Santa Fe.

The Rio Metro Regional Transit District (RMRTD) is a Regional Transportation District formed in 2005, and has replaced MRCOG as the responsible entity in contracting for and providing commuter rail service. The NMDOT owns the rail corridor and currently has primary responsibility to plan, build, and maintain a statewide transportation network which will serve the social and economic interest of our citizens in a productive, cost-effective innovative manner.

The rail corridor is a shared use facility supporting mixed-use traffic including commuter rail, freight transport and long-haul intercity passenger rail service. Interagency joint use agreements have been executed among and between NMDOT, the BNSF Railway Company and the National Railroad Passenger Corporation (Amtrak) for the purpose of delineating service rights, dispatching priorities and maintenance responsibilities of the participating entities. These shared use contracts are provided in Exhibit A of this solicitation.

2. Track Details

As presented in Exhibit B, the attached Track Charts, Time Table and Geometry Report provide details about the 120.5 miles of the state-owned railroad to be maintained under this operations and maintenance contract. A total of 96.4 miles of mainline track hosts the New Mexico Rail Runner Express (NMRX) a commuter rail service. Of the 96.4 commuter rail miles, 0.6 of these miles (MP 21.69-MP 22.3) are owned by the City of Santa Fe, but are maintained by the RMRTD. The portion of the system that does not have commuter train service hosts two Amtrak trains daily plus occasional BNSF local freights as far as Lamy. Of the 24.10 non-commuter rail miles, 2.26 miles are dispatched by BNSF, but maintained by

NMRX, located on the extreme eastern part of the system at Lamy (from MP 834 to MP 836.26).

In addition to mainline track, other significant trackage is located in Albuquerque. There is a five track yard used for servicing commuter rail equipment, a four track storage yard, and also four Industry Lead tracks that depart from the mainline in the Albuquerque area. Two Industry Leads (Zone 7 and Zone 9 tracks) are approximately one mile in length and branch off perpendicular to the east of the mainline, while the third (Zone 5 track) is approximately 1.5 miles in length and branches off perpendicular to the west of the mainline. The fourth Industry Lead, called the Hahn Lead, is also approximately 1.5 miles long, but runs parallel to the mainline. Several smaller industry spur tracks branch off of these Industry Leads. In addition, several industry spurs depart directly from the mainline throughout the Albuquerque area at numerous locations between Isleta Lakes (MP 911.8) and Los Ranchos station (MP 895.5). The remaining significant facilities in Albuquerque are owned and maintained by BNSF Railway (Abajo freight yard, intermodal facility, and automobile distribution center). There are a handful of other industry spurs along the remainder of the railroad up to Lamy, NM.

The NMRX system to be maintained under the operations and maintenance contract is divided into two subdivisions: The Albuquerque (Glorieta) Subdivision between Belen (MP 932.2) and Lamy (MP 834), and the Santa Fe Subdivision from CP Madrid (MP 858, 0.0) to Santa Fe (MP 22.3). The Albuquerque Subdivision has five Controlled Sidings, one Non-Controlled siding, and a segment of Double Track. The Santa Fe Subdivision has three Controlled Sidings and one Non-Controlled siding, used mainly as a lead to a small two track holding yard on the south end of Santa Fe for commuter rail equipment.



a. Albuquerque Subdivision

The segment between Belen (MP 932.2) and Isleta (MP 915) is operated under an I-ETMS PTC mixed system overlay of the Centralized Traffic Control (CTC) system with maximum passenger speed of 79 mph and maximum freight speed of 60 mph on Class 4 track.

The segment between Isleta (MP 915) and CP Abajo (MP 903.8) is operated under an I-ETMS PTC mixed system overlay of the CTC system with a maximum passenger speed of 79 mph and maximum freight speed of 70 mph (under certain train-handling conditions) on Class 5 track.

The segment between CP Abajo (MP 903.8) and MP 901.1 is Double Track and is operated under an I-ETMS PTC mixed system overlay of the Restricted Limits with an Automatic Block System (ABS) system with a maximum speed of 20 mph (both passenger and freight) on Class 2 track. This segment is also equipped with Automatic Train Stop (ATS) from Albuquerque (MP 902.4) to MP 901.1.

The segment between MP 901.1 to CP Hahn (MP 899.1) is also Double Track and is operated under an I-ETMS PTC mixed system overlay of the Track Warrant Control (TWC) with ABS and ATS system with a maximum speed of 50 mph (both passenger and freight).

The segment between CP Hahn and CP Madrid (MP 858) is operated under an I-ETMS PTC mixed system overlay of the CTC and ATS system at a maximum track speed of 79 mph for passenger and 60 mph for freight on Class 4 track.

The segment between CP Madrid and West Lamy (MP 836.26) is a Non-Commuter segment and Non-PTC segment and is operated under TWC with ABS and is also equipped with ATS at a maximum passenger speed of 79 mph and 60 mph for freight on Class 4 track.

The segment between West Lamy and MP 834 is a Non-PTC segment operated under CTC (but with manual Spring Switches) and is dispatched by BNSF. Only West Lamy is equipped with ATS.

b. Santa Fe Subdivision

The segment between CP Madrid (MP 858, 0) and CP Hondo (MP 17.9) is operated under an I-ETMS PTC mixed system overlay of the CTC system with a maximum speed of 79 mph for passenger on Class 4 track.

The segment between CP Hondo (MP 17.9) and CP Alarid (MP 21.8) is operated under an I-ETMS PTC mixed system overlay of the CTC system with a maximum speed of 35 mph for passenger and freight on Class 4 track.

The segment between CP Alarid (MP 21.8) and Santa Fe (MP 22.3) is a Non-PTC segment operated under Restricted Limits at a maximum of 15 mph for both passenger and freight. Within this segment are a main track and also a yard lead.

As illustrated in Exhibit C, the anticipated NMRX schedule includes seven day/week service: 11 northbound and 11 southbound weekday service; five (5) northbound and six (6) southbound Saturday service; and three (3) northbound and four (4) southbound Sunday service. All trains do not traverse the entire corridor. Due to the COVID 19 Pandemic, the NMRX is currently running a reduced schedule, but anticipates resuming the pre COVID 19 Pandemic Schedule by the contract start date (September 21, 2021). Although the RMRTD reserves the right to alter the schedule, at the present time the RMRTD does not anticipate significant changes to the schedule in the near future. The RMRTD train maintenance facilities are located in Downtown Albuquerque across from the Alvarado Transportation Center and fourteen stations service rail passengers.

3. Request For Proposal (RFP) Major Tasks

For each of the major tasks listed below, Offerors shall provide responses that include at a minimum the following information:

1. Key personnel and resources utilized.
2. The organization of these personnel and resources
3. Key issues for mobilization within approximately 10 weeks from NTP

Task 1: General Service Responsibilities

In accordance with the products and responsibilities identified in Appendix 6.10, RMRTD desires to retain a qualified operator that is appropriately staffed and has sufficient resources to manage and safely operate and maintain a commuter rail operation. Specific duties, products and levels of responsibilities for General Service Responsibilities are provided in Appendix 6.10.

Task 2: Train Operations Responsibilities

In accordance with the products and responsibilities identified in Appendix 6.11, RMRTD desires to retain a qualified operator that is appropriately staffed and has sufficient resources to crew and safely and efficiently operate commuter rail trains. Specific duties, products and levels of responsibilities for Train Operations are provided in Appendix 6.11. Fare collection duties are included as a part of Task 2 in Appendix 6.11.

Task 3: Maintenance of Equipment & Facilities Responsibilities

In accordance with the products and responsibilities identified in Appendix 6.12, the RMRTD desires to retain a qualified operator that is appropriately staffed and has sufficient resources to maintain the rolling stock and facilities associated with the commuter rail operation. Specific duties, products and levels of responsibilities for Maintenance of Equipment & Facilities are provided in Appendix 6.12.

Task 4: Maintenance of Way Responsibilities

In accordance with the products and responsibilities identified in Appendix 6.13, the RMRTD desires to retain a qualified operator that is appropriately staffed and has sufficient resources to maintain the tracks and rights of way associated with the commuter rail operation. Specific duties, products and levels of responsibilities for Maintenance of Way are provided in Appendix 6.13.

Task 5: Positive Train Control / Dispatch / Communication Responsibilities

In accordance with the products and responsibilities identified in Appendix 6.14, the RMRTD desires to retain a qualified operator that is appropriately staffed and has sufficient resources to operate, maintain and provide support services for Positive Train Control, Train Dispatch and Rail Communications associated with the commuter rail operation. Specific duties, products and levels of responsibilities for Positive Train Control / Dispatch / Communications are provided in Appendix 6.14.

4. Additional Services

In accordance with the products and responsibilities identified in Appendix 6.16, additional services may be required of the Contractor at some time throughout the life of the Contract. Those additional services are itemized in Appendix 6.16 of this solicitation. Task 1 through 4 and these additional services shall constitute the full Scope of Services contained herein.

APPENDIX 6.10

**REQUEST FOR PROPOSALS
RFP#: 2021-03**

DEFINITIONS

And

GENERAL SERVICE RESPONSIBILITIES

APPENDIX 6.10

Definitions and General Service Responsibilities

1. Definitions

- a. AAR: Association of American Railroads.
- b. Acceptably Operated Train: A revenue train that is on time, a scheduled non-revenue train, or a special train.
- c. APTA: American Public Transportation Association.
- d. Capital Spares: All parts, equipment, and supplies necessary to support both the maintenance of equipment, maintenance of the Maintenance Yard, and maintenance of the right of way that have an individual cost greater than \$5,000 (exclusive of any markups) and a useful life of more than one year.
- e. Capital Maintenance. Capital Maintenance is other than routine maintenance as detailed in Appendix 6.13.
- f. C.F.R.: Code of Federal Regulations.
- g. Director, RMRTD: RMRTD's Director of Commuter Rail.
- h. DOT: U. S. Department of Transportation.
- i. EPA: Environmental Protection Agency.
- j. FRA: Federal Railroad Administration.
- k. FTA: Federal Transit Administration.
- l. Train Consist: The combination of locomotives, coach cars and cab cars that comprise a scheduled train in revenue or non-revenue service
- m. General Manager: The Contractor's authorized representative for the management of the Contract and the provision of the Services.
- n. Total Locomotive Miles: The sum of all Scheduled Locomotive Miles operated during the reporting period, including test trains, work trains, and special trains which are compensated for under provisions of the Contract.
 - (1) Scheduled Locomotive Miles: The sum of all Scheduled Revenue Locomotive Miles and Scheduled Non-Revenue Locomotive Miles.

(2) Scheduled Revenue Locomotive Miles: The number of miles locomotives are operated in revenue passenger-carrying service.

(3) Scheduled Non-Revenue Locomotive Miles: The number of miles locomotives scheduled in non-revenue service including work trains, test trains, revenue train positioning (dead head) and positioning of rescue trains dispatched because of a non-contractor caused problem such as a fire, flood or other incident.

(4) Non-Scheduled Locomotive Miles: The numbers of miles locomotives are operated in addition to scheduled miles. This includes maintenance yard positioning and the positioning of rescue trains dispatched because of a Contractor caused problem such as mechanical failure, track condition or crew error. These miles are not included in any Locomotive Mile calculations for billing purposes.

PROVIDED HOWEVER, for any Rescue Train dispatched because of a Contractor caused problem such as mechanical failure, track condition, or crew error, miles traveled for the initial positioning of the train consist and return of original scheduled train consist (e.g. maintenance facility to point of scheduled train failure doubled), shall not be included in any Locomotive Miles calculation for billing purposes.

o. Maintenance Yard: The storage tracks, service tracks, repair tracks, and shops provided by RMRTD for use by the Contractor.

p. NMDOT: the New Mexico Department of Transportation

q. Rescue Train: Train dispatched to replace a train that cannot continue, or otherwise must be taken out of revenue service.

r. Rolling Stock: Locomotives, passenger coaches and passenger cab cars to be used in the Services.

s. Turn Over Date: September 21, 2021, or such other date as may be mutually agreed upon, that revenue train service under this solicitation begins.

t. Turn Over Mobilization Plan: The step-by-step plan of responsibilities, activities, capital maintenance, and requirements necessary for the Contractor to assume passenger service on the Turn Over Date and as may be necessary to address additional service requirements as may arise during the period of the Contract.

u. Service Property: The property of the NMDOT or RMRTD that is made available for use by the Contractor for providing the Services.

v. Services: The obligations of the Contractor under the Contract.

w. Signal Spares: All parts, equipment and supplies necessary to support the maintenance of the signal system in the right of way that have an individual cost greater than \$5,000.00 (exclusive of any markup) and a useful life of at least one year.

x. Total Cab Car Miles: The sum of all Scheduled Cab Car Miles operated during the reporting period, including test trains, work trains and special trains which are compensated for under provisions of the Contract.

(1) Scheduled Cab Car Miles: The sum of all Scheduled Revenue Cab Car Miles and Scheduled Non-Revenue Cab Car Miles.

(2) Scheduled Revenue Cab Car Miles: The number of miles Cab Cars operated in revenue passenger-carrying service.

(3) Scheduled Non-Revenue Cab Car Miles: The number of miles Cab Cars scheduled in non-revenue service including work trains, test trains, revenue train positioning (dead head) and positioning of rescue trains dispatched because of a non-contractor caused problem such as a fire, flood or other incident.

(4) Non-Scheduled Cab Car Miles: The number of miles cab cars operated in addition to scheduled miles. This includes maintenance yard positioning and the positioning of rescue trains dispatched because of a Contractor caused problem such as mechanical failure, track condition or crew error. These miles are not included in any Cab Car Miles calculation for billing purposes

PROVIDED HOWEVER, for any Rescue Train dispatched because of a Contractor caused problem such as mechanical failure, track condition, or crew error, miles traveled for the initial positioning of the train consist and return of original scheduled train consist (e.g. maintenance facility to point of scheduled train failure doubled), shall not be included in any Cab Car Mile calculations for billing purposes.

y. Total Coach Car Miles: The sum of all Scheduled Coach Car Miles operated during the reporting period, including test trains, work trains and special trains which are compensated for under provisions of the Contract.

(1) Scheduled Coach Car Miles: The sum of all Scheduled Revenue Coach Car Miles and Scheduled Non-Revenue Coach Car Miles.

(2) Scheduled Revenue Coach Car Miles: The number of miles Coach Cars are operated in revenue passenger-carrying service

(3) Scheduled Non-Revenue Coach Car Miles: The number of miles Coach Cars scheduled in non-revenue service including work trains, test trains, revenue train positioning (dead head) and positioning of rescue trains dispatched because of a

non-contractor caused problem such as a fire, flood or other incident.

(4) Non-Scheduled Coach Car Miles: The number of miles coach cars operated in addition to scheduled miles. This includes maintenance yard positioning and the positioning of rescue trains dispatched because of a Contractor caused problem such as mechanical failure, track condition or crew error. These miles are not included in any Coach Car Mile calculations for billing purposes

PROVIDED HOWEVER, for any Rescue Train dispatched because of a Contractor caused problem such as mechanical failure, track condition, or crew error, miles traveled for the initial positioning of the train consist and return of original scheduled train consist (e.g. maintenance facility to point of scheduled train failure doubled), shall not be included in any Coach Car Miles calculation for billing purposes

z. Total Train Hours: The sum of all Scheduled Train Hours that train consists operate during the reporting period, including test trains, work trains and special trains which are compensated for under provisions of the Contract.

(1) Scheduled Train Hours: The sum of all Scheduled Revenue Train Hours and Scheduled Non-Revenue Train Hours that train consists are operated.

(2) Scheduled Revenue Train Hours: The number of train hours train consists are operated in revenue passenger-carrying service.

(3) Scheduled Non-Revenue Train Hours (Positioning): The number of train hours train consists are scheduled as part of non-revenue positioning service including revenue train positioning (dead head) and positioning of rescue trains dispatched because of a non-contractor caused problem such as fire, flood or other incident.

(4) Scheduled Non-Revenue Train Hours (Work): The number of train hours train consists are scheduled as part of non-revenue work service including work trains and test trains.

(5) Non-Scheduled Train Hours: The number of train hours train consists are operated in addition to scheduled hours. This includes maintenance yard positioning and the positioning of rescue trains dispatched because of a Contractor caused problem such as mechanical failure, track condition or crew error. These hours are not included in any Train Hour calculations for billing purposes

PROVIDED HOWEVER, for any Rescue Train dispatched because of a Contractor caused problem such as mechanical failure, track condition, or crew error, train hours for the initial positioning of the train consist and return of original scheduled train consist (e.g. maintenance facility to point of scheduled train failure doubled), shall not be included in any Train Hour calculations for billing purposes.

- aa.** RMRTD: Rio Metro Transit District.
- ab.** RMRTD COO: Chief Operating Officer: The designated representative of the RMRTD.
- ac.** U.S.C.: United States Code.
- ad.** PTC: NMRX's FRA Certified I-ETMS Positive Train Control Mixed System
- ae.** PTCSP: NMRX's FRA Approved Positive Train Control Safety Plan for its I-ETMS mixed system (including all referenced documents)
- af.** PTC Spares: All parts, equipment and supplies necessary to support the maintenance of the PTC system that have an individual cost greater than \$5,000.00 (exclusive of any markup) and a useful life of at least one year.

2. Mobilization Plan

It is anticipated that the Contractor shall have approximately ten (10) weeks between issuance of the Notice to Proceed and the Turnover Date to mobilize. However, under no circumstances shall the Contractor be provided less than eight (8) weeks for mobilization. During the mobilization period, the Contractor shall undertake all steps necessary to successfully commence the Services on the Turnover Date. RMRTD does not expect migration of its hosted dispatch and PTC systems within the ten (10) weeks, but does expect the timeline for migration to be included in the Service Mobilization Plan, and for the migration to be completed as soon as practicable.

- a.** A Service Mobilization Plan (SMP) shall be developed by the Contractor and submitted to RMRTD for approval within 14 days of notification that the Contractor is the apparent winning proposer.
- b.** The Contractor shall perform all activities described in the SMP. The requirements of the SMP include, but are not limited to:
 - (1) Description of overall management structure for performing mobilization activities.
 - (2) A timeline schedule of mobilization activities.
 - (3) A hiring plan defining the projected hiring dates for each position.
 - (4) Qualifying transportation personnel to operate on the corridor.
 - (5) Assigning transportation and maintenance personnel to vendor training

courses.

(6) Assigning Train Attendants to a two-day course (provided by RMRTD) in fare inspection and orientation.

(7) Assigning on-board crew members to a two-day course (provided by RMRTD) in customer relations.

(8) Definition of all other training requirements.

(9) Identification of contracted services and materials to be procured by the Contractor prior to the Turn Over Date.

(10) Work cooperatively with the RMRTD in updating and re-filing the System Safety Plan (SSP) and all other required safety and security plans.

c. The Contractor will provide administrative space within one (1) mile of the maintenance yard for its use during the Mobilization phase. The current RMRTD service provider will cooperate with the Contractor to ensure safe access to the corridor, but the business of operating existing commuter rail, freight and AMTRAK service must continue without interruption or interference.

3. Services Provided

a. **Service Overview:** Contractor will provide the Services in accordance with the terms and conditions described herein. Contractor shall provide staff of qualified management personnel required to manage the provision of the Services in a manner that is consistent with RMRTD's objective of providing the safest, highest quality and most efficient service to the public, and consistent with the policies of, and in the best interests of, RMRTD. The Contractor's management team shall have experience and knowledge in all areas of railroad passenger operations, including, without limitation, customer service, rail operations safety, corridor dispatching, maintenance of rail passenger equipment, PTC (operations, maintenance and support) and maintenance of right of way, and shall have authority to make decisions concerning the daily operations and management of the Services. Contractor shall perform the Services in a manner that shall provide a safe and well-maintained Maintenance Yard, safe and well-maintained passenger cars, on-time train operations, and a safe and well-maintained corridor right of way, that shall at all times be in compliance with all applicable local, state, and federal requirements. All personnel provided by Contractor and its subcontractors involved in any aspect of providing the Services shall be employees or contractors of Contractor or its subcontractors, and not of RMRTD or NMDOT, shall be fully trained and qualified to perform their assigned duties, and shall be subject to the direction, supervision, and control of Contractor and not of RMRTD or NMDOT, and, unless as otherwise provided specifically in this Contract or by mutual agreement of the parties, shall be assigned exclusively to the performance

of the Services. An organization chart showing all management positions of the Contractor for provision of the Services and clearly indicating reporting relationships to the General Manager, subject to the approval of RMRTD, shall be submitted, and resubmitted, whenever there is a change in reporting relationships and at least annually.

(1) General Manager: Contractor shall perform the Services under the direction of a full time General Manager who shall have overall responsibility for all aspects of the Services, including but not limited to, the authority to bind the Contractor on all contractual matters relating to the Services and this Contract. If RMRTD is dissatisfied with the performance of the General Manager and, following consultation between Contractor and RMRTD, Contractor shall replace him or her as General Manager on 90 days written notice from the Director, RMRTD. The General Manager shall be available to meet or confer daily with the RMRTD COO, and other RMRTD staff. The General Manager shall designate an acting General Manager when necessary.

