



COUNTY OF EL PASO
500 E. San Antonio, Suite PU500
El Paso, Texas 79901
(915) 546-2048 (915) 546-8180 Fax

Notice to Interested Parties

Sealed Request for Proposals (RFP) will be received at the County Purchasing Department, 500 E. San Antonio, Suite 500, El Paso, Texas 79901 before 2:00 p.m., **Wednesday, October 24, 2007** to be opened at the County Purchasing Office the same date for **Fixed-Route Commuter Bus Service**.

Proposals must be in a sealed envelope and marked:

"Proposals to be opened **October 24, 2007
Fixed-Route Commuter Bus Service
RFP Number 07-133"**

Any questions or additional information required by interested vendors must be submitted in writing to the attention of the County Purchasing Agent before Tuesday, October 16, 2007, at 12:00 p.m. Questions can be faxed to (915)-546-8180.

Award will be made based on a review of qualifications, scope of services and price. **COMMISSIONER'S COURT RESERVES THE RIGHT TO REJECT ANY AND ALL PROPOSALS AND WAIVE TECHNICALITIES.** Only proposals that conform to specifications will be considered. Successful Proposer shall not order items or services until a Purchasing Order is received from the County Purchasing Office. Payment will not be made on items delivered without an Agreement.

If the proposal totals more than \$100,000.00, the bidder shall furnish a certified cashiers check made payable to the County of El Paso or a good and sufficient bid bond in the amount of 5% of the total contract price, executed with a surety company authorized to do business in the State of Texas. The certified cashiers check must be included with the proposal at the time of the opening.

In order to remain active on the El Paso County Vendor list, each Vendor receiving this proposal must respond in some form. Vendors submitting a proposal must meet or exceed all specifications herein. Vendors submitting a no proposal must submit their reason in writing to the El Paso County Purchasing Department.

PITI VASQUEZ
County Purchasing Agent

PROPOSAL SCHEDULE

To: El Paso County, Texas

I or we agree to furnish the following described equipment, supplies, or services for the prices shown in accordance with specifications listed below or attached. By execution of this proposal, I hereby represent and warrant to El Paso County that I have read and understood the Proposal Documents and the Contract Documents and this proposal is made in accordance with the Proposal Documents.

Please quote prices and discounts on the following items:

F. O. B. El Paso County

Description – RFP # 07-133 Fixed-Route Commuter Bus Service Vendor must meet or exceed specifications
TOTAL COST
\$
Please do not include tax, as the County is tax-exempt. We will sign tax exemption certificates covering these items. Please submit one (1) original copy and five (5) copies of your bid.

Company

Address

Federal Tax Identification No.

City, State, Zip Code

CIQ Confirmation Number

CIQ Sent Date

Representative Name & Title

Telephone & Fax Number

Signature

Date

*****THIS MUST BE THE FIRST PAGE ON ALL BIDS*****

Fixed-Route Commuter Bus Service

RFP #07-133



**Opening Date
Wednesday, October 24, 2007**

1. INTRODUCTION.

El Paso County (THE COUNTY) is seeking a qualified Service Provider to operate, with its own employees, a fixed-route commuter bus service throughout the non-urbanized area of El Paso County for a five (5) year term with El Paso County Rural Transit (EPCRT) retaining the right of renewal for a five (5) year term or any part thereof with the understanding that the cost per revenue service hour be negotiated between THE COUNTY and the Service Provider. The Service Provider will furnish fuel and vehicle maintenance to operate these public transit services and the Service Provider will be responsible for identifying and establishing an operations facility within El Paso County to operate the proposed fixed-route commuter bus services from.

The selected Contractor shall provide the personnel, maintenance, materials, supplies, training, and supervision necessary for safe, courteous, and reliable transportation of passengers. The Service Provider will be solely responsible for maintenance of the EPCRT fleet of vehicles, or part thereof, equipment and a facility suitable for the provision of Services. Passengers will pay the Service Provider with cash on each trip. The Service Provider will return all revenue collected to EPCRT weekly.

