



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

Addendum #3
RFP #2021-03

22	Please provide the current lease agreements for the properties that the successful contractor will lease and invoice RMRTD including but not limited to; office buildings, train repair buildings, land.	see attached
44	Please provide complete on-time performance and train delay causality reports for 2018 through 2019 and since service resumption	Offerors are invited to look at monthly report books on site at 100 Iron Avenue in Albuquerque and should coordinate with Robert Gonzales at (505)235-8050.
49	Please provide copies of any reports, audits, investigations or incidents involving Contractor's security officers for the same periods	Offerors are invited to look at monthly report books on site at 100 Iron Avenue in Albuquerque and should coordinate with Robert Gonzales at (505)235-8050.

BERGER BRIGGS REAL ESTATE & INSURANCE, INC.
215 THIRD STREET, S.W. -- P. O. DRAWER K
ALBUQUERQUE, NEW MEXICO 87103
(505) 247-0444

Lease

This Indenture, made this 12th day of September, 2013, by and between VIWA Joint Venture hereinafter, whether singular or plural, masculine, feminine, or neuter, designated as "Landlord," which expression shall include Landlord's heirs, executors, administrators, assigns, and successors in interest, and Herzog Transit Services Inc., hereinafter, whether singular or plural, masculine, feminine, or neuter, designated as "Tenant," which expression shall include all Tenants, jointly and severally, and shall include Tenant's heirs, executors, administrators, assign, and successors in interest, WITNESSETH:

1. **DEMISE OF PREMISES.** Landlord, for and in consideration of the covenants and agreements herein contained to be kept and performed by Tenant, Tenant's heirs, executors, administrators, assigns, and successors in interest, and upon the terms and conditions herein contained, does hereby let, lease, and demise to Tenant the following-described premises situate in Albuquerque, in the County of Bernalillo, State of New Mexico, to-wit:

A portion of a property located at 100 Iron SE, containing approximately 7,748 & 2450 rentable square feet of office space. and 12,148 rentable square feet of storage space and Yard space. See attached Exhibit A.

2. **TERM OF LEASE.** The term of this Lease shall be for a period of One (1) Year commencing on the 1st day of October, 2013.

3. **RENT.** Tenant, for and in consideration of this Lease and the demise of the said premises by Landlord to Tenant, hereby agrees and covenants with Landlord to pay as rent and deposit for the said premises, without notice or demand, the sum of One hundred twenty thousand Dollars and no/100 Dollars (\$120,000.00) in the following manner, to-wit: Upon execution of this Lease Tenant will pay \$10,000.00; representing advance payment of rent for October, 2013. Landlord and Tenant agree that the previous lease deposit of \$2,000.00 shall carry forward on this lease.

Commencing November 1, 2013 and on the first day of each succeeding month up to and including October 1, 2014 Tenant will pay \$10,000.00 as advance monthly rent.

Late fee: A late charge of 10% per month of the monthly rental will be charged for any unpaid rent past ten (10) days from due date.

All of the rent shall be paid by Tenant to Landlord or Landlord's order in lawful money of the United States to VIWA Joint Venture, at P.O. Drawer K, Albuquerque, NM 87103, or at such other place as Landlord may designate from time to time for this purpose.

4. **USE OF PREMISES.** Tenant, for and in consideration of this lease and the demise of the said premises by Landlord to Tenant, hereby agrees and covenants with Landlord to use and occupy the said premises for the purpose of office and warehousing for commuter rail for no other purpose without first obtaining the written consent of Landlord therefore; to conform and comply with all applicable municipal, state, and federal ordinances, laws, rules, and regulations in using the said premises; and not to use or suffer to be used the said premises in any manner in contravention of any applicable municipal, state, or federal ordinances, laws, rule, or regulation, or so as to create any nuisance, or so as to tend to increase the existing rate of fire insurance for the said demised premises.