(2) Other Management Personnel: Contractor's managers shall be available to meet daily, or as directed by RMRTD, with RMRTD staff. The General Manager shall have the authority to remove or discharge and replace all personnel who are engaged in providing the Services other than those designated by Contractor and RMRTD as key personnel. Key personnel replacement shall be subject to prior written RMRTD approval.

b. RMRTD and NMDOT: Contractor shall cooperate with the RMRTD and NMDOT by furnishing such information as may be required in the preparation of the RMRTD annual operating budgets, federal or state required reports, and capital budgets or financial plans. As part of this process, Contractor shall communicate recommended improvements, corrections, and replacements to equipment as well as capital maintenance recommendations to the equipment, right of way and the maintenance yard in a timely manner as requested by RMRTD.

c. Contractor shall cooperate with RMRTD and any rail vehicle supplier in commissioning new or rehabilitated passenger vehicles and locomotives to be used in the service.

d. Obligations to Provide Scheduled Passenger Service:

(1) Train Operations:

(a) Operations: During the term of the Contract, Contractor shall manage, operate, maintain, and provide staff to perform the Services. The Contractor will be subject to any applicable federal, state, and local laws, rules and regulations, including, but not limited to, those of the FRA and the New Mexico Department of Transportation. Further, subject to RMRTD's review, the Contractor's performance of the Services shall be guided by the following listed operating policies and

procedures:

- i. General Code of Operating Rules (“GCOR” which has been adopted by railroads operating in the western United States and approved by the FRA)
 - ii. Rules governing conductors and trainmen developed by the Contractor and approved by RMRTD
 - iii. Commuter Rail Standard Operating Procedures developed by the Contractor and approved by RMRTD
 - iv. All System Safety and Security Plans
 - v. General Service Responsibilities (Appendix 6.10)
 - vi. Train Operations Responsibilities (Appendix 6.11)
 - vii. Maintenance of Equipment and Facilities Responsibilities (Appendix 6.12)
 - viii. Maintenance of Way Responsibilities (Appendix 6.13)
 - ix. Positive Train Control / Dispatch / Communications Responsibilities (Appendix 6.14)
 - x. APTA Passenger Rail Equipment Safety Standards (PRESS)
 - xi. Necessary crew qualifications, including FRA certification of engineers and other personnel as required
 - xii. Equipment operating instructions issued or approved by RMRTD or Contractor
 - xiii. Any additional standards or procedures as the parties may agree upon from time to time.
- (b) Contractor shall operate the commuter trains on timetables approved by RMRTD.
- (c) Contractor shall manage the train consist size to minimize the number of empty seats, but implement RMRTD’s goal of a seat for every passenger. Train consists and average passenger ridership counts are shown in Exhibit D.
- (d) Contractor shall provide qualified Train Crew Personnel to operate the Rolling Stock and provide the Services. The duties and responsibilities of the Train Crew Personnel are detailed in Appendix 6.11.
- (2) Dispatching: Dispatch is currently done by RMRTD staff in Albuquerque.

RMRTD may, in the future, outsource dispatching and direct Contractor to provide dispatch services over all or a part of the RMRTD System utilizing dispatching equipment and software provided by RMRTD. Pricing for dispatching services will be developed prior to the start of Contractor provided dispatch services. These dispatching services shall be governed by: the General Code of Operating Rules as modified. Priority shall be given to RMRTD's revenue service trains and Amtrak. Freight agreements between NMDOT and operating freight railroads (such as Burlington Northern Santa Fe) obligate RMRTD to allow freight services across the Corridor, however such service is subordinate to the priority for RMRTD and Amtrak passenger service; and such other procedures and standards as may be agreed upon by the parties. If Contractor is directed to provide dispatch services, Contractor shall prepare and publish timetables and special instructions and any other documentation necessary to ensure the safe operation of the railroad

(2) Delays of Service

(a) Contractor shall provide immediate notice to RMRTD Customer Service as best as possible in accordance with RMRTD procedures and shall assist RMRTD in communicating to customers waiting at the stations to board trains of circumstance, which affects the on-time operation of service by five (5) minutes or more. Customers already on board trains will be informed of delays of five (5) minutes or more by announcement made by crew members using the on-board public address system. Updated information will be provided to customers at stations and on the train as it becomes available, but no less frequently than every ten (10) minutes.

(b) Contractor shall provide immediate notification to the RMRTD COO of service delays of twenty (20) minutes or more or catastrophic events such as derailments or accidents involving injury or death, or of property damage.

e. Required Reports. Contractor shall provide the RMRTD COO with the following reports:

(1) Annual Reports

(a) By August 1, for the previous RMRTD fiscal year ended June 30, an annual report which shall include at a minimum the following: performance record compared to standards; record of accomplishments including training performed; issues requiring action; recommendations for improvements or changes to the service; preliminary, un-audited financial report on the fiscal year; assessment of the condition of all capital property, both rolling stock (include vehicle maintenance and utilization report) and structures; good faith DBE efforts; a listing of all assets and valuation thereof held by or under the control of Contractor and a list of all changes during that fiscal year (additions or deletions) to the inventory of equipment, materials and fixed assets provided to and paid for by the NMDOT or RMRTD. Five (5) copies of this report shall be submitted.

(b) Within 90 days after the close of the Contractor's fiscal year, an audited annual financial report shall be submitted to RMRTD.

(c) By August 1, for the previous RMRTD fiscal year ended June 30, information required for the National Transit Database Report and such other reports, which RMRTD is required to submit to the FTA or other Federal authorities. For this purpose, the Contractor is expected to assist the RMRTD with all National Transit Database and other Federal reporting requirements.

(d) Pursuant to 49 U.S.C 5307(d)(1)(C) and the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 2012, the Contractor shall provide on an annual basis a six-year Capital Maintenance Plan developed in cooperation with RMRTD, to include the current condition of the capital components of the rail system, any changes in condition since the last report, recommended targets to be in conformity with State of Good Repair (SGR) performance measures as established by the FTA (currently under development), and a recommended schedule of investment prioritization to meet those targets. Capital components include, but may not be limited to, rolling stock, machinery, equipment, facilities, track and track components, signals and signal systems, train track Supervisory Control Systems and appurtenant communications systems.

(2) Monthly Reports which shall be submitted to the RMRTD COO within 10 days of the end of the month, unless otherwise specified by the parties to include:

(a) Statement of ridership by day for the month and for the RMRTD fiscal year to date, including average weekday, Saturday and Sunday ridership, with comparisons to the prior fiscal year.

(b) Late train report (greater than 5 minutes), including the cause of delay, by station, by day and by train.

(c) Locomotive, coach, and cab car mile report by rolling stock number and aggregated for each vehicle type, including total miles, scheduled revenue miles, scheduled non-revenue miles, broken down by train positioning (dead head) miles, billable rescue miles, work train miles, test train miles and special train miles, non-scheduled miles broken down by non-billable rescue miles, maintenance yard positioning miles, return to yard miles for rescued trains for the month and for the RMRTD fiscal year to date. The report will include an estimate of the next month's miles based on scheduled service, and a comparison with the previous months estimated miles.

(d) Passenger counts by train by day including daily on-off counts at stations. The report will include monthly and year to date averages for the RMRTD fiscal year by train for weekday, Saturday and Sunday ridership with comparisons to prior fiscal year.

(e) Report of damage, by accident, vandalism or whatever cause, to any property used in providing the Services.

(f) Material Control System and other Asset Management reports (material activity summary; perpetual inventory by store/stock; inventory value balance; material payment account status; material transaction register; perpetual inventory difference listing; receipts) including an executive summary.

(g) Fare & Revenue Collection report by train, by day including monthly and RMRTD fiscal year to date averages by train for weekday, Saturday and Sunday. This report should be correlated to the Passenger Count by Train reporting and should include monthly trends with comparisons to the prior fiscal year.

(h) Service Delay-Under-Investigation Report.

(i) Maintenance of Equipment (MOE) report by rolling stock number by day including routine maintenance performed, capital maintenance performed or anticipated and preventive maintenance activity. The report shall include an executive summary that details non-routine and chronic problems by rolling stock number, consumables used by rolling stock number, in the aggregate and averaged by rolling stock class, and any trend information by vehicle type that can be ascertained from the MOE.

(j) Maintenance of Way (MOW) report by track segments by day including inspections performed, routine maintenance performed by work type and location with monthly and RMRTD fiscal year totals for MOW material usage (including an analysis of achieving annual MOW material targets), capital maintenance performed by work type and location (including material usage).

(k) Fuel Usage report for the month correlated to the monthly locomotive miles reported. An estimate of the next month's fuel usage based on scheduled service and a comparison with the previous months estimated fuel usage.

(3) Daily Reports. The following shall be furnished to the Director RMRTD and the RMRTD COO by 8:00 a.m. the following business day:

(a) Report on previous day's operations, including on-time performance, causes for delays, and passenger (on-off) counts at stations.

(b) Service delay or stoppage (including reason).

(c) Vandalism other than incidents described in paragraph (4)(d) below.

(d) Daily vehicle status report.

(4) Immediate Reports. The following shall be reported immediately to the RMRTD COO:

(a) Injuries, loss of life, stoppage or major disruption of service, major damage.

(b) Substance abuse reports.

(c) Any order imposed by regulatory authority.

(d) Major vandalism or other illegal activity that substantially disrupts commuter rail operations (report shall be made concurrently to the appropriate law enforcement authority).

(5) As Necessary Reports. The Contractor will provide to RMRTD written reports as necessary for investigations of customer complaints and claims by RMRTD against third parties for damage to NMDOT or RMRTD property, including equipment and right of way.

(6) PTC / Dispatch / Communications Responsibilities Reports. The Contractor will provide to RMRTD written reports as listed in Appendix 6.14 - PTC / Dispatch / Communications Responsibilities

(7) Additional Reporting Requirements: In addition to the reports listed above, Contractor shall prepare and submit all reports affecting the Services which are required to be submitted to any federal, state, or local governmental agency, and shall furnish copies simultaneously to RMRTD. Contractor also shall promptly furnish to RMRTD copies of any citations or complaints issued by enforcement or regulatory body which affects the Services or the Property, and Contractor shall advise RMRTD of the disposition of citations or complaints. The purpose of the reports described here is to keep RMRTD apprised of the performance of, and incidents which may impact upon the operation of the Services. Contractor shall keep full and accurate records required herein, and shall provide RMRTD with such other reports or information as will fulfill the purpose described in the previous sentence. All reports prepared pursuant to the Contract shall be the property of RMRTD, and Contractor shall not voluntarily release or disclose any of the contents of those reports without the prior approval of RMRTD. Contractor agrees to include this subparagraph "(6)" in each subcontract it enters into incidental to the performance of the Contract. Contractor agrees that the clause shall not be modified except to identify the subcontractor who will be subject to its provisions.

f. Maintenance of Equipment and Facilities: Contractor shall employ staff and provide all materials, supplies and equipment, except for items listed in Exhibit E, which is the RMRTD inventory. The materials and equipment listed in Exhibit E are owned by the RMRTD or the NMDOT and will be made available to the Contractor for the provision of commuter rail service. The Contractor shall be responsible for maintaining necessary items in the inventory during the life of the Contract.

Replacement items valued at \$5,000 or greater per unit cost will qualify for an administrative markup fee of 2% as specified in Appendix 6.16.

Contractor shall maintain, repair, clean, inspect, and service all inventory items of rolling stock, on-board PTC including communications, and equipment in accordance with established RMRTD maintenance standards, as defined in the Maintenance Plan identified in Appendix 6.12 and all FRA requirements, APTA PRESS, and AAR Standards. Contractor also shall maintain the rolling stock, subject to ordinary wear and tear. Contractor shall only make repairs to units of RMRTD's rolling stock as listed in Exhibit E. Furthermore, Contractor shall inspect the rolling stock and equipment detailed in Exhibit E in accordance with federal regulations. Prior written approval of RMRTD's COO is required for all other repairs, changes, and modifications, unless immediate repair is necessary for Contractor employee or passenger safety.

In the event that the Contractor identifies a mechanical defect that affects FRA requirements, the RMRTD COO shall be orally notified immediately of the defect with written follow-up notification within 24 hours of the oral notification. Work performed by Contractor, other than routine work, performed pursuant to RMRTD's maintenance standards and any warranty work, shall be reimbursable to Contractor. At its discretion, RMRTD may elect to arrange for any outside contractors to perform major repairs or modifications to the equipment, including, if feasible, performance of such work at the Maintenance Yard. Contractor shall retain and make available to RMRTD upon request, all of its records and reports concerning inspection, maintenance, and cleaning of each unit of equipment, and shall deliver such records to RMRTD at the end of the Contract.

g. Maintenance of Way, Signals, and Communications Systems at Maintenance Yard: Contractor shall employ staff and provide all materials, supplies and equipment, except for items listed in Exhibit E, which is the RMRTD inventory. The materials and equipment listed in Exhibit E are owned by the RMRTD or the NMDOT and will be made available to the Contractor for the provision of commuter rail service. The Contractor shall be responsible for maintaining necessary items in the inventory during the life of the Contract. Replacement items valued at \$5,000 or greater per unit cost will qualify for an administrative markup fee of 2% as specified in Appendix 6.16 Contractor shall perform maintenance on track and related structures located at Maintenance Yard. RMRTD shall approve all modifications which Contractor proposes to make to Maintenance Yard tracks up to the yard limits and may inspect the property at any time, subject to compliance with all applicable operating and safety rules. The yard limits extend up to, but do not include, the insulated joint for the leaving signal to the main line track.

h. Maintenance of Way, Signals, PTC and Communications Systems on the RMRTD System: Contractor shall employ staff and provide all materials, supplies and equipment, except for items listed in Exhibit E, which is the RMRTD inventory.

The materials and equipment listed in Exhibit E are owned by the RMRTD or the NMDOT and will be made available to the Contractor for the provision of commuter rail service. The Contractor shall be responsible for maintaining necessary items in the inventory during the life of the Contract. Replacement items valued at \$5,000 or greater per unit cost will qualify for an administrative markup fee of 2% as specified in Appendix 6.16 Contractor shall furnish all management, plant, labor, equipment, materials, mobilization and demobilization to provide inspection and maintenance of track, right-of-way, bridges and building, signals and communications as further described in the Scope of Work – Maintenance of Way Services, Appendix 6.13.

i. Maintenance of Way, Signals, and Communications Systems on Spur Line: Contractor shall employ staff and provide all materials, supplies and equipment, except for items listed in Exhibit E, which is the RMRTD inventory. The materials and equipment listed in Exhibit E are owned by the RMRTD or the NMDOT and will be made available to the Contractor for the provision of commuter rail service. The Contractor shall be responsible for maintaining necessary items in the inventory during the life of the Contract. Replacement items valued at \$5,000 or greater per unit cost will qualify for an administrative markup fee of 2% as specified in Appendix 6.16. Contractor shall furnish all management, plant, labor, equipment, mobilization and demobilization to provide inspection and maintenance of track, right-of-way, bridges, signals and communications on any spur line as further described in the Scope of Work – Maintenance of Way Services, Appendix 6.13.

j. Materials Management:

(1) Contractor shall be responsible for and shall manage the purchasing of all supplies (subject to RMRTD's approval that such items are the same or equal) required to perform the Services. All materials, supplies, or equipment purchased by Contractor pursuant to this Contract for the provision of the Services shall be used solely for the purpose of providing the Services to RMRTD and shall become the property of RMRTD upon purchase by the Contractor and payment to the Contractor of the monthly invoice. Unless otherwise agreed, RMRTD shall purchase materials for implementation of capital programs not included in the Services. Contractor shall purchase goods and services to be used in the performance of the Services in a manner consistent with the use of FTA grant funding and that ensures maximum competition for sale of the goods and services and shall provide documentation evidencing the competitive purchasing practices upon written request of RMRTD.

(3) If RMRTD is able to purchase fuel, Capital Spares or Signal Spares at or below the price (including Contractor markup) paid by the Contractor, RMRTD may contract for the purchase of those commodities and provide them at no cost to the Contractor. Contractor shall coordinate delivery requirements and acknowledge deliveries made pursuant to such contracts. The Contractor shall invoice RMRTD for the fuel, Capital Spares and Signal Spares and will be paid in accordance with

subsection (4) below for any such commodities purchased by the Contractor.

(4) RMRTD and the Contractor may mutually agree that RMRTD may purchase, on behalf of the Contractor, commodities that do not qualify as Capital or Signal Spares and which would otherwise be the contractual responsibility of the Contractor to provide. In such instance, upon receipt of those commodities at the Maintenance Yard (or such other designated point of delivery), a credit to RMRTD of the invoiced amount for those commodities shall be allowed by the Contractor on its next invoice to RMRTD.

(4) If the Contractor buys fuel for use under the Contract, it shall receive payment in accordance with Appendix 6.16. If the Contractor buys Capital and Signal Spares or other items for use under the Contract, it shall receive payment in accordance with Appendix 6.15.

(5) Contractor shall institute a materials management system that shall ensure the availability of all materials and parts necessary to meet the maintenance and operations requirement of the Services, and shall provide a history of usage by car, type of material, and part number, and by such other categories as may be requested by RMRTD. The Contractor's materials management system shall separately identify and track the following categories of inventory: RMRTD-furnished, such as rolling stock; Capital or Signal Spares bought for and furnished by RMRTD to Contractor; Contractor inventory necessary to support the maintenance of the equipment; and Contractor inventory necessary to support the administrative functions of its offices and staff. The contractor shall make exports/downloads from the materials management system available to RMRTD upon request. This export/download ability must be in a non-proprietary format, contain 100% of the data and data labels, and allow for import into most commercial-off-the-shelf (COTS) database applications.

k. Police and Security: The Contractor shall provide for security at the Maintenance Yard. Upon no less than two months' prior written notice, RMRTD may request Contractor to provide security at other NMRX facilities or to provide other police or security services as may be required from time to time. Additional services required by RMRTD will be compensated on the basis of an equitable adjustment to the Contract. RMRTD may discontinue Contractor's provision of any security services at any or all locations upon 30 days written notice to Contractor at no cost to RMRTD.

I. Clearing of Wrecks

(1) Contractor shall clear wrecks which involve NMDOT's trains. Unless the wreck is caused by the fault or negligence of the Contractor or its subcontractor, RMRTD will reimburse the Contractor for its direct costs plus mutually agreed to overhead that was incurred in clearing the wreck.

(2) Where a wreck involves a freight railroad and Contractor is called upon to assist in clearing the wreck, Contractor shall cooperate with the freight railroad requesting the assistance and shall support RMRTD's efforts to obtain reimbursement from the freight railroad for expenses incurred in clearing the wreck. If the wreck is cleared by the freight railroad involved, Contractor shall ensure that the work is done to its complete satisfaction and that the track is restored to the same FRA track classification standard in effect at the time of the wreck. The respective rights and obligations of the freight railroad and RMRTD and NMDOT shall be governed by the terms and conditions of agreements between the RMRTD or NMDOT and that railroad. RMRTD will reimburse Contractor for its direct costs incurred in clearing wrecks or monitoring the clearing of wrecks.

(3) Contractor shall ensure that all media inquiries concerning wrecks on the RMRTD Corridor are referred to the RMRTD COO for response or appropriate referral.

m. Special Trains: No less than 14 days prior to any special event, the RMRTD COO will submit to the General Manager a request in writing to operate such special train service. Contractor shall, not less than 10 days prior to the anticipated service date, inform the RMRTD COO in writing of any issues involved with providing the Special Train service and the anticipated time and cost, based on Appendix 6.15, involved in providing such service, and Contractor shall operate the service as requested, subject to operational feasibility and availability of equipment, unless RMRTD has timely withdrawn its request for the service before Contractor has incurred expenses and labor related thereto. If RMRTD provides shorter notice of the intended special service, Contractor shall respond to its request as soon as possible, and Contractor shall use its best efforts to supply crews and other necessary personnel to operate the special train service.

n. Verification of Fares: The Contractor's on-board personnel shall conduct random fare verification inspections in accordance with the Monthly Fare Inspection Plan to be developed jointly by the RMRTD COO and the General Manager and in accordance with the Ticket Sales, Revenue Collection & Fare Verification System implemented by the Contractor and the RMRTD (See Appendix 6.11, Section 7). Contractor shall perform all other related functions as described in the Commuter Rail Operator Train Operations Responsibilities (Appendix 6.11). The Contractor's personnel shall cooperate fully with police officers and fare inspectors of RMRTD or local jurisdictions in their fare verification functions. RMRTD shall periodically conduct surveys and/or audits of Contractor's Fare Verification efforts.

o. Per Train Staffing: Under normal operating conditions, Contractor shall not be required to have more than two (2) on-board personnel (train operator and train attendant), excluding fare collectors, per train.

p. Contractor as Witness: The Contractor's personnel may be required to be witnesses in legal proceedings (usually a court hearing) arising out of incidents on trains or on the RMRTD Corridor. Contractor's costs in providing those witnesses will be reimbursed at the appropriate hourly rate. This hourly rate shall be applied to the actual time spent by Contractor's employees going to and from and attending the proceeding in which he or she is a witness.

q. Flaggers and Work Train Crews.

(1) Contractor shall provide flagging service as required for roadway worker protection in accordance with 49 CFR Part 214 for RMRTD and the RMRTD's capital programs or such other agency and entity construction on the RMRTD Corridor. The Contractor shall also be required to follow all applicable RMRTD On-Track Safety Standards. Contractor shall also provide roadway worker instruction and certification for its workers that require such training.

(2) Contractor may also be required to provide work train crews as necessary to support RMRTD capital programs.

(3) The flaggers who are provided shall be fully qualified and trained (including re-certifications as required) on the content and application of RMRTD Commuter Rail Operating Rules as they relate to trains operating within the project work limits.

(4) The Contractor shall be given no less than 10 calendar days' notice of the requirement for flagging support. If shorter notice of the requirement is provided, the Contractor shall respond to the request as soon as possible.

(5) Contractor shall be paid the appropriate minimum and hourly rates for these services as agreed upon by the contractor and the RMRTD. The Contractor is encouraged to develop innovative methods for the most cost effective provision of flagging services.

(6) If RMRTD has a long-term requirements for flaggers, Contractor shall negotiate a rate for those services commensurate with the time the flaggers are required and the Contractor's actual costs incurred in providing such flaggers.