1.1. Background.

El Paso County is located in the western part of Texas, which borders Mexico to the south and New Mexico to the west. According to 2000 census data, El Paso County has a population of 679,622 with approximately 41,000 in the non-urbanized areas of the county. The largest cities, towns and areas within the county are El Paso, Socorro, Horizon, Anthony, Canutillo, San Elizario, Fabens, Tornillo, Clint and Vinton. EPCRT currently provides service to these locations and to several colonias within the non-urbanized area of the county.

1.2. Purpose of Solicitation.

In issuing this RFP, THE COUNTY is seeking to contract with the best Service Provider to provide an easy to use, safe, reliable, efficient and cost effective public transit solution both for the County and the Passengers that use the services. The Service provider will need to provide the fuel to be used for all the described Services. THE COUNTY will provide the vehicles to be used to provide the service. The vehicles to be used must pass an inspection to ensure cleanliness, reliability and overall performance characteristics by THE COUNTY.

1.3. General Description of Tasks.

Work associated with this RFP shall include but not be limited to the following tasks:

- 1.3.1. The Service Provider shall be responsible for all preparations necessary to begin operation of the services including identification of an operations facility within the El Paso County service area.
- 1.3.2. The Service Provider shall have complete responsibility for identifying and securing of the facility at a site approved by EPCRT prior to the execution of any purchase or lease agreement by the Service Provider. All personnel shall be drug tested, hired and trained, documented procedures shall be established, development of an aggressive safety program, facilities and equipment prepared, routes and schedules fine tuned, driver runs cut, and all other activities required for Service Provider start-up performed prior to actual implementation of the service.

- 1.3.2. The Service Provider shall coordinate, manage, and control all necessary service activities, which shall include, but not be limited to:
- a. Operating all Services to the levels and standards required as described throughout this RFP as well as any additional service added to this contract by EPCRT;
 - b. Providing drivers and maintenance, supervisory, and administrative personnel;
 - c. Establishing all employment policies relative to Service Provider's personnel;
 - d. Developing driver training and testing programs;
 - e. Developing administrative, safety and security procedures, performance statistics, and financial records;
 - f. Developing methods to maximize service efficiency and reliability;
 - g. Performing all activities associated with the maintenance of equipment required for the operation of the system. This shall include maintenance of other equipment provided by EPCRT.
 - h. Performing or assisting EPCRT staff in carrying out operational planning, scheduling, blocking, run-cutting and other related functions, such as identifying running time and/or loading problems and recommending specific schedule and other adjustments to correct problems;
 - i. Executing data collection and gathering services as requested by EPCRT;
 - j. Implementing all Federally required programs such as FTA Drug and Alcohol Testing and ADA Compliance; and
 - k. Providing required insurance.

1.4. **Interpretations and Addenda.**

No interpretation or clarification of the meaning of any part of this RFP will be made orally to any Service Provider. Service Providers must request such interpretations or clarification in writing from the County Purchasing Director. Requests for information or clarification of this RFP must be made in writing and addressed to Piti Vasquez at the address listed below. Questions should reference the RFP page and topic number.

Piti Vasquez
Purchasing Director
RFP Fixed-Route Commuter Bus Services
500 E. San Antonio Ave. Suite 500
El Paso, Texas 79901
Phone: 915-546-2048

Fax: 915-546-8180
E-mail: ligonzalez@epcounty.com

When responding to Service Provider questions, the County Purchasing Department will provide the answer or information in writing or electronic format to all prospective Service Providers that have submitted a Request for Proposals Acknowledgement Form. Please submit your questions by **October 16, 2007**.