5. **CONDITION OF PREMISES AND REPAIRS.** Tenant, for and in consideration of the Lease and the demise of the said premises, hereby agrees and covenants with Landlord that Tenant has examined the said premises prior to the execution hereof, knows the condition thereof, and acknowledges that Tenant has received the said demised premises in good order and condition, and that no representation or warranty as to the condition or repair of the said premises has been made by Landlord, and, at the expiration of the term of this Lease, or any renewal or extension thereof, Tenant will yield up peaceably the said premises to Landlord in as good order and condition as when the same were entered upon by Tenant, loss by fire or inevitable accident, damage by the elements, and reasonable use and wear excepted; that Tenant will keep the said premises in good order and repair during the term of this Lease, or any extension or renewal thereof, at Tenant's own expense and will repair and replace promptly any and all damage, including damage to glass, that may occur from time to time; that Tenant hereby waives any and all right to have such repairs or replacements made by Landlord or at Landlord's expense; and that, if Tenant fails to make such repairs and replacements promptly, or, if such repairs and replacements have not been made within fifteen (15) days after the occurrence of damage, Landlord may, at Landlord's option, make such repairs and replacements, and Tenant hereby agrees and covenants to repay the cost thereof to Landlord on demand. **Tenant accepts premises in as in condition; Landlord makes no**

Landlord's initials _____

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Tenant's Initials _____

representation or warranties as to the condition or suitability of the premises for Tenants proposed use. Tenant improvements are at Tenants sole expense, after receiving written approval from Landlord.

6. LIABILITY OF LANDLORD. Tenant, for and in consideration of this Lease and the demise of the said premises, hereby agrees and covenants with Landlord that Landlord shall not be liable for any damage to persons or property arising from any cause whatsoever, which shall occur in any manner in or about the said premises, and Tenant hereby agrees to indemnify and save harmless Landlord from any and all claims and liability for damage to persons or property to the percentage extent of tenants acts, omissions and or negligence which shall occur about said premises.

7. ALTERATIONS, ADDITIONS, AND IMPROVEMENTS. Tenant, for and in consideration of the Lease and the demise of the said premises, hereby agrees and covenants with Landlord, that Tenant shall not make, or suffer or permit to be made, any alterations, additions, or improvements whatsoever in or about the said demised premises without first obtaining the written consent of Landlord there for; provided, however, that such consent, if given, shall be subject to the express condition that any and all alterations, additions, and improvements shall be done at Tenant's own expense and in accordance and compliance with all applicable municipal, state and federal ordinances, laws, rules, and regulations, and that Tenant hereby covenants and agrees with Landlord that in doing and performing such work Tenant shall do and perform the same at Tenant's own expense, in conformity and compliance with all applicable municipal, state, and federal ordinances, laws, rules, and regulations and that no liens of mechanics, material, men, labors, architects, artisans contractors, sub-contractors, or any other lien of any kind whatsoever shall be created against or imposed upon the said demised premises, or any part thereof, and that Tenant shall indemnify and save harmless Landlord from any and all liability and claims for damages of every kind and nature which might be made or judgments rendered against Landlord or against said demised premises on account of or arising out of such alterations, additions, or improvements.

8. OWNERSHIP OF ALTERATIONS, ADDITIONS, AND IMPROVEMENTS. Tenant, for and in consideration of this Lease and the demise of the said premises, hereby agrees and covenants with Landlord that any and all alterations, additions, and improvements, except shelving and moveable furniture, made at Tenant's own expense after having first obtained the written consent of Landlord therefore, in accordance with the provisions contained in Paragraph VII, hereof, whether attached to the walls, floors, premises, or not, shall immediately vest in Landlord and all such alterations, additions, and improvements shall remain on the said premises and shall not be removed by Tenant at the termination of this Lease. The shelving and/or moveable furniture, which Tenant is privileged to remove, must be removed by Tenant at Tenant's expense on or before the termination of the Lease.