(7) Contractor is required to provide at Contractor's expense flaggers and work train crews as part of its routine maintenance of way obligations under this Contract.

(8) RMRTD may supply qualified flaggers for work to be performed on the corridor by third parties (i.e. entities other than the Contractor or Contractor subs) and for any capital improvement work negotiated with the Contractor

4. Other Obligations of Contractor

a. Hiring of Employees to Provide the Services:

(1) Contractor shall hire all labor, administrative, professional, and supervisory personnel required to provide the Services; provided, however, that RMRTD reserves the right to hire or provide on-board personnel for other than operating functions; and, provided further, that Contractor shall have the right to contract with third parties to provide any of the Services.

(2) All personnel hired by Contractor or its subcontractors shall be qualified and experienced (or trained at Contractor's expense until the individual is sufficiently qualified to be employed) and shall be employees of and supervised and directed by the Contractor or a subcontractor, respectively, and not of or by either RMRTD or NMDOT. As between Contractor and RMRTD, Contractor shall be solely responsible for determination of and payment of the wages and benefits and other terms and conditions of employment of its or any subcontractor's employees; provided, however, that Contractor or the subcontractor shall comply with any applicable mandatory state or federal prevailing wage rate, safety or wage-hour laws. Contractor shall comply with all applicable laws, regulations, rules, and procedures respecting employer's liability, worker's compensation FELA, unemployment insurance and other forms of social security or railroad retirement, if applicable, and also with respect to any other required withholding from the wages of employees. Contractor shall indemnify and hold harmless RMRTD and NMDOT for any and all liability damages, claims, cost (including reasonable attorney's fees), and other expenses of whatever nature arising from alleged violations of such laws, regulations, or rules.

b. Administrative and Other Office Space: RMRTD shall be responsible for providing adequate administrative and other required office space necessary for the provision of services within one (1) mile of the maintenance yard. RMRTD's staff shall have full and complete access to all Service Property; provided, however, that access to Contractor's management team offices shall require a Contractor-employee escort whenever feasible.

c. Additional Meetings: Contractor shall have its General Manager, and other personnel as required, available, upon reasonable notice, to attend meetings at locations to be specified by RMRTD, at which Contractor and RMRTD shall review the performance of the Services, the work of the Contractor's management team, or such other topics as required.

d. Safety:

(1) The Services shall be operated at all times in a safe manner. Contractor shall comply with all applicable safety laws, standards, codes, rules and regulations, including the RMRTD NMRX PTCSP, RMRTD System Safety Plan (SSP) and other safety and security plans to be developed for performance of the Services by the Contractor and approved by RMRTD.

(2) Contractor, in conjunction with RMRTD, shall review annually and update on an as-necessary basis the PTCSP, SSP and other safety and security plans as described more fully below. The plans shall comply with 49 CFR 270.103, FRA regulations and APTA Guidelines. Contractor shall take all precautions which are reasonable or necessary to safeguard against risk of injury to persons or damage to property and shall make regular safety inspections of the Rolling Stock. Contractor shall be responsible for the discovery, determination, and correction of any unsafe conditions arising in connection with the Rolling Stock in the performance of the Services and shall promptly notify the RMRTD COO of any such unsafe condition.

(3) Contractor shall comply with all applicable safety laws, standards, codes, rules, and regulations, including any safety program established by RMRTD in consultation with Contractor. Contractor shall cooperate and coordinate with RMRTD, freight railroads, and with any other RMRTD contractors on safety matters, and promptly shall comply with any specific safety instructions or directions given by any duly authorized regulatory agency. Contractor shall cooperate and coordinate with RMRTD's Safety Officer, including making available personnel and records as may be required.

(4) The SSP shall include procedures for maintenance and inspection of vehicles and equipment as required for safe operation, as well as an Emergency Preparedness Plan and shall reference the PTCSP. Contractor is responsible for implementing the SSP and the PTCSP and for taking all precautions, which are reasonable and necessary to safeguard against risks in the performance of the Services. Contractor's recommended revisions to the SSP shall be submitted to RMRTD for approval prior to implementation.

(5) The SSP shall establish safety guidelines for prevention of accidents, injuries, and illnesses and provide for the safe performance of the Services. The SSP shall include equipment (rolling stock) inspection and maintenance checks, procedures and corrective actions, in accordance with all applicable federal, state, industry standards and APTA guidelines and will provide for monthly safety inspections of the following two areas:

(a) Safety (blue signal protection, employee protective equipment, fire extinguishers, and first aid equipment, facility lighting)

(b) Housekeeping (yard and building free from debris, floor free from hazards, chemicals properly identified and stored, employee washrooms and locker rooms, material handling, and waste)

(6) The SSP shall also include a written safety manual covering all departments, which will be distributed to employees at all levels. Contractor shall ensure that all of its employees receive training in the SSP and safe job procedures. All operating

employees shall complete initial safety training before commencing work. All employees will be required to wear approved emblems while on duty to indicate they have been safety trained. Contractor shall conduct regular safety meetings and other safety programs for all employees. All supervisors shall be responsible for continuously monitoring the work operations of subordinates, correcting hazardous job practices and educating subordinates in safe job procedures.

(7) The Emergency Preparedness Plan that is included in the System Safety Plan shall include emergency procedures including train evacuation, fire on trains, grade crossing accidents, breach of security incidents and steps employees will take to accommodate and assist disabled persons during emergencies. Contractor shall conduct necessary training and coordination with local fire, police, and other public agencies in support of emergency preparedness. The System Safety Plan shall comply with the requirements for Safety Plans defined in FRA Emergency Order No. 20 as well as all Department of Homeland Security Directives.

(8) Contractor shall perform operating and safety tests as required. Copies of written results of such tests shall be provided to RMRTD upon request.

(9) Contractor shall make available such Contractor employees as necessary to provide at least two (2) public rail safety presentations each month.

(10) Contractor shall maintain a Safety Information System available to the RMRTD upon request.

(11) In the event Contractor travel is required to comply with Industry-related safety meetings, RMRTD may authorize reimbursement of Contractor travel costs when such costs are incurred at the request of the RMRTD.

e. Training of Employees: Contractor shall establish and provide training programs for all employees who are performing the Services, including but not limited to the training required by 49 C.F.R. Part 217 and the PTCSP. In addition to the federally-mandated training programs, the Contractor shall ensure that all employees involved with transportation functions, such as engineers, train crews and transportation management, receive training in cardiovascular pulmonary resuscitation (CPR), basic first aid, and security awareness. All training programs or portions thereof that are designed specifically for performance of the Services will be reviewed and approved by RMRTD, and shall be designed, developed, and implemented in accordance with established professional standards for performance-based instruction. Contractor shall provide RMRTD with copies of all training programs used for employees who are performing the Services. Contractor shall provide RMRTD with an annual training report which shall include specific programs and man-hours spent in training sessions, including the training provided by RMRTD to Contractor's employees: a one day course in fare inspection and orientation and a two day course in customer relations.

f. Training of Non-Employees: Training of RMRTD staff as needed shall be done in conjunction with Contractor training of its employees and shall be provided at no cost to RMRTD.

g. Drug and Alcohol Testing: Contractor shall comply with the drug and alcohol testing procedures applicable to the Contractor's employees including, but not limited to, the requirements of 49 CFR Part 219. Contractor shall change the drug and alcohol testing procedures as and when required by any applicable law or regulation, but shall not make any other changes to these procedures without prior notice to, and approval of, RMRTD. Names and test results will always be maintained in a confidential manner, to the extent allowed by law.

h. Customer Relations and Lost and Found:

(1) The Contractor's personnel, when interfacing with RMRTD customers, shall at all times conduct themselves in a professional and courteous manner as more fully specified in Appendix 6.11.

(2) Contractor shall cooperate with RMRTD in investigating, addressing and resolving any customer complaints concerning any aspect of the Service. If remedial action is required as a result of a customer complaint, it shall be taken promptly and Contractor shall notify RMRTD of the results of such action.

(3) Contractor shall establish procedures that result in a timely and seamless transfer of items found on-board RMRTD equipment to the Contractor's administrative staff. The procedures need to include the steps the Contractor's employees will follow when collecting "lost" items and the method of making these items available for public retrieval during normal business hours. The Lost and Found Policy is detailed in Appendix 6.12, Section c(7)(f).

i. Existing Labor Agreements: Nothing contained in the Contract will require Contractor to perform any service or take any action that would violate any term or condition of any existing labor agreement between Contractor and any organization representing Contractor's employees. Contractor shall represent and warrant that providing the Services does not conflict with any term or condition of any such labor agreement. RMRTD will not and does not accept, succeed to, or assume, and this Contract shall not be construed to impose or allow any acceptance, succession to, or assumption of, any obligations of Contractor under any of its collective bargaining agreements with its employees or their representatives.

j. Relationships with Freight Carriers: Contractor shall cooperate with RMRTD in ensuring that the obligations of RMRTD and NMDOT to the freight carriers operating in the RMRTD Corridor and the Spur Line are met. As the operator of the services in the RMRTD Corridor, Contractor will be in direct contact with those freight carriers and is in a unique position to maintain positive, constructive and

amicable relations with those carriers on RMRTD's behalf. Contractor shall advise RMRTD of any issues that may arise as a result of freight carrier operation in the RMRTD Corridor or concerns that the carriers may provide to Contractor. Contractor shall also attend any local meetings at RMRTD's request involving freight operations in the RMRTD Corridor.

k. Use of Equipment, Materials, and Services: Contractor shall use all equipment, materials, and services provided or paid for by RMRTD solely for the purpose of providing the Services. Contractor shall service and maintain all RMRTD supplied equipment and materials using ordinary care and industry standards. Contractor shall acknowledge receipt of all equipment, materials, and fixed assets and shall include in an annual report, an inventory showing additions, deletions, or other changes to the list of such equipment, materials, and fixed assets. All equipment provided by RMRTD shall, on the delivery dates, be in operating condition and meet all requirements of the FRA rules and regulations.

l. Assistance in Distribution of Public Information and Marketing: Contractor shall cooperate with RMRTD in distributing notices and making announcements to passengers informing them on matters related to the Services and shall otherwise render assistance to RMRTD in monitoring and supervising such operations. At the request of RMRTD, Contractor shall distribute schedules and other information to the public. The content of informational materials is at the sole discretion of the RMRTD. Contractor shall assist in the investigation of passenger complaints and in the preparation of responses to such complaints. Contractor shall install RMRTD approved promotional materials or public information notices on the Service Property pursuant to procedures established by RMRTD.

m. Media Relations. All media inquiries concerning RMRTD or the Services that the Contractor receives shall be referred to the RMRTD COO for response. Contractor shall assist the RMRTD COO in responding to the inquiry by providing such technical or operational information as may be required to satisfactorily respond to the inquiry.

n. Accounting Standards: Contractor shall maintain adequate and complete financial books and records relating to this Contract, and shall provide any financial or other reports required by this Contract, all in accordance with generally accepted accounting principles, standards of the RMRTD and of funding sources.

o. Contractor Supplied Equipment and Tools: The Contractor shall supply, at its expense all tools, equipment, supplies, software and hardware, and any other items necessary for the performance of the Services.

p. Reporting, Record Retention, and Access: The Contractor agrees as follows:

(1) Reports: At a minimum, the Contractor agrees to provide to the RMRTD those reports required by the FRA, FTA and U.S. DOT's grant management rules, and

any other reports the Federal Government may require. Paragraph 3.e. above delineates additional reporting requirements.

(2) Record Retention: The Contractor agrees that, during the course of the Contract and for three (3) years thereafter, it will maintain intact and readily accessible to all data, documents, reports, records, contracts, and supporting materials relating to the Services as RMRTD, NMDOT and the Federal Government may require for the Services.

(3) Access to Records: Upon reasonable request of RMRTD, the Contractor agrees to permit RMRTD, NMDOT, the United States Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all Contract work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the Contract.

(4) Contract close-out does not alter these reporting and record retention requirements.

5. Rights and Obligations of RMRTD

a. Access to Equipment and Properties:

(1) At no cost to Contractor, RMRTD and NMDOT will provide, and will allow Contractor the necessary access to and use of the Property, rolling stock, maintenance facilities, equipment, and machinery owned by RMRTD and intended to be used in provision of the Services. RMRTD hereby grants Contractor the right to enter upon and utilize the foregoing for the purpose of performance of Contractor's obligations under this Contract.

(2) RMRTD will mark and identify all vehicles and other equipment provided for Contractor's use in providing the Services with RMRTD's colors, logo, or other identification marks. Contractor will maintain the fleet to an acceptable appearance standard as set forth in Appendix 6.12.

b. Changes in Equipment Provided: RMRTD has the right to make specific improvements or additions to, or to change entirely, the assigned equipment, and Contractor shall make every reasonable effort to implement operations using such different equipment as soon as possible. Should any such change result in an increase or decrease in the cost for Contractor to provide the Services, the Contract shall be appropriately modified. Any cost differences from the base hourly and mileage rates associated with the introduction of other or additional equipment that were not negotiated during scheduled negotiations will be compensated based on an equitable adjustment to the Contract. RMRTD may request the Contractor to perform upgrades, changes, improvements, or other alterations to the equipment as RMRTD may wish to have done. Such additional work will be

compensated as an equitable adjustment to the Contract.

c. Fares and Ticket Sales: RMRTD assumes all responsibility for establishing fares. The Contractor will be responsible for implementing and operating a Ticket Sales, Revenue Collection & Fare Verification System in accordance with Appendix 6.11. Contractor will notify RMRTD by phone of any fare evasion. Except as provided in Subsection i below, only RMRTD may issue passes for free transportation on commuter rail trains.

d. Operations and Management Supervision: In addition to the rights and obligations stated elsewhere in this Contract, RMRTD has the following rights, but not the obligation, with respect to oversight and monitoring of Contractor's performance:

(1) Monitor the records, facilities, and equipment developed or used, and monitor (but not supervise or direct) the personnel used, by Contractor in performance of its obligations, as well as timetable adherence and fare inspection/collection procedures. In its sole discretion, RMRTD may require Contractor to make improvements in or changes to such records, facilities equipment, personnel, timetable adherence and fare inspection/collection procedures. If any such change causes an increase or decrease in the cost of performance of the Contract, it shall result in an appropriate change to the contract price.

(2) Specify standard ties, rail, signal equipment, lubricants, materials, repair parts, supplies, and machinery to be used by Contractor in maintaining the Service Property and the equipment used in providing the Services.

(3) Inspect any equipment at any time, and remove from service any equipment which, in RMRTD's sole discretion, is in an unacceptable condition; and

(4) At RMRTD's sole discretion, it may direct Contractor to cease or alter the operation of any trains operated to perform the Services. Contractor shall resume normal operation of any such train or trains only upon receipt of written authorization from RMRTD if such cessation or alteration lasts more than 1 working day.

e. RMRTD's Right to Information: RMRTD has the right to obtain from the Contractor, as soon as practicable, but no later than 15 days of a request, any information related to the Services.

f. Planning for Modifications to the Services: RMRTD may, from time to time, require changes and will develop proposals and work with the Contractor to plan and implement such changes, in the following aspects of the Services:

(1) Times of day and days of week when trains operate.

(2) Increases or decreases in the level of train operations, including changes in train consists, or changes in the location and number of station stops with adjustments in scheduled running times. Prior to the initiation of testing of the revised schedule, Contractor will run the proposed schedule through a simulation model and provide the results of that simulation to RMRTD. The parties agree to establish a period for testing the schedule established by RMRTD for each Service level change, and for the inception of the Service, during which on-time performance incentives and disincentives shall not be applied or calculated. All schedules shall be based on running times accomplished by experienced operators and confirmed during the period for testing.

(3) Modifications in standards for maintenance of equipment and Rolling Stock, and maintenance of the Property.

(4) Fares, including modifications to the revenue collection system, except to require the Contractor to perform any more than random fare inspection.

(5) Additions to or replacement of equipment and Rolling Stock.

(6) Repair or construction of existing or new facilities, track, sidings, etc. for RMRTD.

g. Public Information Responsibilities: RMRTD will market the public use of the Service through advertisements or other promotions. RMRTD has the responsibility of informing the public about the Services; provided, however, that the Contractor shall cooperate with RMRTD and shall provide such information as it is directed by RMRTD to transmit to the public, including information concerning any disruptions and resulting delays due to emergencies, or place advertising on board trains or in paid media at RMRTD's cost if requested by RMRTD. (See paragraph 3d(3)(a) above for information on the use of the passenger information system to notify customers of delays.)

h. Advertising: Only RMRTD may utilize or authorize the utilization of the interior of trains used or operated to provide the Services for the display of any written or printed advertising, promotional material, or public information notices, and any revenues from such advertisements will be for the account of RMRTD.

i. Transportation of Contractor Employees: RMRTD will permit all employees of Contractor and subcontractors to travel at no charge on the RMRTD trains.

j. Other Contracting Rights: RMRTD specifically reserves the right to contract with another person, corporation, or other entity for performance of any tasks required to perform the Services that are not specifically assigned to Contractor by this Contract. Any employee or contractor of such person, corporation, or other entity shall be permitted to perform the contracted functions at any location on the Property; provided, however, that no such employee or contractor shall

unreasonably interfere with Contractor's provision of the Services.

6. Changes in Services or Service Levels

a. Minor Schedule Changes. RMRTD reserves the right to make minor modifications to the train schedule and train consists. RMRTD will consult with the Contractor prior to implementing these minor modifications. These modifications are not meant to unduly harm the Contractor nor significantly impact the performance of the Services. The cost of implementing these minor modifications will be included, without modification, in the Base Price of the Service. Examples of minor modifications to the schedule and train consist availability include, but are not limited to: modifications to train departure and arrival times on the passenger schedule, including adjustments due to increases or decreases in running time; and adding or removing a coach, cab car, or locomotive in a train consist.

b. Service Modifications: RMRTD may change the scheduled RMRTD Service and/or equipment requirements at its discretion. When making such changes RMRTD will provide written notice to the Contractor to revise its operations as required. Such revisions may be one-time changes, temporary changes, or permanent changes. As long as the notice requirements of “c” below are met, changes to the service schedule shall be made at no increase in the Base Price of Service.

c. Additional Scheduled Service: If RMRTD requests additional scheduled service, it will provide at least thirty (30) days notice to the Contractor prior to the initiation of these service changes. If, after initiating the scheduled service changes, RMRTD desires to cease providing the changed service, it will provide the Contractor with at least thirty (30) days notice prior to the cessation of the scheduled service changes. As long as these notice requirements are met, these changes will be made at no increase in the Base Price of the Service.

d. Service on New Routes: RMRTD may, from time to time, request Contractor to begin providing some or all of the Services provided under this Contract on routes in addition to service between Belen and Santa Fe. The corridors may be refined or additional corridors may be identified by RMRTD or NMDOT in the future. Upon receipt of such a request, Contractor shall, within 45 days, prepare a proposal incorporating an appropriate increase or decrease in price or an adjustment in contractual obligations. After completion of negotiations, such expanded Services will begin as requested, or as soon as is feasible, taking into consideration availability of personnel and equipment to operate the expanded Services. An amended Operating and Maintenance Plan, which shall include supplements to Appendices as required to accurately describe the changes in Services to be provided, shall be developed by Contractor and approved by RMRTD.

e. Costing Changes: RMRTD may order the Contractor to perform certain services within the general scope and intent of the Contract for which no express provision

is included in the Contract. Except as provided in paragraphs “a,” “b,” and “c” above, if any such RMRTD-directed service change order causes an increase or decrease in the cost of, or the time required for, performance of any part of the Services under this Contract, whether or not changed by the change order, the RMRTD shall make an adjustment in the Contract price or the schedule of services, or both, and shall modify the Contract accordingly. It is the desire of both parties to negotiate in good faith and reach agreement.

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APPENDIX 6.11

**REQUEST FOR PROPOSALS
RFP#: 2013-01**

TRAIN OPERATIONS RESPONSIBILITIES

APPENDIX 6.11

Train Operations Responsibilities

1. General

As described in General Service Responsibilities (Appendix 6.10), the Contractor shall perform the train operations and related functions described in the Contract in a manner that will:

- a. Provide safe and on-time train operations.
- b. Be consistent with the objective of providing the highest quality service to the public, consistent with the policies of and in the best interests of RMRTD.
- c. Be in accordance with all applicable local, state, and federal requirements.

2. Contractor Personnel Conduct and Discipline

a. All Contractor personnel shall be qualified for the work assigned to them and shall perform their duties in a courteous, efficient, safe, and competent manner. Contractor personnel who fail to meet such requirements shall be deemed to have engaged in Conduct Unbecoming an Employee. Contractor personnel engaged in performing the Services shall not deface, damage, destroy, vandalize or litter rolling stock, station areas, or any other part of the Service Property, Service Equipment, and Rolling Stock, and shall not, while engaged in the performance of the Services, smoke, read personal material, watch or listen to television or other video devices, use other electronic devices (such as cellular phones or personal digital assistants) for personal reasons, sleep or appear to sleep, or fail to perform duties in a timely fashion as assigned. Any such conduct is Conduct Unbecoming an Employee. In addition, Conduct Unbecoming an Employee shall include, but shall not be limited to, the following conduct or behavior:

(1) Misconduct towards a Customer or other person on the Property, including without limitation abusive, hostile, argumentative, discriminatory, or demeaning behavior.

(2) Failure to comply with customer service standards.

(3) Negligent performance of the Services.

(4) Use or possession of illegal drugs or alcohol.

(5) Use or possession of firearms or other weapons.

(6) Dishonesty, including without limitation:

i. Theft

ii. Willful failure to accurately complete required reports.

(7) Disorderly conduct.

(8) Fighting.

(9) Insubordination.

(10) Criminal activity or reasonable suspicion of criminal activity.