Any written responses issued by THE COUNTY to questions and requests for information will be provided to all Service Providers. Any and all such interpretations and supplemental instructions will be made in the form of written addenda which will be sent to all Service Providers who have completed and returned the Request For Proposals Acknowledgement Form, found in Section 10, Form One. The County Purchasing Director reserves the right to disqualify any Service Provider who contacts a City or County official, employee, or agent concerning this RFP other than in accordance with this Section. Nothing in this Section shall prohibit the County Purchasing Director from conducting discussions with Service Providers after the Proposal opening.

As part of the evaluation process, the Selection Committee may engage in discussions with any Service Provider. Discussions might be held with individual Service Providers to determine in greater detail the Service Provider's qualifications, to explore with the Service Provider the scope and nature of the required contractual services, to learn the Service Provider's proposed method of performance and the relative utility of alternative methods, and to facilitate arriving at a Contract that will be satisfactory to EPCRT. The County Purchasing Director may in its discretion require one or more Service Providers to make presentations to the Selection Committee.

1.5. **Interviews.**

Each Service Provider should prepare as outlined in Section 8.6 for possible interviews by the Selection Committee.

Section 2

General Information

2. GENERAL INFORMATION.

Section 2.0 contains information, which shall govern the general terms and conditions of this Request for Proposals and any subsequent Proposal submissions.

2.1. Definitions.

As used in this RFP, the following terms shall have the meanings set forth below:

Agreement: Refers to the Contract executed between the Service Provider and THE COUNTY.

Billable Time: Billable Time is the time the vehicle is in service carrying passengers (revenue time). Time between separate pieces of revenue work and the time it takes to go to and come from the point or points where vehicles are garaged or parked to the point or points where the vehicle goes into and out of service (deadhead time) are not billable. In most instances, this means that billable hours will be the “first stop to the last stop” on EPCRT approved pieces of work.

Estimated Revenue Hours: Refers to Services outlined in Appendix A under the heading Estimated Revenue Hours.

Point of Contact: EPCRT employee representing the interests of EPCRT for this Project.

Contract: Refers to a Contract executed by EPCRT and a Service Provider for all or part of the Services covered by this RFP.

Contract Administrator: Refers to EPCRT staff, which will administer the day-to-day operation of the Contract for EPCRT.

THE COUNTY: Refers to County of El Paso.

Effective Date: The date on which EPCRT executes the Contract arising from this procurement effort.

Emergency Plan: Detailed plan of action that the Service Provider has submitted to EPCRT for approval including how traffic accidents involving EPCRT vehicles, traffic delays, and extreme weather will be addressed by the Service Provider.

EPCRT: Refers to El Paso County Rural Transit.

Fixed-Route Service: Refers to Services outlined in Appendix A under the heading Fixed-Route Service.

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General Information

Selection Committee:	Team composed of COUNTY staff that will evaluate the Proposals and give a recommendation to the Commissioners Court.
Passengers:	Refers to patrons of the Services offered.
Proposal:	Refers to a properly signed and guaranteed written offer of the Service Provider to perform the Services and to furnish the labor, materials at the unit price quoted on Required Form Seven, Section 10.
Road Calls:	Refers to calls for help to the Service Provider dispatcher for a broken down bus or any other problem that would prevent the timely execution of the Services.
Revenue Vehicle Hour:	Refers to Billable time - the time the vehicle is in service carrying passengers (revenue time). Time between separate pieces of revenue work and the time it takes to go to and come from the point or points where vehicles are garaged or parked to the point or points where the vehicle goes into and out of service (deadhead time) <u>are not</u> billable. In most instances, this means that billable hours will be the “first stop to the last stop” on THE COUNTY approved pieces of work.
Service Provider:	Refers to a Company that has been selected by THE COUNTY to provide the Services as described in this RFP or that has submitted a Proposal in response to this RFP for review by THE COUNTY.
Services:	Refers to services or any work that is required to be performed by the Service Provider according to the terms and conditions as set forth in this RFP for Contract Provider for Fixed-Route Commuter Bus Services.
Service Start Date:	Refers to the date on which Services to be provided under the Contract begin. This date is expected to be Monday, January 7, 2008.
The county:	Refers to El Paso County service area.