9. ASSIGNMENT AND SUBLETTING. Tenant, for and in consideration of this Lease and the demise of the said premises, hereby agrees and covenants with Landlord that neither Tenant nor Tenant's heirs, executors, administrators, assigns, or successors in interest shall assign this Lease or sublet the said demised premises, in whole or in part, without first obtaining the written consent of Landlord there for; that no assignment of this Lease or any subletting of the said demised premises, in whole or in part, shall be valid, except by and with the written consent of Landlord first obtained; that the consent of Landlord to any such assignment or subletting shall not operate to discharge Tenant, or any one of them, or Tenant's heirs, executors, administrators, assigns, or successors in interest from their liability upon the agreements and covenants of this Lease, and Tenant, Tenant's heirs, executors, administrators, assigns, and successors in interest shall remain liable for the full and complete performance of all of the terms, conditions, covenants, and agreements herein contained; that any consent of Landlord to any such assignment or subletting shall not operate as a consent to further assignment or subletting or as a waiver of this covenant and agreement against assignment and subletting; and that following any such assignment or subletting, the assignee and/or sublet shall be bound by all of the terms, conditions, covenants, and agreements herein contained including the covenant against assignment and subletting. **Landlord hereby gives prior approval that this lease may be assigned to Rio Metro Transit authority.**

10. UTILITY AND OTHER CHARGES. Tenant, for and in consideration of this Lease and the demise of the said premises, hereby agrees and covenants with Landlord to pay promptly all utility and other charges of whatsoever kind and nature including charges for telephone, and other services, which may be incurred in connection with Tenant's use of the said premises, and to save harmless Landlord there from. **Landlord and Tenant agree that Tenant pays electric, gas and janitorial, and pays sewer and water.**

11. LANDLORD'S RIGHT OF ENTRY AND TO MAKE ALTERATIONS, ADDITIONS, AND IMPROVEMENTS. Tenant, for and in consideration of the Lease and the demise of the said premises, hereby agrees and covenants with Landlord that Landlord, Landlord's heirs, executors, administrators, assigns, agents, attorneys, and successors in interest shall have the right at any time to enter upon the said premises to inspect the same and to make any and all improvements, alterations, and additions of any kind whatsoever upon the said premises, providing such improvements, alterations, and additions are reasonably necessary or convenient to the use to which the said premises are being put at the time, but at no time shall Landlord be compelled or required to make any improvements alterations, or additions.

12. TAXES, OTHER ASSESSMENTS, AND INSURANCE. Tenant and Landlord hereby covenant and agree that all taxes and other assessments of whatsoever kind that nature which have been or may be levied upon the said demised premises and upon any

Landlord's initials _____

Tenant's Initials _____

alterations, additions, and improvements thereon shall be paid by Landlord at the time when the same shall become due and payable, and that all taxes and other assessments of whatsoever kind and nature which have been or may be levied upon the personal property located upon the said demised premises shall be paid by Tenant at the time when the same shall become due and payable. Tenant, for and in consideration of this Lease and the demise of the said premises, hereby agrees and covenants with Landlord to carry and maintain in full force and effect during the term of this Lease and any extension or renewal thereof at Tenant's expense public liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to Landlord, with single limit coverage of not less than \$1,000,000.00, for the benefit of both Landlord and Tenant as protection against all liability claims arising from the premises, causing Landlord to be named as an additional insured on such policy of insurance, limited to the percentage extent of tenants acts, omissions and or negligence and delivering a copy thereof to Landlord. Fire and extended coverage insurance upon all buildings, residences, alterations, additions, and improvements upon the said premises shall be provided for by Landlord, and fire and extended coverage insurance upon all of the contents and other personal property situated upon the said premises shall be provided for by Tenant.

13. HOLDING OVER. Tenant, for and in consideration of this Lease and the demise of the said premises, agrees and covenants with Landlord that no holding over by Tenant after the expiration of this Lease, or any renewal or extension thereof, whether with or without the consent of Landlord, shall operate to extend or renew this Lease, and that any such holding over shall be construed as a tenancy from month to month at the monthly rental which shall have been payable at the time immediately prior to when such holding over shall have commenced and such tenancy shall be subject to all the terms, conditions, covenants, and agreements of this Lease.