(11) Failure to comply with Contractor's System Safety Program or System Security Plan, or any other act evidencing disregard for safety.

(12) Vandalism or other intentional damage to Service Property, Rolling Stock or other equipment, RMRTD Support Property or Third-Party property.

(13) Failure to comply with any regulation, rule, procedure or instructions required in order to comply with the Americans With Disability Act (ADA) or other applicable accessibility law or regulation.

b. Contractor shall require all Contractor personnel who interact with Customers or the public, including locomotive engineers who work on-board commuter rail trains, to conduct themselves with courtesy and decorum, dress appropriately for the provision of service to Customers, and wear a clearly visible identification badge containing the employee's first name and badge number at the breast pocket. All Contractor personnel who interact with Customers or the public, while on duty, shall not eat, drink or smoke and shall be clean and attired in uniforms that clearly indicate that they are providing Contract Services on behalf of the RMRTD. Uniform designs for on-board Contractor personnel must be approved by RMRTD. Failure to comply with any requirement of this paragraph shall be deemed Conduct Unbecoming an Employee.

c. Contractor shall promptly investigate all reports of Conduct Unbecoming an Employee, and shall institute appropriate corrective measures, which shall include disciplinary action, barring such Contractor personnel from the Service Property, removing such Contractor personnel from the performance of Contract Services, or transferring such Contractor personnel to a job that does not require interaction with Customers or the public. Contractor shall also take steps to ensure that similar instances of Conduct Unbecoming an Employee will not occur in the future.

d. Contractor shall also, at the request of RMRTD, institute corrective measure identified in subparagraph "c" above for any Contractor personnel who engages in

Conduct Unbecoming an Employee, or who RMRTD deems unsatisfactory on any reasonable basis, from entering the Service Property. Such reasonable basis may include the receipt by RMRTD or Contractor of more than three (3) verbal or written complaints regarding conduct of any Contractor personnel. Such complaints need not be documented by complainants in writing or in person if subsequent investigation by RMRTD or Contractor reveals credible evidence of the veracity of the complaint. Any criminal conviction, or reasonable suspicion of criminal activity, that in the discretion of RMRTD or Contractor, indicates that any Contractor personnel poses a threat to customers, RMRTD employees or the Service Property or Rolling Stock or other equipment, shall constitute Conduct Unbecoming an Employee.

e. In the event any Contractor personnel barred from the Service Property or the performance of Contract Services pursuant to paragraphs “c” or “d” above disputes such action through arbitration or other authorized proceeding pursuant to a collective bargaining agreement or other authorized process, and such employee prevails in such proceeding, RMRTD shall pay due deference to the results of such proceeding and shall consult with Contractor regarding the appropriate resolution of such dispute, taking into account whether restoration of any such Contractor personnel to the performance of certain Contract Services may threaten the public safety, or the provision of customer service in a manner that is consistent with the requirements of this Contract.

f. At all times, Contractor will satisfy its obligation to maintain adequate personnel to provide Services specified herein.

3. Train and Engine Service Employees (Crew Members)

a. Crew members shall perform any duties normally required by Contractor of its employees performing the same or similar work. All crew members shall maintain proficiency required to perform the above, including qualifications required by law or any other applicable regulations or RMRTD standards.

b. Contractor shall establish and provide training programs for all Crew Members who are performing the Services.

c. Crew Members may be utilized in addition to normal crew assignments to perform fare collection and verification, passenger counts, passenger assistance, gather, or disseminate information or perform any other duties normally performed by train crew members. Contractor may also utilize Crew Members to perform flagging services

d. RMRTD may employ persons other than Contractor’s employees to perform fare verification, passenger assistance, marketing, informational functions, passenger counts, or other similar duties, but not to perform any operating functions as specified in this Contract.

4. Responsibilities of Crew Members for Start Up Train Operations

- a.** Report for duty in the proper uniform (if applicable) as scheduled.
 - b.** Contact the designated employee for instructions.
 - c.** Inspect and prepare train, including: exterior, brake system, cable or connections, lights, doors, destination signs, public address system, public video display and perform a pre-trip security inspection.
 - d.** Ensure that necessary supplies are on board.
 - e.** Perform brake and other required tests
 - f.** Start air conditioning or heat.
 - g.** Switch cars in or out of train as necessary and make all connections.
 - h.** On assignments where equipment is scheduled to make a subsequent revenue trip before being cleaned and serviced, crews shall pick up newspapers and all litter which may be picked up by hand, and will change destination signs as necessary.
 - i.** Move train to platform and spot for boarding.
 - j.** Secure doors and traps as required.
 - k.** Assist with boarding/alighting.
- (1) Train Attendants are to be visible on platform unless duties require presence elsewhere.
- (2) Train Attendants shall assist disabled passengers as required by RMRTD or applicable laws or regulations. This includes manual operation of the bridging plate between the vehicle and high-block platform.
- (3) Train Attendants shall make periodic announcements. All stops shall be announced.
- (4) Train Attendants shall operate doors and signal Train Operator for departure.
- (5) At least some Crew Members should be bi-lingual, fluent in English and Spanish.
- I.** Perform all PTC pre trip required actions in accordance with the PTCSP

5. Responsibilities of Crew Members En route

- a.** Trains shall be operated in an expeditious manner, consistent with applicable operating rules, PTC rules, SSP, PTCSP, special, or other instructions and the timetable.
- b.** Trains shall not depart any station prior to the departure time published in public timetables.
- c.** Trains shall be spotted appropriately at stops and passenger assistance with boarding/alighting rendered as above.
- d.** Train Attendants shall answer passenger questions in a courteous and informative manner.
- e.** Train Attendants shall provide assistance to disabled passengers in accordance with applicable local, state, and federal requirements or RMRTD policies.
- f.** Crew members shall perform passenger counts as required by RMRTD. Accurate passenger counts are critical in order to satisfy federal, state, or local funding or reporting requirements and RMRTD will closely monitor and/or audit the accuracy of Contractor passenger counts.
- g.** Train Attendants shall verify fares according to RMRTD policy.
- h.** Train Attendants shall make required announcements as specified by RMRTD as appropriate to circumstances, including announcements concerning safety, delays, or unusual conditions.
- i.** All employees shall conduct themselves in a professional, courteous, and helpful manner.
- j.** Crew members shall notify RMRTD when service is disrupted or delayed.
- k.** Crew members shall assist with enforcement of RMRTD's policies such as no smoking, noise, and passenger behavior.
- l.** Crew members shall take emergency actions and procedures as required. For instance, in the event of a medical emergency or a security-related concern, the crew members shall simultaneously contact 911 for assistance and notify the train dispatcher of the emergency.
- m.** Crew members shall operate mechanical controls and breakers as instructed.
- n.** Crew members shall report PTC related, mechanical or electrical problems by radio, telephone, or orally to expedite repair arrangements as well as in writing on

the specified report and/or form.

o. Crew members shall notify RMRTD of trespassers or business encroachments on the RMRTD Service Property Way as expeditiously as possible. Contractor shall notify the RMRTD COO for assistance in resolving these incidents.

p. Crew members shall operate communications, public information, or other equipment which RMRTD may install, consistent with other duties.

6. Responsibilities of Crew Members for Arrival

a. Train Attendants shall assist with passenger alighting and information.

b. Train Operators shall secure the train, change controlling cabs, and make brake tests as required.

c. Train crews shall walk through and inspect train to determine that all passengers have alighted, mechanical problems have been identified, lost personal items are collected, doors are secured, and post-trip security inspections have been completed.

d. Crews shall fill out required reports, including mechanical reports.

e. Crews shall reposition train at terminal as required or take train to the appropriate location for servicing.

f. Crews shall perform switching, work train, or other services as required.

7. Fare Collection

Contractor shall provide sufficient on-board staff to sell one-way, round trip, daily, monthly, and annual tickets utilizing RMRTD supplied equipment in accordance with RMRTD policies and procedures. Contractor shall also provide an on-line ticketing platform and integrated mobile ticketing application complete with fare processing, back-office functionality and fare refunding options. The current integrated on-line / mobile ticketing platform is through Genfare. Online purchases are made through the RMRTD website at the following link:

<https://tickets.genfaremobile.com/web/50002/purchase/campaign/31>

The mobile application is available thru the apple app store and google play under: Rio Metro Ticketing. The ticketing application must provide security and tracking options that result in a robust fare verification and validation process. Contractor shall submit a Fare Sales, Fare Collection, Cash Handling and Invoicing plan and procedure to RMRTD for approval. Contractor shall make deposits no less than three (3) times per week and provide safe and secure storage and monitoring

procedures for all cash handling by contractor employees. Contractor shall maintain the fare collection equipment including supplies and the annual licensing required for the RMRTD supplied fare collection equipment. Contractor shall provide a dedicated fare collection staff of twelve (12) people. Contractor and RMRTD shall determine which trains to deploy the dedicated ticketing staff, but in general one dedicated fare collector should be on each train that has an average ridership of 150 or more. RMRTD expects Train Attendants to have some fare collection duties and responsibilities, on trains without dedicated ticketing staff and on busy trains where the dedicated ticketing agent may need assistance to ensure all fares are collected, consistent with the safe operation of the train. Based on service and ridership, RMRTD may adjust the number of dedicated fare collection staff up or down from the base staff indicated herein.

7. Train Security

Contractor shall provide nine (9) Officers for train security. The Officers shall at a minimum be level 2 certified and licensed through the state of New Mexico. At all times, Officers will act in a professional, courteous and helpful manner and attempt to resolve any issue at the lowest level possible. Officers are primarily responsible for train security, however, Officers are expected to address situation on train platforms, station parking lots and other NMRX / RMRTD property as directed. Under no circumstances shall Officers pursue individual or engage in activities outside NMRX / RMRTD property. In the event of a disruptive passenger or situation, Officers shall make every attempt to keep the situation from escalating. If the behavior persists and cannot be addressed on the train, Officers shall then escort unruly passengers off the train at the next stop or when feasible. In these events contractor will dispatch additional Officers to meet the train at the next stop to continue detainment until authorities arrive.

Officers are responsible for describing the incident in full utilizing incident reports. Incident report format will be approved by RMRTD. Incident reports shall be completed as soon as possible after the incident. A full and complete incident report shall be provided to RMRTD as soon as practicable but within 24 hours of the incident.

Officers at all times shall wear working audio and video recorders. Contractor will provide copies of audio, video and still pictures to RMRTD upon request. All recordings shall be kept by the contractor indefinitely or until otherwise instructed by RMRTD

Prior to engaging in train security services, Officers must successfully complete RMRTD training covering the RMRTD Transit Ambassador Program, RMRTD Customer Service and RMRTD Fare policy.

Based on service and ridership, RMRTD may adjust the number of dedicated train security staff up or down from the base staff indicated herein.

Train Security operations under this part performed by Officers shall be covered by separate insurance as follows:

- Public liability, auto liability, employer's liability with limits of 1 million CSL, excess liability of 5 million naming RMRTD, NMDOT and BNSF, their officers, directors, employees and assigns as additional insured, and be endorsed to state that the insurance provided shall be primary insurance, and any insurance that RMRTD, NMDOT and BNSF, their officers, directors, employees and assigns may have in effect, shall be deemed excess and not contributory.
- Worker's Compensation with statutory limits and waiver of subrogation.
- For this part, Contractor agrees to indemnify RMRTD, NMDOT and BNSF, their officers, directors, employees and assigns for any and all liability or loss arising in any way out of the Train Security operation regardless of RMRTD, NMDOT and BNSF their officers, directors, employees and assigns negligence or fault

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APPENDIX 6.12

REQUEST FOR PROPOSALS

RFP#: 2013-01

MAINTENANCE OF EQUIPMENT & FACILITIES RESPONSIBILITIES

APPENDIX 6.12

Maintenance of Equipment & Facilities Responsibilities

1. General

a. Contractor shall maintain rolling stock and equipment for the Services at the Maintenance Yard or at such other facilities provided by the RMRTD as may be mutually agreed upon by the parties.

b. Contractor shall prepare a Maintenance of Equipment Plan and submit it to RMRTD for approval. The Plan shall comply with FTA's State of Good Repair and all federal requirements, as specified in Appendix 6.10, Section 3e(1)(d) herein, and shall be capable of producing the required reports identified in Appendix 6.10.

c. In implementing the Maintenance of Equipment Plan for the Services, Contractor shall:

(1) Comply with all applicable Federal Railroad Administration (FRA) regulations, New Mexico Department of Transportation regulations, Association of American Railroads (AAR) standards, APTA PRESS, and other accepted industry standards, as well as with the standards set forth in this Appendix, and responsibilities set forth in Appendix 6.10 General Service Responsibilities, or as modified by mutual agreement.

(2) Comply with inspection and servicing intervals defined in manufacturer's operations and maintenance manuals and as modified by mutual agreement. These manuals will be provided by the RMRTD.

(3) Comply with the terms of any manufacturer's warranties on equipment used in the Service, and cooperate with RMRTD in the fulfillment of any obligation of those warranties.

(4) Confirm appropriate repair of warranty items by suppliers.

(5) Perform daily turnaround and running repairs on rolling stock at the Maintenance Yard.

(6) Implement a strict quality control program subject to approval and quality assurance by RMRTD.

(7) In conjunction with RMRTD, review annually and update as necessary a System Safety Plan as described in General Service Responsibilities Appendix 6.10.

(8) In conjunction with RMRTD, review annually and update as necessary an

Emergency Preparedness Plan as part of the System Safety Plan described in paragraph 4.d., General Service Responsibilities Appendix 6.10.

(9) Contractor shall develop and implement a documented process for inventory control and cost effective, efficient procurement and material dispersal, accounting, and all warranty administration, including the implementation of an accounting material purchasing system.

(10) Contractor shall develop and implement a documented process for documentation of the mechanical history on each piece of equipment for control, repair scheduling and planning purposes, and for compliance with FRA and FTA requirements, as well as for warranties. Contractor shall retain all records and reports concerning inspection, maintenance, and cleaning of the equipment and shall provide these to RMRTD at the end of the contract.

(11) Maintain in good working order the equipment used to maintain the Rolling Stock.

(12) Implement a comprehensive preventive maintenance program for the Maintenance Facility and the equipment used to maintain the Rolling Stock.

(13) Maintain Rolling Stock communications systems including, but not limited to, the Public Address (PA) system, on-board two-way radio system and on-board WiFi system.

(14) Maintain the on-board segment of the PTC system including, but not limited to the on-board PTC communications segment equipment, hardware and software in compliance with Appendix 6.14.

d. Contractor shall provide assistance in review of plans, specifications, performance schedules, and cost estimates for RMRTD'S Rolling Stock requirement, and RMRTD corridor capital improvement projects.

e. Contractor shall cooperate and provide comments and suggestions during the planning, construction and implementation of the Maintenance Yard and expansions or changes to, or modifications of, capital infrastructure (facilities and track-related) and Rolling Stock in order to minimize disruptions to daily service and assure that all operational considerations are addressed.

f. Contractor shall provide support for, and will participate with, RMRTD and equipment manufacturers in the testing and acceptance new or rehabilitated rolling stock.

g. Contractor shall work with RMRTD to refine and update performance standards, procedures and reporting formats for the maintenance of equipment, including the preparation of quality control standards in conformity with federal,

state and local regulations.

h. Contractor shall work with the equipment manufacturers and RMRTD to develop appropriate technical training courses, and to train Contractor employees and the RMRTD in their required functions.

2. Daily Turnaround Servicing and Running Repairs

a. Each day, prior to being placed in service, Contractor shall clean, service, and inspect equipment in accordance with mutually agreed-to standards and in compliance with 49 CFR Parts 229 and 238 and the PTCSP. All defects that are found will be corrected as promptly as practicable, and in accordance with applicable law, regulations and standards.

b. In addition to cleaning requirements defined in Paragraph 10 below, the Contractor shall pick up trash and newspapers on board the entire train and conduct a security sweep throughout the entire train consist after the completion of each trip.

c. Maintenance Yard Servicing. During the period the equipment remains in the servicing area at the Maintenance Yard, the following work shall be performed:

(1) Equipment shall be fueled on predetermined schedule.

(2) Equipment shall be sanded, as needed.

(3) Daily inspection shall be performed on equipment. At a minimum, this shall include inspection of wheels, trucks, brake shoes, running gear, engine (audio-visual inspection), doors, lighting, communications, auxiliary power unit, HVAC, control functions, on-board PTC segments and bridge plate and accommodations.

(4) Turnaround cleaning shall be performed on all equipment in accordance with standards outlined in Paragraph 10, below.

(5) Locomotive engines shall be steam cleaned as required for the proper inspection and maintenance of the equipment.

(6) Running repairs shall be performed on all equipment. Items of repair that require additional time will be repaired in the shop, and the vehicle with the defect shall be replaced from the available equipment pool. Running repairs include such items as removing and replacing governors, injectors, water and oil pumps, air starters and fuel pumps, turbochargers, manifolds, cooling fans, and control cards, contactors on-board PTC equipment, event recorders. Necessary replacement of cab control devices, truck component and wheel repairs, change out or repairs to auxiliary power units, and touch-up and small component painting are also normal running repair maintenance items. Running repairs do not include non-routine

maintenance of vehicles or major components.

(7) Overnight or Midday Servicing shall include, but not be limited to, the following:

(a) Perform exterior and interior calendar day mechanical inspections of passenger equipment as required to be in compliance with 49 CFR Part 238.

(b) Clean vehicles as described in Paragraph 10, below.

(c) Start or regulate air conditioning or heat.

(d) Post, distribute, or stock bins with passenger schedules and notices.

(e) Pick up newspapers and all litter.

(f) Collect items of personal property left on the trains and turn over to Contractor's administrative staff for processing. Contractor shall maintain the lost and found inventory and provide for lost and found pick up by customers at the Maintenance Yard, or such other agreed upon location, during normal business hours.

(g) Connect/disconnect standby power, if used.

3. Preventative Maintenance Program.

Contractor shall institute a preventative maintenance program for the Services, as follows:

a. The preventive maintenance work shall be performed in accordance with all manufacturers' maintenance instructions, warranty provisions and time intervals. Operator shall utilize FRA-required maintenance, test, and service forms during these inspections. Preventive maintenance inspections shall be recorded in the Transit Asset Management System database to be developed by the RMRTD. Work shall be performed in accordance with detailed printed instructions, and shall require sign-off by the mechanic performing the function. All work shall also be reviewed and signed by the foreman in charge. Daily, monthly, quarterly, annual and tri-annual servicing and inspection records shall be retained on file available for RMRTD inspection and provided to RMRTD at the end of the contract.

b. Wheel truing for Rolling Stock equipment shall be performed at an AAR-approved facility and in accordance with OEM requirements or such deviations thereto as authorized by RMRTD. The cost of the work performed at the wheel truing facility, including boring, mounting and demounting, axle bearing inspections and replacements, and freight charges are to be reimbursed by RMRTD with appropriate overhead charges. The labor cost to remove and install axles on the vehicles by the Contractor is included in the base amount of the Contract as Contractor's routine maintenance of the equipment.

4. Non-Routine Maintenance.

Non-routine maintenance or heavy overhaul services not covered in the contract for Rolling Stock may be contracted out by RMRTD to third party contractors, or the Contractor may be required to perform such services. If provided by the Contractor, such services would be subject to a negotiated price.

5. Maintenance of Other Equipment and Facilities

- a.** Contractor shall maintain the facilities for which it is responsible in good working order as described below. Safety in the work place shall receive highest priority.
- b.** Special tools and equipment provided and owned by RMRTD shall be properly labeled, secured and maintained.
- c.** The car washing equipment shall be maintained as per manufacturer's specifications.

6. Maintenance Yard Facility Operational and Maintenance Requirements

- a.** RMRTD owns or controls property and facilities in downtown Albuquerque used as the Maintenance Yard. This facility is available for Contractor's use to maintain and service the equipment.
- b.** In addition to the RMRTD-provided equipment and supplies, the Contractor is responsible for providing all necessary equipment, tooling, furnishings, and supplies required to perform routine cleaning, inspection, and maintenance for the fleet of Rolling Stock. RMRTD will provide the basic building and equipment necessary to support cleaning, inspection, and maintenance operations at the Maintenance Yard. Contractor shall maintain a written inventory of the equipment, materials and fixed assets that have been furnished by RMRTD. The inventory shall be mutually updated annually.
- c.** In addition to RMRTD-provided equipment, the Contractor is responsible for providing all necessary labor, equipment, and supplies required to maintain the facilities that comprise the Maintenance Yard in an operational and safe manner (in accordance with OSHA and other federal/state/local safety requirements) and in accordance with all equipment warranties and maintenance instructions. These responsibilities include but are not limited to:

(1) Daily cleaning of all work areas including periodic steam cleaning of all pits (at least once every two weeks), platforms and work surfaces to remove grease, oil, and other substances. Office areas utilized by Contractor are to be maintained in a clean and neat fashion at all times.

(2) Replacement of light bulbs.

(3) Replacement of filters and inspection and replacement of belts on fans and motors.

(4) Inspection, lubrication, and maintenance of all equipment.

(5) Routine replacement of fueling filter elements and sanding nozzles and hoses, standby power connectors, wash brushes, washer reclamation equipment, and other components of equipment furnished by RMRTD whose replacement is caused by normal use by the Contractor or a failure of the Contractor to operate and maintain the equipment in accordance with the manuals supplied by RMRTD.

(6) Periodic cleaning of the washer reclamation system.