2.2. **THE EPCRT Point of Contact.**

EPCRT will provide one (1) Point of Contact for the final Contract, who will represent THE COUNTY’S best interests. The EPCRT Point of Contact will facilitate the flow of information, as needed between the Service Provider and EPCRT, and act as the Project Manager. The EPCRT Point of Contact may choose at their discretion to invoke liquidated damages after any incidence that the Service Provider does not meet the specifications of this RFP as described in Section 9.7

2.3. **Accuracy of RFP and Related Documents.**

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General Information

THE COUNTY assumes no responsibility for conclusions or interpretations derived from technical and background information presented in this RFP, or otherwise distributed or made available during this procurement process. In addition, THE COUNTY will not be bound by or be responsible for any explanation, interpretation or conclusions of this RFP or any documents provided by THE COUNTY other than those given in writing by THE COUNTY through the issuance of addenda. In no event may a Service Provider reply on any oral statement by THE COUNTY or its agents, advisors or consultants.

Should a Service Provider find discrepancies or omissions in this RFP or any other documents provided by THE COUNTY, the Service Provider should immediately notify the Purchasing Director of such potential discrepancy in writing, and a written addendum will be mailed or delivered to each Service Provider if THE COUNTY determines clarification to be necessary. Each Service Provider requesting an interpretation will be responsible for delivering such requests to The County's designated representatives in writing.

2.4. **THE COUNTY's Rights and Options.**

THE COUNTY, at its sole discretion, reserves the following rights:

- 2.4.1. To supplement, amend, substitute or otherwise modify this RFP at any time;
- 2.4.2. To cancel this RFP with or without the substitution of another RFP;
- 2.4.3. To take any action affecting this RFP, this RFP process, or the Services or facilities subject to this RFP that would be in the best interests of THE COUNTY;
- 2.4.4. To issue additional requests for information;
- 2.4.5. To require one or more Service Providers to supplement, clarify or provide additional information in order for THE COUNTY to evaluate the proposals submitted;
- 2.4.6. To conduct investigations with respect to the qualifications and experience of each Service Provider;
- 2.4.7. To waive any defect or technicality in any Proposal received; and
- 2.4.8. To reject any or all Proposals.

2.5. **Expense of Submittal Preparation.**

THE COUNTY accepts no liability for the costs and expenses incurred by the Service Providers in responding to this RFP, in preparing responses for clarification, in attendance at interviews, participating in contract development sessions, or in meetings and presentations required for the contract approval process. Each Service Provider that enters into the procurement process shall prepare the required materials and submittals at its own expense and with the express understanding that they cannot make any claims whatsoever for reimbursement from THE COUNTY for the costs and expenses associated with the procurement process.

2.6. **Proposal Conditions.**

The following terms are applicable to this RFP and your organization's Proposal.

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General Information

2.6.1. RFP Not An Offer.

This RFP does not constitute an offer by THE COUNTY. No binding contract, obligation to negotiate, nor any other obligation shall be created on the part of the THE COUNTY unless THE COUNTY and your organization execute a Contract. No recommendations or conclusions from this RFP process concerning the Service Provider shall constitute a right (property or otherwise) under the Constitution of the United States or under the Constitution, case law, or statutory law of Texas.

2.6.2. General Reservation of Rights.

THE COUNTY reserves the right, in its sole discretion, to reject any or all Proposals in response to this RFP, to waive any irregularities or informalities in a Proposal, and to enter into any Agreement deemed by THE COUNTY to be in the best interest of THE COUNTY, with one or more of the Service Providers responding. THE COUNTY reserves the right to discuss and negotiate with selected Service Provider(s) any terms and conditions in the Proposals including but not limited to financial terms.