14. BANKRUPTCY AND CONDEMNATION. Tenant, for and in consideration of the Lease and the demise of the said premises, hereby agrees and covenants with Landlord that should Tenant, or any one of them, make an assignment for the benefit of creditors or should be adjudged a bankrupt, either by voluntary or involuntary proceedings, or if otherwise a receiver should be appointed by any court of competent jurisdiction for Tenant because of any insolvency, the occurrence of any such event shall be deemed a breach of this Lease, and, in such event, Landlord shall have the option to forthwith terminate this Lease and the re-enter the said demised premises and take possession thereof, whereupon Tenant shall quit and surrender peaceably the said demised premises to Landlord. In no event shall this Lease be deemed an asset of Tenant, or any one of them, after adjudication in bankruptcy, the appointment of a receiver, or the assignment for the benefit of creditors. Further, Tenant hereby covenants and agrees with Landlord that in the event the said demised premises, or any part thereof, are taken, damaged consequentially or otherwise, or condemned by public authority, this Lease shall terminate, as to the part so taken, as of the date title shall vest in the said public authority, and the rental reserved shall be adjusted so that Tenant shall be required to pay for the remainder of the term that portion of the rent reserved in the proportion that the said demised premises remaining after the taking, damaging, or condemnation bears to the whole of the said demised premises before the taking, damaging, or condemnation. All damages and payments resulting from the said taking, damaging, or condemnation of the said demised premises shall accrue to and belong to Landlord, and Tenant shall have no right to any part thereof.

15. DESTRUCTION. Tenant, for and in consideration of the Lease and the demise of the said premises, agrees and covenants with Landlord that if at any time during the term of this Lease, or any extension or renewal thereof, the said demised premises shall be totally or partially destroyed by fire, earthquake, or other calamity, then Landlord shall have the option to rebuild or repair the same, provided such rebuilding or repairing shall be commenced within the period of thirty days after notice in writing to Landlord of such destruction or damage, and to rebuild or repair the same in as good condition as they were immediately prior to such calamity. In such case, a just and proportionate part of the rental herein specified shall be abated until such demised premises shall have been rebuilt and repaired. In case, however, Landlord shall within thirty days following notice in writing to him of such damage elect not to rebuild or repair said premises, Landlord shall so notify Tenant and, thereupon, this Lease shall terminate and become null and void.

16. SIGNS. Landlord and Tenant covenant and agree that Tenant may at Tenant's own expense erect and maintain a sign or signs to carry out the purpose for which Tenant is leasing the said demised premises provided, however, the location, type and design of all exterior signs shall be first approved in writing by Landlord. Upon the expiration of this Lease, or any renewal or extension thereof, Tenant shall remove such sign or signs, and shall repair any damage to the premises caused thereby at Tenant's sole expense. Further, at any time within thirty days prior to the termination of this Lease, or any renewal or extension thereof, Landlord shall have the right to place upon any part of said demised premises any "For Rent" or "For Lease" signs that Landlord may select.

17. TERMINATION AND REMEDIES. It is understood and agreed between Landlord and Tenant that if the rent specified above, or any part thereof, shall be in arrears or unpaid on the day of payment, then Landlord will give Tenant five (5) days written notice to cure such default. It is understood and agreed between Landlord and Tenant that if default shall be made in any of the covenants or agreements contained in this Lease then Landlord will give Tenant fifteen (15) days written notice to cure such default. If Tenant shall remain in possession of the premises after the above required notice period it shall be lawful for the Landlord to declare the said term ended and re-enter the premises to expel, remove, or put out the Tenant; to repossess and enjoy the same premises again as in its first and former state; and to seize for any rent that may be due any property belonging to Tenant. It is the intent of the parties hereto to recognize in Landlord a valid first lien as provided by the laws of the State of New Mexico, upon any goods, chattels, and other property belonging to Tenant and located on the premises as security for the payment of rent and fulfillment of the faithful performance of the agreements and covenants in

Landlord's initials _____

Tenant's Initials _____

this Lease. If at any time the term shall be declared ended at such election of Landlord, Tenant agrees to surrender and deliver the premises peaceably to the Landlord. If Tenant shall remain in possession of the premises after the required notice period specified above, Tenant shall be deemed guilty of a forcible entry and detainer of the premises under the laws of the State of New Mexico and shall be subject to eviction and removal under due process of law.