7. Facility Operation.

The Contractor is responsible for all labor, equipment, and supplies required to operate the Maintenance Yard facilities including, but not limited to, the following:

- a. Supply of chemicals and detergents for washing the equipment
- b. Supply of fuel to operate the non-passenger rail equipment and machinery
- c. Supply of sand for the car and locomotive sanding systems
- d. Removal of waste oil from the oil water separators by a licensed hauler
- e. Removal of sludge from the washer system by a licensed hauler
- f. Supply of containers and removal of all trash, hazardous wastes and consumables in accordance with all regulations
- g. Office furnishings for staff at the Maintenance Yard) and lunchroom tables
- h. All costs involved in telephone and other utility, including all water, electricity and gas, costs
- i. Minor facility repairs up to \$1,500 and all repairs due to vandalism
- j. Material handling equipment such as forklift trucks

8. Quality Control Program

Contractor shall conduct monthly reviews to check vendor compliance with specifications, material quality, and compliance with maintenance standards and procedures including the health of the on-board PTC equipment. A monthly facility quality control measurement report shall be prepared from inspections performed by all management and control personnel. Contractor shall permit and cooperate with quality assurance inspections performed by RMRTD.

9. Reporting Requirements

Working with RMRTD and equipment suppliers, Contractor shall develop and maintain a system for recording the maintenance status and history of each piece of equipment, which shall provide the following reports and perform the indicated functions:

- a. Vehicle Trip Inspection
- b. Vehicle Daily Inspection
- c. Vehicle Condition Report
- d. Coordinate all preventative maintenance cycles, providing highest possible availability of equipment while assuring that all reported defects are corrected in the most efficient manner.
- e. Maintain history on all equipment, helping to analyze defect patterns and correct failure trends.
- f. Record and follow up on repairs to all equipment, hours expended on tasks, etc. Repair forms shall be filled out and signed daily by the operating crew. Forms shall list all defects known to the crew and inspectors, be forwarded to the maintenance office and the data entered in the system. In no case shall a defective vehicle be returned to revenue service dispatched from the preventative maintenance line until every reported defect has been corrected. The defects shall remain a part of that equipment maintenance history and can be used to identify failure trends on that piece of equipment, the vehicle, or the entire fleet and ensure that warranty claims against the manufacturer can be substantiated and collected.
- g. Aid in the scheduling of all preventative maintenance and FRA inspections. The maintenance history shall reflect all past/future inspection dates. This database shall be used for control, repair scheduling, and planning purposes, as well as for warranty administration. All records shall be available for inspection by the RMRTD and turned over at the end of the contract.
- h. All electronic equipment requiring programming in electronic format shall be

documented for each device by locomotive or car number. This includes completely documented software and firmware for event recorders, on-board PTC systems and communication systems. This information shall be retained for all data recorders, communication equipment, PTC equipment and any other device with electronic storage of user enter programs.

- i. Other functions as required by Federal laws and regulations

10. Cleaning Standards

a. Layover cleaning, performed when a train rests over night or during the day for more than four hours, includes:

- (1) Pick up papers and trash
- (2) Sweep the entire floor and top of heater guard
- (3) Bag and dispose refuse
- (4) Wipe windows using window cleaner, remove gum and other adhesives from upholstery and floor
- (5) Mop floor daily
- (6) Vacuum flooring
- (7) Clean window sills, arm rests, heater boxes
- (8) Replace seat cushions, as required
- (9) Brush seats and seat backs
- (10) Remove graffiti from interior panels, fittings, ceiling, and seats
- (11) Clean spills
- (12) Clean door tracks
- (13) Spot clean stairs
- (14) Clean cab control area
- (15) Service restrooms
- (16) Security sweep

b. Monthly maintenance cleaning includes:

- (1) Drop ceiling panels and blow car thoroughly, including HVAC ducts, heater boxes, seats, and seat backs
- (2) Wash ceilings, sidewalls, and bulkheads
- (3) Completely wash seat frames and clean cushions, heater boxes, light fixtures, using cleaning fluid and/or detergent
- (4) Remove all chewing gum, graffiti, stains, and other adhesives, scrub floor thoroughly, paying attention to the corners and under seats and stairways
- (5) Thoroughly clean windows with window cleaner
- (6) Wash and polish interior stainless steel, chrome, and aluminum surfaces
- (7) Clean and remove all dirt stains from air intake grills
- (8) Clean exterior end sheets, end windows, skirting, step wells, step treads, trucks, and under car boxes, pilots
- (9) Upholstery cleaning shall be performed once every three months
- (10) Power scrub the roof

c. Exterior Washing

Each vehicle shall be manually washed as often as practicable, but no less frequently than once per week. Equipment exteriors not successfully cleaned with washing equipment will be hand detailed.

d. Graffiti Removal

Graffiti shall be removed as promptly as possible during the layover cleaning as described above. However, this requirement may not be used to degrade service consist requirements and may require interim measures by the Contractor until such time as the graffiti is removed.

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APPENDIX 6.13

REQUEST FOR PROPOSALS

RFP#: 2013-01

MAINTENANCE OF WAY RESPONSIBILITIES

APPENDIX 6.13

Maintenance of Way Responsibilities

1. Rail Lines to be Maintained

The Contractor shall maintain and inspect all rail lines, signal systems, wayside segment PTC systems including applicable PTC communication segment systems and related facilities up to the NMDOT property line, which is surveyed and marked with medallions up and down the corridor. The Contractor shall maintain all rail lines, signal systems and related facilities up to the Clearance Point from the main line and said maintenance be included in the base MOW price proposal. Required maintenance on spurs off the main line within the NMDOT property from the Clearance Point from the main line to the Property line shall be included in the base MOW price proposal.

The requirements of this section apply to all rail lines, signal, wayside PTC and communication systems, and related facilities including but not limited to, tracks, rails, ballast, ties, turnouts with switches, frogs, switch ties, fencing, bridges, trestles and culverts, structures, facilities, signals, crossing warning devices, railroad communications systems, on the following:

Total mainline route mileage of the state-owned railroad to be maintained is approximately 120.5 miles. A total of 96.4 miles of mainline track hosts NMRX commuter train service (Commuter Rail) and is equipped with PTC. Of the 96.4 Commuter Rail miles, 0.6 of these miles (MP 21.69-MP 22.3) is owned by the City of Santa Fe (is Non-PTC track), but is maintained by NMRX. The portion of the system that does not have commuter train service (Non-Commuter Rail) is not equipped with PTC and only hosts two Amtrak trains daily, plus occasional BNSF local freights as far as Lamy. Of the 24.10 Non-Commuter Rail miles, 2.26 miles are dispatched by BNSF, but maintained by NMRX, located on the extreme eastern part of the system at Lamy (from MP 834 to MP 836.26).

In addition to mainline track, other significant trackage is located in Albuquerque. There is a five track yard used for servicing commuter rail equipment, a four track storage yard, and also four Industry Lead tracks that depart from the mainline in the Albuquerque area. Two Industry Leads (Zone 7 and Zone 9 tracks) are approximately one mile in length and branch off perpendicular to the east of the mainline, while the third (Zone 5 track) is approximately 1.5 miles in length and branches off perpendicular to the west of the mainline. The fourth Industry Lead, called the Hahn Lead, is also approximately 1.5 miles long, but runs parallel to the mainline. Several smaller industry spur tracks branch off of these Industry Leads. In addition, several industry spurs depart directly from the mainline throughout the Albuquerque area at numerous locations between Isleta Lakes (MP 911.8) and Los Ranchos station (MP 895.5). The remaining significant facilities in

Albuquerque are owned and maintained by BNSF Railway (Abajo freight yard, intermodal facility, and automobile distribution center). There are a handful of other industry spurs along the remainder of the railroad up to Lamy, NM.

The NMRX system to be maintained under the operations and maintenance contract is divided into two subdivisions: The Albuquerque (Glorieta) Subdivision between Belen (MP 932.2) and Lamy (MP 834), and the Santa Fe Subdivision from CP Madrid (MP 858, 0.0) to Santa Fe (MP 22.3). The Albuquerque Subdivision has five Controlled Sidings, one Non-Controlled siding, and a segment of Double Track. The Santa Fe Subdivision has three Controlled Sidings and one Non-Controlled siding, used mainly for a lead to a small 2 track holding yard on the south end of Santa Fe for commuter rail equipment.

Albuquerque Subdivision:

The segment between Belen (MP 932.2) and Isleta (MP 915) is operated under Centralized Traffic Control (CTC) with maximum passenger speed of 79 mph and maximum freight speed of 60 mph on Class 4 track. This segment operates under PTC.

The segment between Isleta (MP 915) and CP Abajo (MP 903.8) is operated under CTC at a maximum passenger speed of 79 mph and maximum freight speed of 70 mph (under certain train-handling conditions) on Class 5 track. This segment operates under PTC.

The segment between CP Abajo (MP 903.8) and MP 901.1 is Double Track and operated under Restricted Limits with an Automatic Block System (ABS) at a maximum speed of 20 mph (both passenger and freight) on Class 2 track. This segment is also equipped with Automatic Train Stop (ATS) from Albuquerque (MP 902.4) to MP 901.1. This segment operates under PTC. During the course of this contract, RMRTD may upgrade a portion or all of this segment to CTC overlain by I-ETMS.

The segment between MP 901.1 to CP Hahn (MP 899.1) is also Double Track and operated under Track Warrant Control (TWC) with ABS and ATS at a maximum speed of 50 mph (both passenger and freight). This segment operates under PTC. During the course of this contract, RMRTD may upgrade a portion or all of this segment to CTC overlain by I-ETMS.

The segment between CP Hahn and CP Madrid (MP 858) is operated under CTC and ATS at a maximum track speed of 79 mph for passenger and 60 mph for freight on Class 4 track. This segment operates under PTC. During the course of this contract, RMRTD may extend Main 2 from CP Hahn to MP 897.9 to include CTC overlain by I-ETMS, as well as introduce a controlled siding in the vicinity of Alameda Blvd. in Albuquerque.

The segment between CP Madrid and West Lamy (MP 836.26) is a Non-Commuter segment and is operated under TWC with ABS and is also equipped with ATS at a maximum passenger speed of 79 mph and 60 mph for freight on Class 4 track. This is a Non-PTC segment.

The segment between West Lamy and MP 834 is operated under CTC (but with manual Spring Switches), and is dispatched by BNSF. Only West Lamy is equipped with ATS. This is a Non-PTC segment.

Santa Fe Subdivision:

The segment between CP Madrid (MP 858, 0) and CP Hondo (MP 17.9) is operated under CTC at a maximum speed of 79 mph for passenger on Class 4 track. This segment operates under PTC.

The segment between CP Hondo (MP 17.9) and CP Alarid (MP 21.8) is operated under CTC at a maximum speed of 35 mph for passenger and freight on Class 4 track. This segment operates under PTC.

The segment between CP Alarid (MP 21.8) and Santa Fe (MP 22.3) is operated under Restricted Limits at a maximum of 15 mph for both passenger and freight. Within this segment are a main track and also a yard lead. This is a Non-PTC segment.

Eldorado Subdivision:

Contractor is not responsible for Maintenance of Way in the Eldorado Subdivision between M.P. 17.9 and M.P. 0.00 (Lamy, NM). This is a Non-PTC segment.

Collectively, the property identified above is referred to as the "Service Property".

2. Maintenance of Way Services

a. Routine Maintenance

(1) General

(a) During the term of the Contract, the Contractor shall manage, maintain, and provide staff to perform the Maintenance of Way Services (“MOW Services”) in accordance with, but not limited to, this Contract, RMRTD's Maintenance Standards as set forth below, and all FRA and FTA regulations.

(b) The Contractor shall be responsible for any fines assessed by the FRA or other regulatory body arising from the actions or inaction of the Contractor or the Contractor's employees.

(c) The Contractor shall perform track, right-of-way, buildings and structures, signal, wayside segment PTC and communications maintenance, generally as described in this Contract, under the daily supervision of the Contractor's Maintenance Director in conjunction with the Contractor's PTC Project Manager and under the oversight of RMRTD.

(d) Listing, or failure to list, a specific maintenance activity does not discharge or relieve the Contractor from performance of that task. RMRTD will have sole determination of the amount and type of maintenance activities performed (except in case of emergencies when the Contractor's supervisors will direct needed maintenance activities pending communication with RMRTD). The Contractor, through its Maintenance Director, has responsibility for the quality and completeness of the maintenance tasks performed.

(e) The Contractor shall perform the MOW Services in a timely manner. The Contractor shall maintain and make available to the RMRTD, upon request, all of its records and reports concerning inspection and maintenance of the system and shall deliver such records to the RMRTD at any time requested and at the end of the Contract.

(f) Except for emergency corrective maintenance, an activity that takes a mainline track or controlled siding out of service is not permitted unless agreed to in writing in advance by the RMRTD.

(g) The Contractor shall not make any changes to the system without prior written approval of the RMRTD, unless immediate repair is necessary for the Contractor, employee, or passenger safety. All work shall be subject to any applicable rules or regulations of the FRA and subject to RMRTD review of the listed documents. The standards which shall guide the Contractor's maintenance of the system are:

i. RMRTD Maintenance Standards.

ii. American Railway Engineering and Maintenance of Way Association Manual for

Railway Engineering (AREMA - 01).

iii. Portfolio of Track Work Plans (AREMA - 02).

iv. FRA Track Safety Standards.

v. AAR Standards.

vi. PTCSP

(h) These policies and procedures may be amended from time to time. The Contractor will recommend changes as deemed necessary and shall implement such changes upon written instruction of RMRTD, as the needs of the operations change.

(i) The Contractor shall, before any excavation, notify all utilities through ONE CALL, or other means to prevent any damage to any underground utilities.

(2) Track and Right-of-Way Maintenance Requirements

(a) The levels of maintenance described herein are not all-inclusive and are intended to provide direction for the Contractor to provide quality fixed property maintenance with the intent to avoid the deferral of maintenance.

(b) Levels of maintenance shall be performed as described in Section 3 of this Appendix unless governed by other special conditions (i.e. maintenance contracts with outside vendors, landlord maintenance agreements, programmed maintenance scheduled).

(c) Levels of maintenance to RMRTD-furnished machinery, systems, components, equipment shall be performed per the manufacturer's standard recommended maintenance instructions to the extent that they exist or as otherwise directed herein.

(d) The Contractor shall ensure the Property is kept clean. Salvage and/or scrap material generated either through routine maintenance of way, capital projects, or new construction shall be disposed of by the Contractor consistent with the policies and procedures adopted by the RMRTD and the NMDOT which shall be consistent with applicable state law relating to the disposition of personal property.

For the purposes of providing a response to the RFP, the Offerors shall base pricing upon the assumption that salvage and/or scrap material generated either through routine maintenance of way, capital projects, or new construction shall become the property of the Contractor. Contractor may retain salvaged material or resale of salvaged material and retain any proceeds from the resale. Material which does not have resale value shall be disposed of by the Contractor in an

environmentally safe fashion. **Upon execution of the Contract, Contractor shall comply with the policies and procedures adopted by the RMRTD and NMDOT relating to property disposal.**

(e) Litter Control. The Contractor, on a weekly basis, shall inspect, remove and dispose of (at a legally approved off site area) all litter and trash, which may include sizable objects such as tires, furniture and appliances within the RMRTD Corridor, including, without limitation, litter and trash on and within the rail, tie and ballast limits at all stations and litter on the platforms or other areas of the stations. All trash must be disposed at an appropriate State of New Mexico approved landfill. Frequency of litter control shall be as needed and directed by RMRTD.

(f) The Contractor shall provide maintenance of track elements such as, but not limited to, rails, ties, ballast, sub-ballast, wayside and locomotive based rail lubricators (including lube sticks), grading, special trackwork, and grade crossing panels or surfaces. Commuter line track, CP Madrid to Lamy, and controlled sidings are to be maintained to FRA Class 4 or current FRA Class standards. The spur tracks and sidings not utilized by Commuter Service are to be maintained to FRA Class 2, or the condition of the track at the Maintenance Turn Over Date, if less than FRA Class 2. RMRTD Rail Line Maintenance Standards are contained in paragraph 3 below. Where tracks are Class 5, or are upgraded or rehabilitated to Class 5 or higher they will be maintained to Class 5. Pricing for any class upgrades shall be negotiated with the Contractor.

(g) Temporary slow orders will be removed as promptly as practicable. No permanent slow order will be placed on any track without approval of RMRTD. Permanent speed restrictions shall constitute those restrictions imposed by permanent timetable inclusions and shall represent restrictions necessitated by permanent conditions, laws, or orders.

(h) Right-of-Way Maintenance includes everything outside of the tie and ballast limits of the mainline tracks and sidings and other tracks. The Contractor is responsible for drainage, pedestrian crosswalks, weed control, mowing, grading, signage, access road, catch-basins, slopes, power feeds, and related elements.

(i) The Contractor shall provide non-destructive testing of in-track rail and concrete ties in the RMRTD System twice (2) annually on any track that a revenue train operates and annually on all other tracks, or as directed by RMRTD or FRA. Tests will be performed by equipment capable of detecting defects as noted in FRA Track Safety Standards, Parts 213.113, 213.234, and 213.237. Within seven (7) days of completion of a test the Contractor will deliver to the RMRTD the results of said test.

(j) The Contractor may schedule rail test MOW Services at any time that will not interfere with train operations.

(k) The Contractor shall conduct a joint hi-rail inspection of the Property no less often than quarterly. The inspection team shall consist of the Manager of Maintenance (or acceptable designees) and RMRTD's designated representative(s).

(l) The Contractor shall provide MOW Services for mechanical and chemical vegetation control, including on-track application of herbicides and brush-cutting equipment.

i. Vegetation control of the right-of-way will result in control of grass and brush growing within the RMRTD-owned or controlled right of way. Contractor shall comply with all state and local laws, ordinances and regulations relating to brush and weed control. Contractor shall be responsible for any fines or penalties levied for failure to comply. Vegetation control of the right-of-way may include pre-emergent chemical soil treatment and follow up spot contact spray and mowing to aid in controlling germination and emergent vegetation. Chemical treatment shall be used with full environmental impact awareness. The Contractor shall include chemical soil treatment to prevent germination and to kill emergent vegetation. Application of chemicals shall be scheduled by the Contractor and approved by RMRTD in order to achieve the results specified herein. Application of chemical agents shall be in conformance with applicable laws and regulations. The Contractor is specifically liable for damage claims attributed to chemical application, and any such claims received by RMRTD will be referred to the Contractor. The Contractor is to obtain all permits for chemical application. Vegetation treatment is to include costs of all follow-up mechanical or manual removal of brush and grass due to failure to control growth by chemical application. The Contractor will notify all affected parties before any application.

ii. Mechanical or manual removal will be required to correct all growth which causes violations of local fire codes and FRA Standards and/or growth which intrudes into the walkway or track structure, impairs visibility, or impairs drainage channels. Mechanical or manual removal of vegetation will include removal from NMDOT/RMRTD property. Brush will be cut and chipped or removed from the property. Grass mowing along right-of-way will be performed by the Contractor.

iii. The Contractor shall trim all trees and underbrush to assure that no vegetation or other growth or downed trees are within 25 feet of the nearest railroad track. No other tree removal work shall be performed without prior approval of the RMRTD.

(m) Inspections

i. The Contractor shall perform the following inspections at least within the minimum interval indicated:

a. FRA mandated track and right-of-way inspections

b. Grade crossing inspection – annually

c. During and after severe storms

d. Joint switch inspection track and signal - monthly by Manager of Maintenance (or acceptable designee) and RMRTD's designated representative

ii. The results of all inspections and details of corrective actions taken shall be reported on the prescribed form, signed by inspector/s, as indicated on the form, and retained by the Contractor. Any corrective action required shall continue to be noted on the inspection reports until such time as the required corrective action has been taken to the satisfaction of the inspector. The date the corrective action was accomplished shall be included on the prescribed form.

(n) The Contractor shall investigate, respond to and attempt to resolve complaints and problems on and along the rights of way of the Property that result from the performance of the MOW Services.

(o) Any surfacing performed in station areas shall not change the relationship of the rail to platform elevation without prior approval of RMRTD.

(p) Contractor will develop and implement CWR maintenance and installation plan with its training plan and in accordance with FRA Regulation 49 CFR Part 213.

(3) Signal and Grade Crossing Maintenance shall be performed in accordance with Section 3, RMRTD Maintenance Standards detailed below.

(4) Communications. All communication systems and related equipment as shown in Exhibit E shall be maintained to a safe and reliable level. These systems include, but are not limited to, wayside signals, bungalows, equipment, power locations, track circuits, houses and cases, control cables and wiring, switch machines, hot box detectors, paging equipment detectors, and other related communication equipment inclusive of the train track Supervisory Control Systems. All systems shall be maintained in accordance with RMRTD Maintenance Standards unless modifications are authorized in writing by RMRTD. Contractor shall employ staff and provide all materials, supplies and equipment, except for items listed in Exhibit E, which is the RMRTD inventory. The materials and equipment listed in Exhibit E are owned by the RMRTD or the NMDOT and will be made available to the Contractor for the provision of commuter rail service. The Contractor shall be responsible for maintaining necessary items in the inventory during the life of the Contract. Replacement items valued at \$5,000 or greater per unit cost will qualify for an administrative markup fee of 2% as specified in Appendix 6.15

(6) Bridges, culverts and structures inspection and maintenance shall be performed in accordance with Section 3 of this Appendix presented below.

b. Service Compliance Inspections

(1) Measurement of adherence to the requirements of this Contract shall be evaluated based on the results of inspections performed on a random frequency, but not less than monthly. RMRTD shall normally provide the Contractor with twenty-four (24) hours notice prior to conducting an inspection. RMRTD does not pay for unsatisfactory performance of MOW Services. A reasonable amount as determined by RMRTD may be deducted for deficient performance of MOW Services.

(2) To the extent possible, the inspection team shall be comprised of the Contractor's Maintenance Manager (or authorized designee), RMRTD's Chief Engineering Officer (or other RMRTD designee), and the Contractor's appropriate supervisor for each division being inspected. Once assigned to an inspection team the individual shall not be released without the approval of RMRTD until the inspection is complete.