2.6.3. THE COUNTY'S Right to Terminate Discussions.

The Service Provider's participation in this process might result in THE COUNTY selecting your organization to engage in further discussions. The commencement of such discussions, however, does not signify a commitment by THE COUNTY to execute a Contract or to continue discussions. THE COUNTY can terminate discussions at any time and for any reason.

2.6.4. Requirement for Representation as to Accuracy and Completeness of Proposal.

Each Service Provider shall make the following representations and warranty in its Proposal Cover Letter, the falsity of which might result in rejection of its Proposal: **"The information contained in this Proposal or any part thereof, including its Exhibits, Schedules, and other documents and instruments delivered or to be delivered to THE COUNTY, is true, accurate, and complete. This Proposal includes all information necessary to ensure that the statements therein do not in whole or in part mislead THE COUNTY as to any material facts."**

2.6.5. Confidentiality.

Upon receipt at THE COUNTY, your Proposal is considered a public record. After the Proposal opening, your Proposal will be reviewed by THE COUNTY'S Selection Committee, as well as other COUNTY staff and members of the general public who submit public records requests.

2.6.6. Statutory Requirements.

Any Contract awarded as a result of this RFP shall be in full conformance with all statutory requirements of Texas and all statutory requirements of the Federal Government, to the extent applicable.

2.6.7. Reservation of Right to Change Schedule.

THE COUNTY shall ultimately determine the timing and sequence of events resulting from this RFP. THE COUNTY reserves the right to delay the closing

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General Information

date and time for any phase if THE COUNTY staff believe that an extension will be in the best interest of THE COUNTY.

2.6.8. Reservation of Right to Amend RFP.

THE COUNTY reserves the right to amend or cancel this RFP at any time during the process, if it believes that doing so is in the best interests of THE COUNTY. Any addenda will be sent to each Service Provider in writing. Service Providers are required to acknowledge their receipt of each amendment by using the Addenda Receipt Confirmation Form set forth in Section 10, Form Two.

2.6.9. Additional Evidence of Ability.

A Service Provider shall be prepared to present additional evidence of its experience, qualifications, ability, products, service facilities, and financial standing if requested by THE COUNTY.

2.6.10. No Collusion or Conflict of Interest.

By responding to this RFP, the Service Provider shall be deemed to have represented and warranted that the Proposal is not made in connection with any competing Service Provider submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud. Any evidence of collusion or fraud will be investigated and prosecuted by THE COUNTY to the fullest extent of the law.

2.6.11. Proposal Terms Firm and Irreversible.

The signed Proposal shall be considered a firm offer on the part of the Service Provider. THE COUNTY reserves the right to negotiate price and services. All Proposal responses (including all statements, claims, declarations, prices and specifications in the Proposals) shall be considered firm and irrevocable for purposes of future Contract negotiations unless specifically waived in writing by THE COUNTY. The Service Provider chosen for award should be prepared to have its Proposal and any relevant correspondence incorporated into the Contract, either in part or in its entirety, at THE COUNTY'S election. Any false or misleading statements found in the Proposal will be grounds for disqualification.

2.6.12. Withdrawal for Modification of Proposals.

Service Providers may change or withdraw their Proposals at any time prior to Proposal opening; however, no oral modifications will be allowed. Only telegrams, letters, or other formal written requests for modifications or corrections of a previously submitted Proposal, which is addressed in the same manner as the Proposal, and received by THE COUNTY prior to the scheduled closing time for receipt of Proposals, will be accepted. The Proposal, when opened will then be corrected in accordance with such written request(s), provided that the written request is contained in a sealed envelope, which is plainly marked "**Modifications to Proposal.**"

2.6.13. No Bribery.

In submitting a response to this RFP, each Service Provider certifies that neither it, any of its affiliates, nor any employees of any of the foregoing has bribed, or

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attempted to bribe, an officer or employee of THE COUNTY in connection with this Agreement.