It is understood and agreed between Landlord and Tenant that at any time after such termination the Landlord may re-lease the premises or any part thereof, for such term and on such conditions as the Landlord, in his sole discretion, may determine, and may collect and receive the rent thereafter. In the event Landlord re-leases the premises, it is understood and agreed that the term may be greater or lesser than the period which constituted the term of this Lease, and the conditions may include free rent or other concessions which may be reasonably required to induce another party to lease the premises.

It is also understood and agreed that no such termination of this Lease shall relieve Tenant of its liabilities and obligations under this Lease, and such liabilities and obligations shall survive any such termination. In the event of any such termination, whether or not the premises have been re-leased, the total remaining balance of the rent which would be due and payable for the remainder of the term of this Lease, less the net proceeds of any re-leasing effected by the Landlord shall become due and payable as liquidated damages of Tenant's default. The net proceeds shall be calculated as the gross dollar amount of the new lease less any expenses Landlord incurred in re-leasing the premises including but not limited to all repossession costs, brokerage commissions, legal and attorney fees, alteration costs and expense of preparation for such re-leasing.

It is understood and agreed that Tenant will pay all costs, reasonable attorney's fees and expenses incurred by Landlord in enforcing the covenants of this Lease. If a suit is brought by any party to this Lease to enforce the covenants and terms of this Lease, the prevailing party shall be entitled to reasonable attorney fees and costs to be assessed by the court.

18. FAILURE TO TERMINATE. Tenant, for and in consideration of this Lease and the demise of the said premises, agrees and covenants, with Landlord that failure, neglect, or omission of Landlord to terminate this Lease for any one or more breaches of any of the covenants hereof, shall not be deemed a consent by Landlord of such breach and shall not stop, bar, or prevent Landlord from thereafter terminating this Lease, either for such violation, or for prior or subsequent violation of any covenant hereof.

19. BINDING ON HEIRS, EXECUTORS, ADMINISTRATORS, ASSIGNS, AND SUCCESSORS IN INTEREST. It is covenanted and agreed by and between the parties hereto that the covenants and agreements herein contained shall extend to and be binding upon the heirs, executors, administrators, assigns, and successors in interest of the parties to this Lease.

20. THIS LEASE EMBODIES ALL AGREEMENTS BETWEEN THE PARTIES. It is covenanted and agreed by and between the parties hereto that this lease incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and that all such covenants agreements, and understandings have been merged into this written Lease. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Lease.

21. CANCELLATION. It is covenanted and agreed by and between the parties hereto that in the event of a sale, a long term lease, or a major improvement of this property, the Landlord reserves the privilege of canceling this Lease by giving Tenant **180** days notice in writing.

22. AMENDMENTS. It is covenanted and agreed by and between the parties hereto that this Lease shall not be altered, changed, or amended except by instrument in writing executed by the parties hereto.

23. REQUIREMENTS OF PUBLIC AUTHORITY. Tenant for and in consideration of this Lease and the demise of the said premises, hereby agrees and covenants with Landlord that during the term of this Lease, Tenant shall, at its own cost and expense, promptly observe and comply with all present and future municipal, state and federal ordinances, laws, rules, and regulations affecting the demised premises or appurtenances thereto, or any part thereof, whether the same are in force and effect at the time of the commencement of the term of this Lease or may in the future be passed, enacted, or directed, and Tenant shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claim, and demands, including reasonable attorney's fees, that may in any manor arise out of or be imposed because of the failure of the Tenant to comply with the covenants and agreements of this paragraph. Further, Tenant hereby agrees and covenants with Landlord that if Tenant fails to comply promptly with any present or future municipal, state, and federal ordinances, laws, rules, and regulations, or fails to comply by such time that compliance may be required by law. Landlord may, at Landlord's option, take actions as may be necessary to comply with all present and future municipal, state, and federal ordinances, laws, rules, and regulations, and Tenant hereby agrees and covenants to repay the cost incurred by Landlord in taking such action to Tenant on demand.