(3) From time to time, inspections may be unannounced and conducted at any location at any time. Inspection locations shall be determined solely at the discretion of RMRTD and is subject to change at all times.

(4) Inspection may include all or any segment of a requirement.

(5) Any deficiencies observed shall be noted. The Contractor team member responsible for the deficiency shall make a commitment that the corrective action necessary to resolve the deficiency will be completed by a specified date. RMRTD must allow reasonable time to take corrective action, but in no case will more than thirty (30) days be allotted without written authority of RMRTD. Corrections concerning the safety of employees or the public at large must be made immediately.

(6) A photographic record may be made to document the extent of the deficiency.

(7) The results of the inspection shall be recorded by the Contractor and shall be signed by each appropriate member of the inspection team indicating its accuracy. A copy of inspection records including a copy of any photographs or video shall be provided to RMRTD team members. The Contractor shall provide to RMRTD these copies within three (3) days of the inspection or receipt of the inspection materials.

(8) At any time, after the inspection and the time allotted to correct a deficiency, RMRTD may, with or without the Contractor's participation, re-inspect the location of the deficiency to verify the correction. RMRTD will invite the Contractor to attend the re-inspection. The Contractor should assume that the re-inspection will be scheduled to occur on the expiration date indicated on the inspection records. If any portion of the deficiency remains, or the corrective action resulted in a new deficiency, the Contractor will be issued a citation by RMRTD. The citation will

contain, at a minimum, the dates, location, and the nature of the deficiency.

c. Administration

(1) The Contractor shall not establish any headquarters point or staging area, nor set up any office or storage trailer on NMDOT or RMRTD property without the written approval of RMRTD. Additionally the Contractor shall not increase, decrease or delete the level of utility of any existing location without written approval by RMRTD.

(2) The Contractor shall provide a twenty four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year emergency maintenance system as approved by RMRTD.

d. Audit of Property

Within sixty (60) days after the Turn Over Date, RMRTD and the Contractor shall conduct a joint audit including videotaping or digital imaging of the Property. The necessary details of videotaping or digital imaging will be determined jointly during the audit. The purpose of such audit shall be to identify and establish the condition of the Property as of the date of the audit and to establish the maintenance work required to achieve the minimum maintenance standards required by the Contract. Both the Contractor and RMRTD will retain a copy of the video or digital image for future reference.

e. Damage to Property

In the event of damage to the Property, if, in the opinion of the RMRTD, such damage is due to the Contractor's neglect during the term of this Contract, the Contractor shall determine the extent and cause of the damage and provide a written report to the RMRTD no later than the business day following the incident giving rise to such damage. All damage reports filed pursuant to this subsection must specify in detail the cause of the damage and measures taken by the Contractor to prevent similar future damage. Unless otherwise directed by the RMRTD, the Contractor shall, following submission of a damage report, undertake repairs. The costs incurred by the Contractor in making repairs to full restoration acceptable to RMRTD will be the sole responsibility of the Contractor.

f. Miscellaneous

(1) The Contractor shall notify and coordinate property management issues within the RMRTD Corridor with RMRTD's designated maintenance representative. Property management issues include:

(a) Reporting third party activities not authorized by RMRTD and the Contractor

(b) Reporting suspicious activity, trespassing and unauthorized third party activities

(2) The Contractor shall report to the RMRTD any evidence of on-site vagrancy, vandalism, theft, apparent unauthorized use of the Service property, or property damages. Where such evidence presents a clear and present danger to the railroad, the public or the security of the site, the Contractor shall immediately report such evidence orally to the RMRTD and in writing and to the appropriate governmental authority (such as fire and police). The Contractor shall make a verbal report of any adverse land conditions such as erosion, washouts, debris lodged in culverts and bridges or drainage problems.

(3) The Contractor shall report to the RMRTD where a fence and/or barricade need to be repaired or erected to prevent unauthorized access to NMDOT or RMRTD owned railroad right-of-way properties.

(4) All Maintenance-of-Way facilities, including buildings, equipment, and train storage areas, shall be kept clean and maintained so as to allow the function it was intended to perform to be performed without interruption.

(5) All RMRTD-supplied buildings and facilities used by the Contractor shall be maintained in clean and good working order, ordinary wear and tear excepted.

(6) All properties and associated systems shall be maintained by the Contractor in accordance with all applicable local, state, and federal codes, laws and regulations. Maintenance of RMRTD's properties shall also be sensitive to the historical nature of the Property.

(7) Any and all penalties and fines imposed regarding the violation of local, state and federal codes, regulations and laws shall be the responsibility of the Contractor.

(8) The Contractor shall maintain as current all appropriate permits, certificates, licenses and other authorizations, relating to the systems, facilities and equipment of the Property which are used in its maintenance. In doing so, the Contractor, within ninety (90) days of the Turn Over Date, shall submit to the RMRTD a program to manage the updating and record keeping for all permits, licenses and certificates and other authorizations. This program shall also include, but not be limited to, compliance with all local, state and federal environmental laws and regulations.

(9) Upon the occurrence of a derailed train, vandalism, collision, fatality, serious injury, strike or work stoppage, fire, oil spill or pollution problem, or other emergency condition which causes serious damage to service equipment or Property or obstructs railroad operations, the Contractor shall notify RMRTD immediately.

(10) RMRTD shall ensure that prior to any outside vendors/contractors performing maintenance of way work, the outside vendor/contractor shall timely notify Contractor of their intentions of commencing maintenance of way operations, including where and when the work will take place. For the purposes of this section, any outside vendors/contractors shall be any vendor or contractor that is working within the rail right-of-way and is not performing work as a sub to the Contractor. This section shall not apply to any vendors/contractors performing work including, maintenance of way and operations, pursuant to this Agreement.

3. RMRTD Maintenance Standards

a. General Maintenance Instructions

(1) The levels of maintenance described herein are not all-inclusive and are intended to provide direction for the Contractor to provide high quality fixed property maintenance with the intent to avoid the deferral of maintenance.

(2) All maintenance will be performed so as to minimize interference with, or delay to, scheduled passenger trains.

(3) The Contractor shall provide and maintain two-way radios with the required railroad frequencies for all highway vehicles and for both on and off track maintenance equipment to ensure communications capability between the Contractor's maintenance forces, all trains, and employees controlling the movement of trains.

(4) Right of Way (ROW) shall mean the property described in Paragraph 1 above.

(5) The Contractor shall maintain the Mainline main line track to a minimum FRA Class 4 level or the FRA Class at the Turn Over date, and the Spur Line track shall be maintained to a minimum FRA Class 2 level or the FRA Class at the Turn Over Date.

(6) Maintenance of the ROW of way shall be divided into three separate activities as follows:

(a) Routine Maintenance: Routine Maintenance is considered to be the day – to – day service maintenance needs of the RMRTD. Under this performance specification, Contractor will be responsible for all work and track materials (except as noted below) necessary to maintain these tracks to the respective FRA Class of track. Annually, this work and materials will include, but not be limited to:

i. Cross tie replacement: Contractor shall install up to 8,000 grade 5 wood ties per year (approximately 7,600 8'6" ties and 400 switch ties) in locations approved by the RMRTD COO. RMRTD shall supply ties at RMRTD expense.

ii. Ballasting: Contractor shall install up to 10,000 tons of mainline ballast per year at locations approved by the RMRTD COO. RMRTD shall supply the ballast at RMRTD expense.

iii. Surfacing and lining: Contractor shall surface up to 20 miles of track per year at locations approved by the RMRTD COO.

iv. Undercutting: Contractor shall undercut up to 12,000 feet of track per year at locations approved by the RMRTD COO.

v. Bridge repairs. Routine bridge maintenance shall be considered to include staff and equipment necessary to utilize \$100,000 of RMRTD supplied material for bridge repairs and maintenance, excluding ties, ballast, and rail. Contractor as part of its annual bridge inspection program will identify maintenance priorities in consultation with RMRTD and NMDOT, and will produce maintenance design plans to utilize the \$100,000 of RMRTD supplied material annually.

vi. Turnout repairs

vii. Ultrasonic rail testing (twice per year)

viii. Defective rail replacement

ix. Spot turnout tie replacement

x. Minor road crossing repair

xi. ROW litter removal

xii. ROW brush cutting

xii. ROW fencing: Contractor shall maintain fences to the condition they are in at the Turnover Date. Contractor shall install or replace up to ten (10) miles of 4-strand barb wire fence (or panel fencing / chain link fencing) along the right of way annually and shall thereafter maintain these fences. RMRTD shall supply the fencing materials for installing new fences at RMRTD expense.

xiii. Signal, Wayside segment PTC and communication maintenance including material items costing less than \$5,000 per unit exclusive of any markups.

xiv. Necessary track, signal, wayside segment PTC and bridge inspections. Tie replacement, ballasting, and surfacing in quantities greater than identified above shall be considered Capital Maintenance.

(b) Capital Maintenance: Capital Maintenance will include tie renewal programs in

excess of routine tie replacement identified above, rail relays, switch replacements, signal upgrades, PTC Upgrades, grade crossing replacements, bridge replacements in excess of bridge work identified above, and any other work deemed necessary by the parties that is not included in Routine Maintenance. As part of the Mobilization Plan, and each year thereafter, the Contractor and RMRTD will jointly prepare a capital maintenance priority list for upgrades needed on the RMRTD Property. A budget will then be prepared.

(c) Capital Improvements: Capital Improvement projects are projects that are a betterment or enhancement to the property. These projects will be handled, as a capital construction project on an as-needed basis and may be procured independently of this Contract, at the sole discretion of the RMRTD.

b. Maintenance Standards.

The rail lines listed in paragraph 1 above shall be maintained in accordance with the following maintenance standards.

(1) Technical Requirements. Listed below in priority order are the standards to be applied for track and structures maintenance work performed in accordance with this Contract:

(a) RMRTD Standards set forth in this Contract;

(b) American Railway Engineering and Maintenance of Way Association (AREMA) Manuals for Railway Engineering and Portfolio of Track Work Plans;

(c) FRA Track Safety Standards;

(d) Burlington Northern Santa Fe Standards;

(e) AAR Standards

(f) Manufacturer standards

Where a conflict exists between the RMRTD Standards and any other listed standard, the higher or more stringent Standards will control. Any changes or amendments to such standards may be proposed by either party and will be subject to approval by the other party, which shall not be unreasonably withheld.

(2) Track and Right-Of-Way Maintenance

(a) All tracks will be maintained for safe, reliable passage of trains as described herein. Tracks, rights-of-way, and related structures will further be maintained to at least the minimum maintenance level described herein.

(b) Right-of-Way

(1) Extermination of vermin and rodents in buildings shall be carried out by the Contractor.

(2) Work being performed near commuters, employees, or the general public will be properly protected to prevent personal injury or property damage.

(3) The Contractor shall report to the appropriate law enforcement agencies illegal dumping, trespassing, and unauthorized use of Service Property. The Contractor shall also participate with RMRTD programs to educate the public as to the dangers of trespassing on railroad right-of-way.

(4) The Contractor shall maintain, repair, and replace existing right-of-way signage as required.

(5) The Contractor shall not permit any construction or modification of any facility which reduces existing clearance dimensions at any location along the right-of-way without the written approval of RMRTD.

(6) The Contractor shall make available to RMRTD sufficient personnel qualified and authorized by the Contractor to support RMRTD capital and "third party" projects as Extra Work. Personnel staffing sufficiency shall be agreed to by RMRTD. The Contractor shall be responsible for the accurate recording of its capital and personnel and other support costs and for rendering appropriate project cost records on a monthly basis to RMRTD, in the format as mutually agreed to by the parties.

(7) The Contractor shall comply with NMSA 1974, Sections 62-14-1 *et seq.*, as amended, renumbered or replaced, and RMRTD and utility company standards and procedures in regard to excavations on RMRTD right-of-way in proximity to underground fiber optics, communications lines, signal lines, and/or other underground utilities.

4. Signals and Communications

a. General

(1) Contractor shall maintain all signal and grade crossing elements including wayside signals, wayside segment PTC equipment, signal/PTC communications equipment, bungalows, signal equipment, signal power locations, track circuits, signal houses and cases, control cables and wiring, switch machines, grade crossing protection equipment (including gates, flashers, bells, signage, equipment), electric locks and derails, hot box detectors, paging equipment detectors, and other related signal equipment to insure a safe and reliable service.

Contractor shall employ staff and provide all signal and grade crossing materials, supplies and equipment, except for items listed in Exhibit E, which is the RMRTD inventory. The materials and equipment listed in Exhibit E are owned by the RMRTD or the NMDOT and will be made available to the Contractor for the provision of commuter rail service. The Contractor shall be responsible for maintaining necessary items in the inventory during the life of the Contract. Replacement items valued at \$5,000 or greater per unit cost will qualify for an administrative markup fee of 2% as specified in Appendix 6.16.

All maintenance shall be maintained to safe and reliable Contractor, BNSF, FRA, Manual on Uniform Traffic Control Devices (MUTCD), AAR, AREMA, and State standards. These standards shall apply until such time as RMRTD issues its own Signal Standards, which shall not deviate from industry standards to a significant extent.

(2) Signals, wayside PTC systems and communications systems shall be maintained in such a manner as to keep service failures and/or train delays to an absolute minimum. Any modifications to signal and communications systems or RMRTD's signal maintenance and construction standards shall not be made unless authorized in writing by RMRTD. Emergency modifications may be performed in the interest of safety. Verbal notification of such modifications shall be made within four (4) hours of initiation of such modifications. A request for final modifications shall follow in writing within twenty-four (24) hours of such initiation. The request shall include a detailed explanation of the required modifications, and the reason it was initiated.

(3) Signal, wayside PTC systems or communications systems shall not be modified, expanded, or deleted without written authorization from RMRTD. The Contractor shall prepare and defend all necessary documents required for modifications. When such authorization is given, it shall be the responsibility of the Contractor to file all necessary applications with the FRA or the State for changes, additions, modifications, or new installations. This application shall be co-signed by RMRTD.

(4) Material for maintenance or construction shall meet and/or exceed AREMA recommended practices. Generally, signal material shall also meet BNSF standards, subject to RMRTD approval. These standards shall apply until such time as RMRTD issues its own Signal Standards, which shall not deviate from industry standards to a significant extent. Any deviation from these standards shall be approved by RMRTD in advance.

(5) The Contractor shall be responsible for coordination with the dispatcher and RMRTD with regard to any unusual occurrence that would cause service disruption, result in public complaints or inhibit the safety of the general public including, but not be limited to, crossing accidents, FRA code violations, false proceeds, crossing activation failures or any severe damage to the fixed plant. The

RMRTD dispatcher shall make notifications to law enforcement organizations, but Contractor shall also provide notification to insure public safety. The Contractor shall protect trains and initiate whatever measures are necessary to mitigate any such circumstances as described. The Contractor shall take steps to initiate plans to provide warning of approaching train to the public.

(6) Signal, wayside PTC systems and communication cases and apparatus shall be kept free of brush, graffiti, rust, and rodents.

(7) Only RMRTD approved replacement parts or parts identical to those being replaced shall be used to repair broken signal, wayside PTC systems and communication apparatus on a permanent basis.

(8) Temporary signal repairs shall be made permanent as soon as practicable.

b. Tests and Inspections

(1) All signal, wayside PTC systems and communication systems in use on the Property shall be tested and inspected by the Contractor to assure that they operate at a safe and reliable level. This shall be accomplished by periodic tests and inspection of RMRTD signal systems and apparatus as required by the Contractor's Standards, BNSF Standards, RMRTD's Standards (when issued), and any applicable rules and regulations, including those of the FRA (Parts 234 & 236), State, Manual on Uniform Traffic Control Devices (MUTCD), AAR, AREMA, and the RMRTD.

(2) Tests shall be performed and recorded no later than the scheduled due date indicated on the monthly FRA or RMRTD report of test compliance. All tests performed shall be recorded on forms provided by the Contractor for the test performed. Each form shall provide for triplicate copies, one to be retained at the signal location, one to be retained at the RMRTD signal maintenance facility, suitably indexed and filed for inspection by the Contractor and one to be retained by the Contractor for its records. The proposed forms shall be submitted to RMRTD for approval prior to use.

(3) Special Instructions for Maintenance of Highway Grade Crossing Signals

(a) General. In case of severe storms, inspections are to be made to insure that equipment is operating properly. When making inspections after electrical storms, visually inspect all arrestors and equalizers, check AC power and take ground reading on batteries.

(b) Accidents - Inspections and Tests. Inspections and tests for proper operations after a reported accident must be recorded.

(c) Test all crossings without altering any aspects of the crossing by performing

the following steps and complete a Post-Accident Investigation Form/Checklist.

- i. Place hardwire shunt in the island or center section
- ii. Check that all lights are lit during operation (AC/DC)
- iii. Check that bell operates (AC/DC)
- iv. Check that gate(s) and/or apparatus operate (AC/DC)
- v. Remove shunt upon completion of tests
- vi. Check voltage of applicable batteries (AC/OFF)
- vii. Check grounds on all applicable batteries and circuits (AC/DC)
- viii. Determine type of crossing controls and continue with applicable tests
- ix. The crossing sheet and post-accident form shall be forwarded to the appropriate person in charge showing accident inspection and any exceptions

(4) Filing of Forms. The Contractor shall be responsible for filing all necessary forms in a timely manner so as to comply with all FRA, rules, standards and instructions. This shall include, but not be limited to, FRA parts 233, 234, and 236. The Contractor shall develop the necessary forms for use by signal maintainers and shall retain copies of all forms and test results as a record of completion and compliance.

(7) The Contractor shall inspect and verify that any modifications or changes to any part of the RMRTD signal system, wayside segment PTC system and communication system by the Contractor, RMRTD contractors, or other contractors have been performed in accordance with approved test procedures. The test procedures shall be established by the Contractor in accordance with AREMA, FRA, manufacturer recommendation and industry standards / regulations. Other contractors shall submit, prior to beginning any work, plans showing proposed changes to the contractor for review as well as a complete schedule of work and testing. Test procedures shall be submitted indicating the proposed testing to be performed on a daily basis or as needed each time the signal system is returned to operation prior to movement of any trains. Such test procedures must be reviewed and approved by both the Contractor's and RMRTD's representatives prior to testing and connections or cutovers.

(8) It will be the responsibility of Contractor or its agent (who may be a Contractor Inspector) to ensure that work installed is in compliance with FRA, MUTCD, State, AAR, AREMA, and RMRTD Standards.

c. Inventory

(1) The Contractor shall provide the levels of signal material inventory necessary to maintain RMRTD's signal systems as required.

(2) The material storage area utilized by the Contractor shall be kept secure and in an orderly fashion at all times. All surplus materials or quantities above that needed for routine maintenance shall be stored at the material storage area unless otherwise approved by RMRTD

(3) Defective batteries shall be disposed of in an environmentally approved manner.

d. Signal Design

(1) Existing "as-built" plans shall be maintained in accordance with FRA regulations at all times. The Contractor is the "keeper of record" of signal plans in order to assure that proper revision levels are utilized. Any proposed signal changes and/or modifications to be performed by RMRTD or its contractor/designer shall be made on plans issued by the Contractor. Contractor shall provide "marked up" plans to RMRTD for revision and approval. Each set of plans requiring revision shall be "checked out" by the other party and shall not be modified until updates and/or revisions are complete. Costs associated with plan upgrades and modifications shall be reimbursed appropriately.

(2) Electronic copies of any changes made shall be forwarded to the RMRTD and the RMRTD Signal Records Contractor (currently Pacific Railway Enterprises, Inc.) by the Contractor in order to keep the RMRTD master set of plans current.

(3) Updated field (as-built) plans reflecting changes made shall be required within (30) business days of such field change.

(4) The Contractor shall keep correct, updated, and legible plans in signal cases or houses at all interlockings, control points, automatic signals, grade crossings, and any other location as required by law.

(5) For any and all Contractor-initiated changes, the Contractor shall furnish 6 complete paper sets of current line drawings and circuit plans and 6 electronic copies on CD ROM consistent with and of the same type and content as currently furnished by the Contractor's Signal Design Subcontractor(s). For historical purposes, the Contractor shall submit to RMRTD every year, within the first two (2) months of each calendar year, in a CADD format acceptable to RMRTD, a complete set of line drawings and circuit plans for the entire railroad.

(6) All electronic equipment requiring field programming in electronic format shall be documented for each device by location. This includes completely documented

software and firmware for signals, wayside PTC systems and communication systems. This information shall be retained for all vital logic control equipment; coded track equipment, data recorders, communication equipment, PTC equipment and any other device with electronic storage of user enter programs.

e. Supervisory Control Systems and PTC Communications Systems

(1) Redundant carrier lines shall be maintained in an operable condition at all times where such lines exist, and periodic testing/usage shall be performed to ensure their integrity.

(2) Where available, RMRTD communication facilities, including lines, wires, fiber optics, and radio frequencies shall be used.

(3) The Contractor shall provide all technical personnel required to maintain the train track Supervisory Control systems and PTC Communications Systems.

f. Highway Grade Crossings

(1) When requested, and with RMRTD approval, the Contractor shall provide information to the appropriate agency regarding railroad operations involving specific highway-rail grade crossings including, but not limited to, present passenger traffic; present maximum authorized track speed; and other conditions which may affect the planning for and prioritization of crossing improvements.

(2) Grade crossing gates, lights, and wires shall be properly attached to apparatus using appropriate devices.

(3) View conditions at crossings shall not be obstructed by brush, weeds, or trees on the right-of-way in order to provide a clear view of approaching trains or motorists.

(4) All existing crossing recording devices shall be remotely accessible and individually addressable, so that one communication line can be used for multiple devices. Recording devices will be installed on new crossing installations. Existing locations will not be modified to include recording devices.