2.6.14. Exceptions to RFP.

Other than exceptions that are stated in compliance with this Section, each Proposal shall be deemed to agree to comply with all terms, conditions, specifications, and requirements of this RFP. An “exception” is defined as the Service Provider’s inability or unwillingness to meet a term, condition, specification, or requirement in the manner specified in the RFP. All exceptions taken must be identified and explained in writing in your Proposal and must specifically reference the relevant section(s) of this RFP. If the Service Provider provides an alternate solution when taking an exception to a requirement, the benefits of this alternative solution and impact, if any, on any part of the remainder of the Service Provider’s solution, must be described in detail.

2.6.15. Fair Trade Certifications.

By submission of a Proposal, the Service Provider certifies that in connection with this procurement:

- ♦ The prices have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with anyone; and
- ♦ Unless otherwise required by law, the prices which have been quoted in its Proposal have not been knowingly disclosed by the Service Provider and will not knowingly be disclosed by the Service Provider prior to opening; and
- ♦ No attempt has been made or will be made by the Service Provider to induce any other person or firm to submit or not to submit a Proposal for the purpose of restricting competition.

2.6.16. Compliance with Laws.

In submitting a Proposal, each Service Provider agrees to make itself aware of and comply with all local, state, and federal ordinances, statutes, laws, rules, and regulations applicable to the Services covered by this RFP. Each Service Provider further agrees that it will at all times during the term of the Contract be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to Workers’ Compensation, the Fair Labor Standards Act (FLSA), Equal Employment Opportunity Act (EEOA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), and all Occupational Safety and Health Administration (OSHA) regulations applicable to the work covered by this RFP.

2.6.17. Clarification of Ambiguities.

Any Service Provider believing that there is any ambiguity, inconsistency or error in this RFP shall promptly notify THE COUNTY in writing of such apparent discrepancy. Notification shall be sent to THE COUNTY at the address in Section 1.4. Failure to notify THE COUNTY will constitute a waiver of claim of ambiguity, inconsistency or error.

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2.6.18. Service Provider's Obligation to Fully Inform Themselves.

Service Provider's or their authorized representatives are expected to fully inform themselves as to all conditions, requirements and specifications of this RFP before submitting Proposals. Failure to do so will be at the Service Providers own risk.

2.6.19. Post-Award Conference.

A post-award conference will be scheduled with the Service Provider(s) as soon as practical after the award of the Contract. A Service Provider representative shall attend the conference. A proposed implementation schedule shall be submitted to the EPCRT Point of Contact.

2.6.20. Disclaimer.

Each Service Provider must perform its own evaluation and due diligence verification of all information and data provided by EPCRT. THE COUNTY makes no representations or warranties regarding any information or data provided by EPCRT.

Section 3

Description of Procurement Process

3. DESCRIPTION OF PROCUREMENT PROCESS.

This Section 3.0 contains information, which shall govern the procurement process for this project.

3.1. Schedule and Process.

The following chart shows the schedule of events to prepare your organization's Proposal. The key events and deadlines for this process are as follows, some of which are set forth in more detail in the Sections that follow:

<i>DATE</i>	<i>EVENT</i>
Sunday October 7, 2007	<i>Issuance of RFP. THE COUNTY</i> issues this RFP.
Tuesday October 16, 2007	Request for Proposals Acknowledgement. Organizations who intend to submit a Proposal shall submit the RFP Acknowledgement Form by this date to the fax number listed in Section 3.2.
Tuesday October 16, 2007	Submission of Written Questions. Service Providers are permitted to submit questions to THE COUNTY concerning the RFP. Responses to will only be sent to written questions, but only for purposes of clarifying this RFP. All questions must be sent to Piti Vasquez at the address, e-mail or fax number listed in Section 1.4 and must include the name of a Service Provider contact person to receive the answers to the RFP questions.
Wednesday <u>October 24, 2007</u>	<i>Proposal Submission.</i> Proposals are due by 2:00 PM on Wednesday, October 24, 2007 , at THE COUNTY as described in the cover letter. All Proposals will be time-stamped upon receipt and held in a secure place until this date.
Monday November 12, 2007	<i>Anticipated Contract Award Date.</i>
Monday January 7, 2008	<i>Service Start Up Date.</i>

3.2.