24. GRAMMATICAL USAGE. In construing this Lease, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular or plural in any place in which the context so requires.

Landlord's initials _____

Tenant's Initials _____

25. **COVENANT TO EXECUTE ADDITIONAL INSTRUMENTS.** The parties hereto agree to execute and deliver any instruments in writing necessary to carry out any agreement, covenant, term, condition, or assurance in this Lease whenever an occasion shall arise and request for such instrument to be made.

26. **SEVERABILITY.** If any provision of this Lease, or any application thereof, shall be declared invalid or unenforceable by any court of competent jurisdiction, the remainder of this Lease, and any other application of such provision, shall continue in full force and effect.

27. **CAPTIONS.** The section headings are for convenience of reference only and shall not otherwise affect the meaning hereof.

28. **GOVERNING LAW.** This Lease shall be governed by and construed in accordance with the laws of the State of New Mexico.

29. **ENVIRONMENTAL INDEMNITIES.** Landlord warrants and represents, to the best of Landlord's knowledge, that the Premises do not contain any hazardous substances, and have not been used previously for any generation, storage, processing, or disposal of hazardous substances. Tenant warrants and represents that it shall not bring any hazardous substances on the Premises or use the Premises for any generation, storage, processing for disposal of hazardous substances, except in quantities and for uses and in such a manner as may be permitted under hazardous substances laws. Each party agrees to observe and comply with all hazardous substances laws. Tenant shall indemnify Landlord and hold Landlord harmless from and against any and all claims, liabilities, loss, costs and expenses, including attorney fees relating to any violation of hazardous substances laws or presence of hazardous substances in or about the premises, caused by Tenant or Tenant's invitees or agents. The term "hazardous substances laws" shall mean the Comprehensive Environmental Response, Compensation and Liability Act, and any other federal or New Mexico legislation governing use, handling and clean-up of substances deemed hazardous in the environment, and liability there for, and all regulations issued pursuant to such legislation. The term "hazardous substances" shall mean the substances addressed or regulated by any hazardous substances laws. Provisions of this paragraph shall survive expiration of Lease.

30. **MAINTENANCE & REPAIRS.** Notwithstanding the wording of paragraph V of this Lease herein, Landlord will repair and maintain only the following portions of the leased premises: the roof and structural portions of the leased premises, consisting only of the foundation and members supporting the roof. All maintenance and repair other than those required to be made by Landlord in this paragraph V, will be made by Tenant at Tenant's cost and expense, including without limitation, heating and air conditioning equipment (weather roof mounted or otherwise affixed outside the Leased Premises); electrical and plumbing equipment; all fixtures; all wiring and plumbing lines (whether exposed or concealed); doors, door frames, molding trim, windows, window frames, closure devices, hardware, plate glass and floor covering. Tenant shall not make or permit any penetration in the roof above the Leased premises and shall be responsible for all rooftop flashing around the rooftop air conditioning unit. If any such roof penetration is required in connection with Tenant's repair responsibilities, Landlord shall perform such roof penetration at Tenant's cost, which shall be paid upon demand. If tenant is unable to maintain and repair any of those items referred to in this paragraph 30 herein due to normal obsolescence of that item or that the item has worn out or is no longer capable of maintenance and repair, then Landlord shall replace those items: provided that, if the items to be replaced have become obsolete or nonfunctional due to Tenant's employees intentional or negligent conduct, then those items shall be replaced by Tenant at Tenant's cost. **Landlord at landlords sole expense will service and maintain the heating and cooling systems.**

31. **OPTION TO RENEW.** Landlord hereby grants Tenant the option to renew this Lease for **Four (4) each One (1) year periods** under the same terms and conditions contained herein excepting rental which shall be negotiated. Tenant to notify Landlord in writing of intent to exercise option to renew no later than **sixty (60) days** prior to the expiration of this lease.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year first above written.

LANDLORD:

TENANT:

VIWA Joint Venture

Herzog Transit Services Inc.

By: _____ Date: _____

By: _____ Date: _____

Its: _____

Its: _____