(5) Broken crossing gates will be repaired as soon as possible upon notification. Upon receipt of a credible report of any type of crossing warning system defect, damage, false activation or activation failure, the dispatcher must first take action to protect trains and motorists using the crossing. This protection shall be in compliance with FRA Part 234.101 through 234.109 regulations.

(6) Gate counterweight arms, where not constructed of aluminum, will be kept painted and in a good state of appearance.

(7) The Contractor shall maintain automatic grade crossing warning signals to be activated by trains approaching on main tracks through track circuits or by electronic controls in accordance with MUTCD, AREMA, FRA and State standards to accommodate the existing maximum authorized train speeds and provide crossing approach distances of sufficient length to accommodate the existing maximum authorized track speeds.

g. Wayside Signals and Interlockings

(1) Focus of signals shall be maintained to provide the optimal sight distance at all times.

(2) Wires and connectors shall be properly bootlegged and connected to crossties and rails to avoid exposure to mechanical damage and/or vandalism.

(3) Signal number plates shall be properly displayed so that signal identification is clearly visible from the ground or by locomotive engineers.

(4) Signal lamp change-out records showing last date changed shall be kept at each signal location. Signal lamps shall be changed on an annual basis where lamps with filaments are utilized.

(5) Up-to-date copies of the FRA required tests of signal apparatus shall be kept in the signal instrument housing at all times.

(6) All signal apparatus (e.g., signal houses, cases, signals, switch machines, circuit controllers, crossing mechanisms that are not aluminum, stainless steel or other non-corrosive material) shall be repainted as needed.

h. Reporting Requirements

(1) Monthly Report on FRA Test Compliance: All tests required to be performed on NMDOT or RMRTD property shall be included in this report. The report shall include the location and rule or test number, the test due date and the completed date.

(2) Signal Material Loss Report shall be provided whenever signal and communication materials are lost due to theft, accident, or vandalism on forms provided by RMRTD.

(3) FRA False Proceed Report:

(a) An oral report will be made immediately. A preliminary written report shall be provided to RMRTD within twenty-four (24) hours of the reported false proceed.

(b) The final report shall be submitted to RMRTD within fifteen (15) days of the

false proceed. The report shall be filed on Form FRA F6180-14.

(4) FRA Highway-Rail Grade Crossing Warning System Failure Report:

(a) A verbal report will be made immediately. A preliminary written report shall be provided to RMRTD within twenty-four (24) hours of the reported false proceed.

(b) The final report shall be submitted to RMRTD within fifteen (15) days of the false proceed. The report shall be filed on Form FRA F6180-83.

i. Communications equipment for MOW Services necessary to RMRTD, including two-way radio systems, or RMRTD-owned telephone systems will be maintained to a reliable level of service in compliance with State or Federal Communications Commission (FCC) regulations.

j. Signal and Communications Personnel Qualifications and Requirements

(1) The Contractor shall provide supervisory personnel who, as a minimum:

(a) Can and do provide inspection of FRA and State reports to verify their compliance and accuracy.

(b) Are capable of and do directly supervise all signal, wayside PTC and communications employees.

(c) Are qualified to program, adjust, test, and troubleshoot all signal appliances wayside segment PTC equipment and communications equipment and appurtenances on NMDOT/RMRTD property.

(d) Are qualified in all FRA, State, AAR, AREMA, MUTCD, and RMRTD regulations.

(e) Are capable of and do supervise and participate in training and certification of all maintainers and inspectors.

(f) Are qualified on roadway worker safety rules and regulations and track and time rules and regulations.

(g) Are provided with a vehicle equipped with two-way radio complete with outside speaker, LED or strobe warning lights (minimum 4), reflective markings and tools and equipment necessary to perform signal maintenance supervision. Supervisors shall be provided with fluorescent orange or lime yellow clothing trimmed in reflective material including a safety vest, winter coat and rain suit.

(2) Inspectors: The Contractor shall provide inspector personnel who, as a

minimum:

(a) Can and do provide inspection and testing required by the FRA, State, and RMRTD and complete reports in a timely fashion.

(b) Are qualified to program, adjust, test, and troubleshoot all signal, wayside PTC and communications appliances and appurtenances.

(c) Are qualified in all FRA, State, MUTCD, AAR, AREMA, and RMRTD regulations.

(d) Participate in training and certification of maintainers at the supervisor's direction.

(e) Are qualified on roadway worker safety rules and regulations and track and time rules and regulations.

(f) Are provided with a vehicle equipped with two-way radio complete with outside speaker, cellular telephone, LED or strobe warning lights (minimum 4), reflective markings and tools and equipment necessary to perform signal inspection. Inspectors shall be provided with fluorescent orange or lime yellow clothing trimmed in reflective material including a safety vest, winter coat and rain suit.

(3) Maintainers: The Contractor shall provide maintainer personnel who, as a minimum:

(a) Can and do provide inspection and testing required by the FRA, State, and the RMRTD on their assigned territories.

(b) Are qualified in all FRA, State, and RMRTD regulations.

(c) Are qualified to program, adjust, test, and troubleshoot all signal, wayside PTC and communications appliances and appurtenances.

(d) Are qualified on roadway worker safety rules and regulations and track and time rules and regulations.

(e) Are provided with a hi-rail vehicle equipped with shunts, two-way radio complete with outside speaker, cellular telephone, LED or strobe warning lights (minimum 4), reflective markings and tools and equipment necessary to perform signal maintenance. Maintainers shall be provided with fluorescent orange or lime yellow clothing trimmed in reflective material including a safety vest, winter coat and rain suit.

(4) Signal Gang: The Contractor shall have available within four hours after notification, a signal gang consisting of a foreman and three signalmen, boom

truck, backhoe, trencher and tools and equipment necessary to repair and/or replace any signal mast, cantilever, bungalow, power switch, electric lock or other signal device, wayside PTC device or communications device located along the right-of-way that has been vandalized, or damaged due to accident or derailment or in any way becomes inoperative and is delaying movement of trains. All signal gang members shall be qualified on RMRTD roadway worker safety rules.

5. Bridges, Trestles, and Culverts

a. General

(1) The Contractor shall inspect and maintain all bridges, culverts, pedestrian overpasses, tunnels and structures to insure a safe and reliable service. All maintenance shall be performed by the Contractor in accordance with/to FRA, AAR Standards and AREMA recommended practices and in accordance with RMRTD Maintenance Standards. If extensive maintenance is required, the Contractor shall notify RMRTD immediately.

(2) Under-grade track bridges, trestles, and culverts will be kept free of debris, vegetation, trash, and other obstructions or objects so that waterways are clear and there are no combustibles that could cause a fire.

(3) Capital bridge replacement will be the responsibility of RMRTD. Routine bridge maintenance/ repairs referenced in Section 3A(6)(a)v will be the responsibility of the Contractor. If in excess of routine bridge maintenance / repairs, the Contractor shall notify RMRTD immediately.

(4) All railroad bridges, structures, culverts, and manholes will be inspected annually. All highway overhead bridges across railroad tracks, regardless of ownership, will be observed for any unusual conditions and reported to the proper authorities. Bridge repairs recommended by the Contractor's Bridge Inspector will be completed in the fiscal years designated by the Inspector.

(5) The Contractor shall keep all bridge seats clean and free of debris at all times.

(6) Retaining walls and piers of all types will receive minor maintenance to preserve these structures.

(7) All bridge walkways, handrails, and other bridge appurtenances will be maintained in accordance with RMRTD and applicable State or other standards.

(8) The Contractor shall safely attach and/or remove banners, posters and signage to/from bridges as requested by RMRTD.

(9) The Contractor shall remove all unauthorized attachments immediately after reported or found during inspection.

b. Inspections

(1) The Contractor shall perform inspections on the following listed structures and other structures within the System Property including, but not limited to, bridges, culverts, building structures, structural components and improved and unimproved roads on NMDOT/RMRTD property.

(2) If a bridge is damaged by a third party, RMRTD or Contractor shall determine if additional inspection is required. If an additional inspection is made, the reasonable cost of the inspection shall be reimbursed by RMRTD.

c. Bridges

(1) The Contractor shall cause to be performed at its own expense an annual independent inspection of all bridges on the Property documented on forms approved by the RMRTD which will be consistent with AREMA - 01 recommended practice and all applicable federal and state requirements. These inspection reports, managed through the Transit Asset Management System, shall include photographs depicting the conditions of the bridges and will also include recommendations for improvements and repairs, a time schedule for repairs and a cost estimate for the repairs recommended. The contractor shall conduct a debrief of the annual inspection with RMRTD and NMDOT to prioritize maintenance and capital maintenance of bridges. Additionally, if requested, contractor shall produce maintenance plans that detail maintenance fixes, including required materials and materials cost estimates. These plans will be utilized to program annual bridge maintenance program in section 3(v) herein and capital bridge maintenance work. The reasonable cost of the bridge maintenance plan preparation shall be reimbursed by RMRTD. Additional periodic or more detailed inspections may be required as a result of the annual inspections. Updating the bridge list is part of this requirement

(2) The Contractor shall comply with all bridge and structure inspection requirements of the U. S. Department of Homeland Security.

(3) The Contractor shall ensure that its personnel includes a qualified Railroad Bridge Inspector, as defined in the Railroad Bridge Safety Program, and that such personnel is available to respond to emergency events at all times. In the event of an emergency, as defined by the Railroad Bridge Safety Program, the Contractor shall immediately inspect the affected bridge(s) to establish if trains may proceed over the bridge(s) and whether speeds must be reduced until further inspection and evaluation determines that normal operations may resume, and advise the RMRTD COO of further remedial actions as necessary.

d. Culverts

- (1) The Contractor shall perform annual culvert cleaning
- (2) The Contractor shall maintain and install culvert markers
- (3) The Contractor shall repair and maintain all culverts

e. Drainage Systems

The Contractor shall keep all ditches and drainage systems clean and free of obstructions and objects so as to allow for unimpeded drainage.

6. Rail Lines Maintenance Responsibilities of the Contractor. The Contractor's Rail Lines Maintenance and Repair responsibilities, which do not include capital programs, shall include, without limitation, the following:

a. Spot replacement of defective crossties shall be the responsibility of the Contractor. Relay or new material may be used.

b. Repair/restoration of grade crossings: The Contractor shall make all minor repairs at grade crossings (i.e., patching asphalt, repairing, anchoring or replacing loose timbers, shaving high asphalt.) RMRTD shall pay for all materials, equipment and subcontractors and any premium time associated with repairs other than minor repairs.

c. As needed (out-of-face) surfacing and lining including addition of new ballast as required. Track surfacing and lining shall be supported by a signal maintainer to locate and mark track wires, shunts, tuned joint couplers, etc. The signal maintainer shall make immediate repairs to any device(s) damaged during surfacing and lining.

d. Replacement of broken or defective rails as determined by visual or ultrasonic inspection, detector car, observation or service failure. All defective rail shall be cut into smaller pieces and segregated from new or relay rail until such time as it is properly disposed of.

e. Turnout timber replacements to meet FRA class requirements. The Contractor shall spot replace turn out ties as needed. Turn out ties shall be new on the Mainline Tracks and may be relay materials on the Spur Lines.

f. Minor repair or replacement of frogs, switch points, stock rails, and/or other turnout components.

g. Gauging track and adjusting rail anchors.

- h.** Repair of insulated joints.
- i.** “Spot” tamping to restore line and surface. All locations receiving spot ties will be spot tamped.
- j.** Placement of ballast.
- k.** Ballast regulating.
- l.** Field welding and grinding associated with ordinary repairs.
- m.** Lubricating joints.
- n.** Incidental installation of new or reformed joint bars. Replacing/tightening track bolts.
- o.** Ultrasonic rail and concrete tie inspections twice per year.
- p.** Prior to use on the Property, relay rail will be tested by a method satisfactory to the RMRTD to ensure it safe to be used and the method and date of testing shall be printed on the rail.
- q.** Track shimming.
- r.** Incidental replacement of other track materials.
- s.** Vegetation control.
- t.** Reasonable ROW litter control/clean-up with the understanding that any litter in the immediate vicinity of the track area will receive special attention.
- u.** ROW Fencing
- v.** Repairing crossing gates or other crossing warning/protection device apparatus.
- w.** Maintaining curve lubricators.
- x.** Replacing wiring in a signal “bootleg” or replacing relays in a signal case.
- y.** Repairs of damages to rail line caused by derailments or other accidents where such repairs fall within the terms and limits otherwise described above or elsewhere in this Contract.
- z.** Replacing punch bonds and track connections with welded bonds.
- aa.** Replacing switch machine layouts.

6. Clearances. New construction and temporary facilities will conform to New Mexico Department of Transportation (NMDOT) Clearance Standards.

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APPENDIX 6.14

REQUEST FOR PROPOSALS

RFP#: 2013-01

PTC / DISPATCH / COMMUNICATIONS RESPONSIBILITIES

APPENDIX 6.14

Positive Train Control / Dispatch / Communications Responsibilities

1. Systems to be Maintained

The Contractor shall be responsible for maintaining all aspects of the NMRX Dispatch system (TMDS), the NMRX PTC system (I-ETMS mixed system) [including, but not limited to, back office segment, on-board segment, wayside segment, track database and communication segment (Territory wide Wi-Fi, common carrier cellular data devices, PTC 220 MHz Interoperable wireless network)], other NMRX communications networks [including the 800Mhz-900Mhz signal/dispatch network, the two-way radio network, on-board Wi-Fi and individual station networks] Contractor will be responsible for all aspects of network maintenance up to the common carrier circuits used to backhaul the individual networks.

The Contractor shall be responsible for maintaining the track database (Sub-div) in accordance with the PTCSP, OMM and applicable configuration management manuals. RMRTD will maintain and be financially responsible for the necessary Wabtec I-ETMS and TMDS licensing and maintenance Agreements related to track database changes. Contractor will act as executor of these Agreement and will work with RMRTD to ensure the proper agreements are in place at the appropriate support levels. Contractor will perform all required validation activities

The Contractor shall be responsible for all required testing (including lab testing), validation, auditing and inspections of the PTC system detailed in the PTCSP, OMM and applicable vendor documents. RMRTD will maintain and be financially responsible for the necessary Wabtec I-ETMS and TMDS licensing and maintenance agreements, MeteorComm ITCM licensing & agreements, PTC 220 LLC licensing & agreements, All FCC licensing & agreements and other third-party agreements necessary to operate the NMRX PTC system, dispatch system and Communication systems. Contractor will act as executor of these Agreements and will work with RMRTD to ensure the proper agreements are in place at the appropriate support levels.

2. PTC Configuration and Change Management

The Contractor shall provide a PTC Manager responsible for ensuring that RMRTD is compliant with its internal configuration and change management plans and processes, and its external Interoperable Train Control (ITC) configuration and change management obligations. The PTC Manager and the General Manager will be responsible for ensuring all MOW, MOE and Communications personnel involved in PTC maintenance have the required

knowledge and training to perform work on the PTC systems. Additionally, the PTC Manager and General Manager will be responsible for ensuring that MOW, MOE and Communications personnel do not alter any elements of the NMRX that would have an adverse effect on PTC operations without those changes going through the document configuration and change management process described herein.

The Contractor shall

a. The PTC Manager shall assume the Configuration and Change Manager roles described in the PTCSP and referenced document, including the *PTC Hardware and Software Configuration Management Plan (CMP)* and *Subdivision File and Critical Asset CMP* (copies available upon request). Tasks include, but are not limited to, managing the NMRX baseline, overseeing all changes to the baseline (i.e., initiating and processing change request), auditing the baseline, running change control board meetings, performing required validation work and testing (including lab testing), etc.

b. As RMRTD has only recently implemented PTC, the PTC Manager shall also develop and implement a fully documented configuration and change management plan that builds upon the current documents and procedures. The plan will be developed in consultation and approved by RMRTD. The PTC Manager shall also complete the following tasks in close cooperation with RMRTD staff to mature RMRTD's configuration and change management practices as part of the plan development:

(1) Procure and maintain a CM tool to manage the configuration item (CI) library and process change requests. The CM tool shall also serve as a repository for important PTC documents, software, release notes, test results, training materials/records, etc.; and should ideally integrate with the PTC help desk. RMRTD staff shall be given access to the CM tool and have the ability to export/download data and documents. This export/download ability must be in a non-proprietary format, contain 100% of the data and data labels, and allow for import into COTS database application.

(2) Identify CIs and accompanying artifacts that will comprise the NMRX baseline, as well as any other PTC documents, software, release notes, test results, training materials/records, etc. that will be stored in the CM tool.

(3) Develop more detailed change management, auditing, and other procedures as called out in the CMPs.

(4) Reconcile differences between the two CMPs and the [Signal] *Software Management Plan*. In particular, the *Subdivision File and Critical Asset CMP* and *Software Management Plan* were approved prior to the drafting and approval of the *PTC Hardware and Software CMP*. Consequently, the former two plans

don't align as well as they could with the *PTC Hardware and Software CMP*, and there is considerable opportunity to coordinate the three plans.

c. The PTC Manager shall be responsible for all interoperable configuration/change management duties including, but not limited to:

(1) Coordinating changes with interoperable railroads (e.g., issuing event notifications) in conformance with the *Interoperable Change Management Policies and Procedures Manual*.

(2) Assuming Standard User, Railroad Configuration Manager, Railroad Change Manager, ILM Reports and any other railroad-level roles in the Interoperable Lifecycle Management (ILM) system, which is used for interoperable configuration and change management. At the time of this RFP, RMRTD had completed the NMRX interoperable baseline in the ILM system and is actively submitting change requests and reviewing other railroads' change requests in the ILM system.

(3) Representing NMRX as a voting member at Interoperable Change Approval Board (ICAB) meetings and submit/review all interoperable change requests through the ILM system. At the time of this RFP, this committee meets each Wednesday from 12:00pm-1:00pm Mountain Time.

(4) Representing NMRX at ITC Configuration and Change Management (CCM) meetings. At the time of this RFP, this committee meets each Friday from 12:00pm-1:00pm Mountain Time.

(5) Representing NMRX at Interoperable Lifecycle Management (ILM) meetings, as appropriate. At the time of this RFP, this committee meets each Thursday from 11:00pm-12:00pm Mountain Time.

(6) The PTC Manager's responsibilities described in Section 2c shall not preclude RMRTD employees from likewise participating in interoperable configuration/change management or other ITC forums.

(7) If a change to the PTC system requires a Request for Amendment (RFA) to the PTCSP or any other PTC document, the PTC Manager shall be responsible for preparing the RFA in cooperation with RMRTD and coordinating the submission, review and approval of the RFA with the FRA.

3. Dispatch and PTC Back Office Support and Hosting Services

The Contractor shall provide maintenance and hosting services for the NMRX CAD System (CAD) and the NMRX PTC Back Office Systems (BOS), including the Interoperable Train Control Messaging System (ITCM). Hosting will include:

- I. High-Availability connection to CAD, BOS and ITCM from the NMRX Dispatch Center in Albuquerque and the ability to perform dispatching / BOS functions from multiple locations in Albuquerque during emergencies
- II. Management of the end user CAD workstation configurations in Albuquerque including assistance with redundant circuit configuration and security.
- III. High Availability connection of systems to the Federated Network including Wabtec's NMRX PTC Lab environment
- IV. Maintenance of infrastructure including high availability and redundancy
- V. Maintenance of database, application, or other servers and clusters related to the CAD, BOS and ITCM
- VI. CAD, BOS and ITCM software updates both scheduled and non-scheduled. (anticipated scheduled updates: TMDS Updates 4 per year, BOS Updates 2/year, ITCM as needed)
- VII. Geographically redundant datacenters with disaster recovery support
- VIII. Load balancing setup and maintenance
- IX. Performance tuning as needed to maximize performance
- X. Hardware refresh of servers and equipment involved in supporting CAD, BOS and ITCM systems at a minimum every 36-months or as agreed to by Contractor and RMRTD
- XI. Firewall setup and Maintenance
- XII. Management and maintenance of all System Software and Updates
- XIII. Data center operating system management and updates
- XIV. 24/7/365 operations, with support individuals available

a. Contractor shall provide periodic failover testing of the Hosed service. During failover testing, Contractor will monitor CAD, PTC BOS ITCM and related applications performance, record test results and provide results to RMRTD

b. Contractor shall implement PTC messaging monitoring and real time alerts, from all BOS components. Monitoring shall alert Contractor of any abnormalities in the PTC messaging flows, such that immediate action can be taken by Contractor.

c. RMRTD will manage the software account(s) related to the CAD, PTC BOS, ITCM and related applications. RMRTD will maintain and be financially responsible for the necessary Wabtec PTC and CAD maintenance Agreements. Contractor will act as executor of these Agreement and will work with RMRTD to ensure the proper agreements are in place at the appropriate support levels.

d. The annual fee for Meteorcomm ITCM Back Office and Onboard licensing will be the responsibility of RMRTD. Contractor will act as executor and coordinate with RMRTD to ensure licensing agreements are in place.

e. If hosting requires a Request for Amendment (RFA) to the PTCSP or any other PTC document, the PTC Manager shall be responsible for preparing the

RFA in cooperation with RMRTD and coordinating the submission, review and approval of the RFA with the FRA.

4. PTC Support and Maintenance Services

The Contractor will be responsible for coordinating and providing PTC support and maintenance service for the NMRX PTC System. The Contractor shall provide sufficient qualified personnel for the performance of services to support and maintain the NMRX PTC system. All work shall be completed in compliance with AREMA recommended practices, RMRTD Specification and Approved Products, FRA requirements, the PTCSP including referenced documents, the OMM and related vendor manuals.

Contractor shall maintain and administer the OMM, PSP, PTCSP (including sub-manuals and referenced document). Contractor shall maintain all federally required documents relating to the installation, maintenance, repair, modification, inspection and testing of the PTC system. Contractor shall maintain the RMRTD master set of documents. These Documents must be available on the property for review by RMRTD, FRA and other authorized individuals. Contractor will comply with all requirements for record keeping in accordance with the OMM, PSP, PTCSP, relevant sections of the CFR and all federal requirements. If a change to the PTC system requires a Request for Amendment (RFA) to the PTCSP or any other PTC document, the PTC Manager shall be responsible for preparing the RFA in cooperation with RMRTD and coordinating the submission, review and approval of the RFA with the FRA.

a. 24/7/365 CAD / PTC Help Desk Support Operations.

(1) The Contractor shall provide 24/7/365 PTC Help Desk Support Operations for the benefit of RMRTD and the Contractors Operation and Maintenance personnel. PTC Help Desk Support responsibilities shall include:

- I. Tier 1, Level 1: First level customer support representative to provide basic troubleshooting steps to operation and field crews and checks all wayside, locomotive and monitoring tools from the Help Desk Operations 24/7/365.
- II. Tier 1, Level 2 and Level 3: As determined by the issue, severity level and requirements for additional support. Level 2 and Level 3 Tier 1 support shall provide a higher level of troubleshooting support by advanced PTC technicians with extensive experience supporting I-ETMS.
- III. Tier 2: Contractor shall provide a PTC Product Support Desk to provide Tier 2 support for report of an incident or railroad

operations impact that cannot be resolved in the Tier 1 support process or has been identified as a failure by the PTC Help Desk requiring non-field support. The PTC Product Support Desk shall provide troubleshooting consulting and escalate issues to the appropriate advance support segment when necessary for advanced, detailed analysis. The PTC Product Support Desk shall attempt to identify the cause of and resolve the incident or otherwise escalate the incident to Tier 3 support

- IV. Tier 3: RMRTD and Contractor will maintain 3rd Party maintenance agreements for CAD and PTC maintenance with Wabtec as indicated in section 3 above and Tier 2 support must be able to escalate issues to appropriate individuals without RMRTD intervention.
- V. Help Desk Operations shall include the creation and updating of incident reports as necessary to resolution of the incident and to provide a complete troubleshooting and incident resolution process and record to maintain a history and improve the PTC Help Desk process
- VI. 24/7/365 support with appropriate resources to resolve issues
- VII. Coordination with NMRX related on-site personnel and other resources to respond to PTC failures and issues for troubleshooting and repair including, but not limited to:
 - i. Initialization failures (RMRTD, and tenant railroads)
 - ii. In-route failures (RMRTD, and tenant railroads)
 - iii. Communication failures (RMRTD)
 - iv. On-board equipment failures (RMRTD)
 - v. Wayside PTC failures (RMRTD)
- VIII. Coordinate with tenant railroad Help Desks as required
- IX. Document and track multiple metrics and ensure issues are reported and satisfactorily tracked to resolution and close out
- X. Provide log analysis to include access to wayside, communication, network, onboard and back office systems.
- XI. Issue metrics to identify and recommendation for operational efficiencies.

(2) The Contractor shall coordinate all levels of Help Desk Support with the appropriate field and administrative personnel (Contractors, RMRTD, tenants, etc.) to ensure troubleshooting of the entire PTC system is carried out in a systematic manner to issue resolution and ensure that all issues are tracked, thoroughly documented, and a history maintained.

b. PTC Wayside Signal Maintenance

The Contractor shall maintain NMRX Wayside Interface units (WIUs) and those communication devices responsible for transporting Wayside Status Messages.

This shall include required routine testing, trouble response and issue resolution, hardware replacements, software updates configuration changes and other related tasks. Repairs to the NMRX Wayside PTC system shall be in accordance with NMRX PTCSP including referenced documents and comply with all requirements of the RMRTD PTC Configuration Management Plan (PTCCMP). Any changes in the NMRX PTC System shall be fully documented as required in the PTCSP and PTCCMP. If a change to the PTC system requires a Request for Amendment (RFA) to the PTCSP or any other PTC document, the PTC Manager shall be responsible for preparing the RFA in cooperation with RMRTD and coordinating the submission, review and approval of the RFA with the FRA.

(1) Contractor shall provide wayside signal hardware and software inspection, support and maintenance as defined in the NMRX PTCSP including referenced documents. Defective PTC hardware shall be replaced in accordance with the original equipment manufacturer's specification and the NMRX PTCSP including referenced documents. All repairs will be coordinated with the General Manager, PTC Change Control Board and relevant personnel.

(2) To the extent currently possible and as may evolve over the life of the contract, Contractor will provide remote monitoring of the NMRX Wayside PTC System equipment from its Hosting and/or Help Desk Operations including the I-ETMS system, communication devices, WIU's, etc. The Contractor shall initiate troubleshooting and issue resolution in the event monitoring indicates the Wayside PTC System is failing to perform as intended.

(3) Contractor shall be responsible for troubleshooting, issue resolution and support of all Wayside PTC System components, inclusive of wayside communication, and replacement of identified failing components.

(4) Contractor shall employ staff to maintain the Wayside PTC systems and provide all PTC components, materials, supplies and equipment, except for items listed in Exhibit E, which is the RMRTD inventory. The materials and equipment listed in Exhibit E are owned by the RMRTD or the NMDOT and will be made available to the Contractor for the provision of commuter rail service. The Contractor shall be responsible for maintaining necessary items in the inventory during the life of the Contract. Replacement items valued at \$5,000 or greater per unit cost are eligible for reimbursement by RMRTD and will qualify for an administrative markup fee of 2% as specified in Appendix 6.16.

c. PTC On-Board Maintenance

The Contractor shall maintain NMRX On-Board PTC Systems and those

communication devices responsible for transporting On-Board PTC Data and Messages. This shall include required routine testing, trouble response and issue resolution, hardware replacements, software updates configuration changes and other related tasks. Repairs to the NMRX On-Board PTC system shall be in accordance with NMRX PTCSP including referenced documents and comply with all requirements of the RMRTD PTC Configuration Management Plan (PTCCMP). Any changes in the NMRX PTC System shall be fully documented as required in the PTCSP and PTCCMP

(1) Contractor shall provide remote monitoring of NMRX On-Board PTC equipment from its Hosting and/or Help Desk Operations including the I-ETMS system, 220 MHz radios, cellular/Wi-Fi devices, and Train Manage Computer (Slot-10). The Contractor shall initiate troubleshooting and issue resolution in the event the monitoring indicates the PTC On-Board System is failing to perform as intended.

(2) Contractor shall provide On-Board PTC hardware and software inspection, support and maintenance as defined in the NMRX PTCSP including referenced documents. Defective PTC hardware shall be replaced in accordance with the original equipment manufacturer's specification and the NMRX PTCSP including referenced documents. All repairs will be coordinated with the General Manager, PTC Change Committee and relevant personnel.

(3) Contractor shall be responsible for troubleshooting, issue resolution and support of all On-Board PTC System components, inclusive of communications, and replacement of identified failing components

(4) Contractor shall employ staff to maintain the On-Board PTC system and provide all PTC components, materials, supplies and equipment, except for items listed in Exhibit E, which is the RMRTD inventory. The materials and equipment listed in Exhibit E are owned by the RMRTD or the NMDOT and will be made available to the Contractor for the provision of commuter rail service. The Contractor shall be responsible for maintaining necessary items in the inventory during the life of the Contract. Replacement items valued at \$5,000 or greater per unit cost are eligible for reimbursement by RMRTD and will qualify for an administrative markup fee of 2% as specified in Appendix 6.16

d. PTC Communications Maintenance.

(1) The Contractor shall monitor PTC 220 MHz radios and shall notify the appropriate personnel, including third party vendors as applicable, to initiate troubleshooting and issue resolution in the event the RMRTD Communications System is failing to perform as intended.

(2) The Contractor shall monitor PTC Communications Segment Cellular and Wi-Fi devices and shall notify the appropriate personnel, including third party vendors as applicable, to initiate troubleshooting and issue resolution in the event the RMRTD Communications System is failing to perform as intended.

(3) The Contractor shall monitor applicable software releases and will notify the RMRTD when software updates are recommended or required in accordance PTC Configuration and change Management section of this appendix . As applicable, contractor shall perform functional and integration test efforts, as well as log pulling and analyses.

(4) Contractor shall be responsible for troubleshooting, issue resolution and support of all PTC Communication Segment components and replacement of identified failing component

(5) Contractor shall employ staff to maintain the PTC Communication systems and provide all PTC components, materials, supplies and equipment, except for items listed in Exhibit E, which is the RMRTD inventory. The materials and equipment listed in Exhibit E are owned by the RMRTD or the NMDOT and will be made available to the Contractor for the provision of commuter rail service. The Contractor shall be responsible for maintaining necessary items in the inventory during the life of the Contract. Replacement items valued at \$5,000 or greater per unit cost are eligible for reimbursement by RMRTD and will qualify for an administrative markup fee of 2% as specified in Appendix 6.16

5. Communications Support Services

In addition to PTC related communication systems, Contractor shall be responsible for monitoring and maintaining all NMRX communication systems including the NMRX Wi-Fi system, on-board Wi-Fi subsystem, NMRX Station networks, all CAD and Signal communications, cellular data devices, two-way radio network.

Contractor shall employ staff to maintain the NMRX Communication systems and provide all components, materials, supplies and equipment, except for items listed in Exhibit E, which is the RMRTD inventory. The materials and equipment listed in Exhibit E are owned by the RMRTD or the NMDOT and will be made available to the Contractor for the provision of commuter rail service. The Contractor shall be responsible for maintaining necessary items in the inventory during the life of the Contract. Replacement items valued at \$5,000 or greater per unit cost are eligible for reimbursement by RMRTD and will qualify for an administrative markup fee of 2% as specified in Appendix 6.16

6. Training of Personnel

Contractor shall be responsible for performing all federally required PTC training, including training required in the PTCSP. Training shall be conducted and documented in accordance with the PTCSP and other federal requirements.

7. Reporting

Contractor shall be responsible for all federally required PTC reporting, including reporting required in the PTCSP, OMM, PSP, and other railroad specific PTC documents. Contractor shall work with RMRTD and the Change Management Committee to identify further reporting to be including in Contractor's monthly, as needed, and annual reporting requirements

APPENDIX 6.15

REQUEST FOR PROPOSALS

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PRICING INSTRUCTIONS AND TABLE

APPENDIX 6.15

Pricing Instructions

The Pricing Table shall be completed and submitted with the response to RFP.

Prices for the first two years of the contract shall be provided. Price will be evaluated based on a 5-year contract. Evaluation of the Price component of the RFP will be as follows:

Base Proposal Price: The base proposal price will include the following Line Items from the Pricing Table – 1A, 2, 3A, 3B, 4A, 4B, 5A, 5B, 6A, 6B, 7A, 7B, 8A, 8B. RMRTD will use a 1.02 multiplier to Line Item 2 compounded annually to determine years 2-5 of the management fee. Similarly, RMRTD will use a 1.02 multiplier on the Annualized Extended Price for Line Items 3B, 4B, 5B, 6B, 7B and 8B compounded annually to determine costs for years 3-5 for each Line Item. The Base Proposal Price will be worth 23 points of the available 30 and will be scored as follows:

Lowest Base Proposal Price

This Base Proposal Price X 24 = Award Points

PTC / Dispatch Hosting Services Price (PTC/CAD HSP): The PTC/CAD HSP will include the following Line Items from the Pricing Table – 1B, 9A, 9B. RMRTD will use a 1.02 multiplier to Line Item 9B compounded annually to determine years 3-5 for the Line Item. The PTC/CAD HSP will be worth 5 points of the available 30 and will be scored as follows:

Lowest PTC/CAD HSP Price

This PTC/CAD HSP Price X 5 = Award Points

The last point will be awarded base on the remaining Line Items. The 5-year price will be determined in the same manner above, and points will be awarded according to the same formula.

RMRTD desires to deal with only one Contractor for all contemplated services identified in this RFP but may remove PTC / Dispatch Hosting Services and 24/7/365 CAD / PTC Help Desk Support Operation as detailed in Appendix 6.14 Section 3 and Section 4a. from the contract if it is determined to be in the best interest of RMRTD. Offerors shall include these services in their proposals and in the Pricing Table.

Pricing Line-Item Instructions

Line Item 1A: Mobilization. The complete cost of mobilization with the exception of setting up the PTC / CAD hosting environment and Help Desk Operation detailed in Appendix 6.14 Section 3 and Section 4a. shall be included as a lump sum.

Line Item 1B: PTC / CAD Hosting Mobilization. The complete cost of setting up the PTC / CAD hosting environment and Help Desk Operation detailed in Appendix 6.14 Section 3 and Section 4a. shall be included as a lump sum.

Line Item 2: Management Fee. Costs shall include the annual cost of management of the contract, including the Contractor's General Manager, direct reports to the General Manager, administrative cost and administrative support.

Line Item 3A: Year One Train Operations Responsibilities / Crew. Costs shall include the hourly rate for train operations for year one of the contract based on the annual quantity of train hours run (12,500). Costs shall include all crew costs. This includes a base of 12 full time fare collection agents and 9 full time train security officers for the entire operation. Cost shall also include the Contractor provided on-line / mobile application ticketing platform. (For the ticketing platform, only include annualized management fees if any. If the ticketing platform model is based on a per transaction fee include that fee as a footnote on the bottom of the pricing sheet.)

Line Item 3B: Year Two Train Operations Responsibilities / Crew. Costs shall include the hourly rate for train operations for year two of the contract based on the annual quantity of train hours run (12,500 hours). Costs shall include all crew costs as described in Appendix 6.11. This includes a base of 12 full time fare collection agents and 9 full time train security officers for the entire operation, and the Contractor provided on-line / mobile ticketing platform (For the ticketing platform, only include annualized management fees if any. If the ticketing platform model is based on a per transaction fee include that fee as a footnote on the bottom of the pricing sheet.)

Line Item 4A: Year One Locomotive Maintenance. Cost shall include the per mile rate for year one of the contract based on the annual quantity of locomotive miles (450,000). Line Items 4-6 costs shall include all aspects described in Appendix 6.12

Line Item 4B: Year Two Locomotive Maintenance. Cost shall include the per mile rate for year two of the contract based on the annual quantity of locomotive miles (450,000). Line Items 4-6 costs shall include all aspects described in Appendix 6.12

Line Item 5A: Year One Coach Car Maintenance. Cost shall include the per mile rate for year one of the contract based on the annual quantity of Coach Car miles (875,000). Line Items 4-6 costs shall include all aspects described in Appendix 6.12

Line Item 5B: Year Two Coach Car Maintenance. Cost shall include the per mile rate for year two of the contract based on the annual quantity of Coach Car miles (875,000). Line Items 4-6 costs shall include all aspects described in Appendix 6.12

Line Item 6A: Year One Cab Car Maintenance. Cost shall include the per mile rate for year one of the contract based on the annual quantity of Cab Car miles (560,000). Line Items 4-6 costs shall include all aspects described in Appendix 6.12

Line Item 6B: Year Two Cab Car Maintenance. Cost shall include the per mile rate for year two of the contract based on the annual quantity of Cab Car miles (560,000). Line Items 4-6 costs shall include all aspects described in Appendix 6.12

Line Item 7A: Year One Track, Signal and ROW Responsibilities. Cost shall include the annual cost of all track, signal and ROW maintenance for year one of the contract. Costs shall include all aspects described in Appendix 6.13.

Line Item 7B: Year Two Track, Signal and ROW Responsibilities. Cost shall include the annual cost of all track, signal and ROW maintenance for year two of the contract. Costs shall include all aspects described in Appendix 6.13.

Line Item 8A: Year One PTC / Dispatch / Communications Responsibilities. Cost shall include the annual cost of all PTC / dispatch / communication responsibilities for year one of the contract. Costs shall include all aspects described in Appendix 6.14, except for those called out in Section 3 and Section 4a.

Line Item 8B: Year Two PTC / Dispatch / Communications Responsibilities. Cost shall include the annual cost of all PTC / dispatch / communication responsibilities for year two of the contract. Costs shall include all aspects described in Appendix 6.14, except for those called out in Section 3 and Section 4a.

Line Item 9A: Year One PTC / Dispatch Hosting Services. Cost shall include year one annual cost of all PTC / CAD Hosting Services and Help Desk Operations detailed in Section 3 and Section 4a. of Appendix 6.14.

Line Item 9B: Year Two PTC / Dispatch Hosting Services. Cost shall include year two annual cost of all PTC / CAD Hosting Services and Help Desk Operations detailed in Section 3 and Section 4a. of Appendix 6.14.

Line Item 10A: Year One Flagging. Hourly flagging costs for third party contractors (non-subs) for year one of the contract.

Line Item 10B: Year Two Flagging. Hourly flagging costs for third party contractors (non-subs) for year two of the contract.

Line Item 11A: Year One Misc. Crew Costs. Cost shall include the hourly rate for a train crew, not in passenger service, for year one of the contract.

Line Item 11B: Year Two Misc. Crew Costs. Cost shall include the hourly rate for a train crew, not in passenger service, for year two of the contract.

Line Item 12A: Year One Training. Hourly training rate when the Contractor teaches third-party contractors (non-subs). Costs of training materials, if any, will be paid to contractor at cost as a direct pass through.

Line Item 12B: Year Two Training. Hourly training rate when the Contractor teaches third-party contractors (non-subs). Costs of training materials, if any, will be paid to contractor at cost as a direct pass through.

Line Item 13: Full Time Fare Collection Agent. Monthly Cost for a full time Fare Collection Agent above the base of 12 full time Fare Collection Agents included in Line Item 3

Line Item 14: As needed Train Security Officer. Hourly Cost for a Train Security Officer above the base of 9 full time Train Security Officers included in Line Item 3

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Pricing Table

Line Item	Description	Unit of Measure	Quantity	Unit Price	Annualized Extended Price
1A	Mobilization Cost (One Time Fee)	Lump Sum	1		
1B	PTC / CAD Hosting Mobilization (One Time Fee)	Lump Sum	1		
2	Management Fee	Annual	1		
3A	Year One Train Operations Responsibilities / Crew ¹	Train Hours	12,500		
3B	Year Two Train Operatons Responsibilities / Crew ¹	Train Hours	12,500		
4A	Year One Locomotive Maintenance ²	Miles	450,000		
4B	Year Two Locomotive Maintenance ²	Miles	450,000		
5A	Year One Coach Car Maintenance ²	Miles	875,000		
5B	Year Two Coach Car Maintenance ²	Miles	875,000		
6A	Year One Cab Car Maintenance ²	Miles	560,000		
6B	Year One Cab Car Maintenance ²	Miles	560,000		
7A	Year One Track, Signal and ROW Responsibilities ³	Annual	1		
7B	Year One Track, Signal and ROW Responsibilities ³	Annual	1		
8A	Year One PTC / Dispatch / Communication Responsibilities ⁴	Annual	1		
8B	Year Two PTC / Dispatch / Communication Responsibilities ⁴	Annual	1		
9A	Year One PTC / Dispatch Hosting Services ⁵	Annual	1		
9B	Year Two PTC / Dispatch Hosting Services ⁵	Annual	1		
10A	Year One Flagging	Hours	200		
10B	Year Two Flagging	Hours	200		
11A	Year One Misc. Crew Costs	Hours	100		
11B	Year Two Misc. Crew Costs	Hours	100		
12A	Year One Training	Hours	50		
12B	Year Two Training	Hours	50		
13	Full Time Fare Collection Agent (above Train Crew Base of 12)	Monthly	12		
14	As needed Train Security Officer (above Train Crew Base of 9)	Hourly	200		

1 - Includes all responsibilities listed in Appendix 6.11 -Train Operations Responsibilities (including all Engineers, all Conductors, 12 Ticket Agents and 9 Security Officers)

2 - Includes all responsibilities listed in Appendix 6.12 - Maintenance of Equipment & Facilities Responsibilities (including all MOE staff)

3 - Includes all responsibilities listed in Appendix 6.13 - Maintenance of Way Responsibilities (including MOW and Signal staff)

4 - Includes all responsibilities listed in Appendix 6.14 - PTC / Dispatch / Communication Responsibilities except for Section 3 and Section 4a.

5 - Includes all responsibilities listed in Appendix 6.14 Section 3 and Section 4a.

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ADDITIONAL SERVICES

APPENDIX 6.16

Additional Services

RMRTD, at its option, may require Contractor to provide the following services and/or materials:

1. Fuel for the commuter rail equipment at actual costs plus a 1% administrative fee.
2. Capital spares with a per unit value of \$5,000 or greater at actual costs plus a 2% administrative fee.
3. Other necessary material or equipment at actual costs plus a negotiated administrative fee.
4. Annual Capital Maintenance Program approved by RMRTD at a negotiated agreed upon cost.
5. Maintenance Yard design and construction at a negotiated agreed upon cost.
6. Additional signal design and installation at a negotiated agreed upon cost.
7. Dispatching service for the rail line. Currently, RMRTD dispatches the entire NMRX system. In the event RMRTD desires to outsource the dispatch responsibilities, RMRTD may require the contractor to assume dispatch responsibilities at a negotiated agreed upon cost.
8. Maintenance of electronic devices serving the NMRX system, including but not limited to, station display systems, station surveillance cameras, station call buttons and phones, on-board electronic display systems, on-board video equipment and surveillance cameras, at a negotiated agreed upon cost.
9. Other regular preventive maintenance activities not currently anticipated, but which may result from an extended territory, additional train runs or acquisition of more rolling stock, at a negotiated agreed upon cost.
10. Capital maintenance and improvement work on NMRX related properties owned by RMRTD or NMDOT and work under permit on directly adjacent property owned by others at a negotiated agreed upon cost.

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