Request For Proposals Acknowledgement.

Upon the Service Provider's receipt of this RFP, please acknowledge its receipt via facsimile by **October 16, 2007**, using the Request for Proposals Acknowledgement Form

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Description of Procurement Process

located in Section 10, Form One. Complete the form in its entirety advising THE COUNTY of your firm's intention to submit or not submit a Proposal and the name, address, telephone number, facsimile number and e-mail address of your primary and secondary contact person. The completed and signed form should be faxed to THE COUNTY, Attention: Piti Vasquez, at 915-546-8180.

3.3 Placeholder

3.4. Service Provider Investigation.

Service means, as they deem necessary, concerning the conditions, which may affect delivery of the Providers shall satisfy themselves through personal investigation and by such other proposed Services as well as their cost. No information derived from any part of this RFP or from THE COUNTY, or any other source, shall relieve the Service Provider from any risk or from fulfilling the provisions of any Agreement resulting from this RFP.

3.5. Interviews, Meetings and Negotiations with Service Providers.

The Service Provider may be required to appear before THE COUNTY and/or its representatives for an interview. During such interview, the Service Provider may be required to orally and otherwise present its Proposal and to respond in detail to any questions posed. Key management staff included in the Proposal must attend the interview.

Additional meetings may be held to clarify issues or to address comments, as THE COUNTY deems appropriate. Service Providers will be notified in advance of the time and format of such meetings.

Since THE COUNTY may choose to award a Contract without engaging in discussions or negotiations, the Proposals submitted shall define the Service Provider's best offer for performing the Services described in this RFP.

3.6. Submission of Proposals.

One (1) original Proposal signed in ink by an authorized company official along with the corporate seal, plus five (5) copies shall be submitted to the address listed in Section 1.4. The "original" Proposal and each of the five (5) copies shall be complete and unabridged, and shall not refer to any other copy of the signed/sealed original for any references, clarifications, or additional information. When received, all Proposals and supporting materials, as well as correspondence relating to this RFP, shall become the property of THE COUNTY.

Proposals or any part thereof, received by fax will not be considered. Please do not arrive at the Proposal opening for the purposes of reviewing your competitor's Proposals. Proposals will not be made available to inspect or copy until any trade secret issues have been resolved.

3.7. Binding Proposal.

Each Proposal shall be signed by an individual authorized to bind the Service Provider and shall contain a statement to the effect that the Proposal is a firm offer for a one-

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Description of Procurement Process

hundred-eighty (180) calendar day period from the date of the opening. THE COUNTY reserves the right to negotiate price and Services. All prices quoted shall be firm and fixed for the full Contract period. The Proposal shall provide the name, title, address and telephone number of the individual with authority to contractually bind the Service Provider. THE COUNTY has the option to accept subject to exception by Contract.

3.8. **Correction of Errors.**

The person signing the Proposal must initial erasures or other corrections in the Proposal. The Service Provider further agrees that in the event of any obvious errors, THE COUNTY reserves the right to waive such errors in its sole discretion. THE COUNTY, however, has no obligation under any circumstances to waive such errors.

Section 4

Proposal Format

4. PROPOSAL FORMAT.

THE COUNTY requires all Proposals to be identical in format in order to facilitate comparison. While THE COUNTY's format may represent departure from the Service Provider's preference, THE COUNTY requires strict adherence to the format. Each Proposal will be prepared simply and economically, avoiding the use of elaborate promotional materials beyond those sufficient to provide a complete, accurate and reliable presentation. The Proposal will be in the format described below:

- a. Cover Letter;
- b. Company Portfolio or Annual Report;
- c. Affidavit;
- d. Executive Summary;
- e. Background, Experience and Project Approach (questions in Section 7.7);
- f. Financial Information (as requested in Section Seven);
- g. The "Request for Proposal Acknowledgement Form" Section 10, Form One;
- h. The "Addenda Receipt Confirmation Form" set forth in Section 10, Form Two;
- i. The "Proposal Submission Form" set forth in Section 10, Form Three;
- j. The "Insurance Agent Statement" set forth in Section 10, Form Four;
- k. The "Project Functional Requirements Form" set forth in Section 10, Form Six;
- l. The "Cost Proposal Forms" set forth in Section 10, Form Seven;
- m. The "Federal Transit Administration Clauses and Forms";
- n. Completed Attachment B – Certification of primary participants regarding debarment, suspension, and other ineligibility and voluntary exclusion;
- o. Completed Attachment C - Certification of restrictions on lobbying; and

All Proposals shall be 8 1/2" x 11" format with all standard text no smaller than 11 points. All submissions should use one-sided copying and be bound in a three ring or spiral binder with tab dividers corresponding to the content requirements specified below.

Service Providers are required to organize the information requested in this RFP in accordance with the format outlined. Failure of the Proposer to organize the information required by this RFP as outlined may result in THE COUNTY, at its sole discretion, deeming the Proposal non-responsive to the requirements of this RFP. The Service Providers, however, may reduce the repetition of identical information within several sections of the Proposal by marking the appropriate cross-references to other sections of their Proposal. Appendices may be used to facilitate Proposal preparation.

4.1. Use of Required Forms.

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Proposal Format

The Cost Proposal Form (Section 10, Form Six) provided by THE COUNTY shall be used and shall not be altered.

4.2. **Proposal Content.**

The Scope of Work in Section Five details the start-up and on-going tasks required of the Service Provider. THE COUNTY has attempted to document all necessary tasks for implementation and on-going tasks, but we are receptive to changes that Service Providers may suggest.

4.2.1. Cover Letter.

The Proposal should contain a letter and introduction (limit to one page) and include the company name and address, and the name and telephone number of the persons who will be authorized to represent the Service Provider regarding all matters related to the Proposal and any Contract subsequently awarded to said Service Provider. This letter shall be signed by a person(s) authorized to bind the company to all commitments made in the Proposal. If the Service Provider is a partnership, a general partner must sign the Proposal in the name of the partnership thereof. If the Service Provider is a corporation, the proposal must be signed on behalf of the corporation by two authorized officers (a Chairman of the Board, President or Vice President, and a Secretary, Treasurer or Chief Financial Officer) or an officer authorized by the Board of Directors to execute such documents on behalf of the corporation. All signatures above must be original and in ink on at least one copy of the Proposal that will be submitted to THE COUNTY.

By submitting a Proposal pursuant to this RFP and executing the cover letter, the Service Provider acknowledges that he/she has read this RFP, understands it, and agrees to be bound by its terms and conditions. Proposals may be submitted by mail or express delivery or delivered in person.

4.2.2. Company Portfolio or Annual Report.

The Service Provider should submit a detailed company portfolio including the company's financial viability for the past three (3) years, credit references, on-going projects, and all pending litigation in which the company may be directly or indirectly involved. Financial references including, name of primary financial institutions of the Service Provider, address of financial institution, name of a contact person, and telephone number for each financial institution identified shall be included.

4.2.3. Affidavit.

Every Proposal shall have thereon or attached hereto the affidavit of the Service Provider indicating that: such proposal is genuine, not sham or collusive, nor made in the interest of any person not therein named; that the RFPder has not directly or indirectly induced or solicited any other Service Provider to submit a sham proposal or to refrain from proposing; and that the Service Provider has not in any manner sought by collusion to secure for himself an advantage over any other Service Provider. Any Proposal made without such affidavit, or found to be in violation thereof, shall not be considered.

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Proposal Format

4.2.4. Executive Summary.

The Service Provider shall submit an executive summary, which outlines its Proposal, including the proposed general management philosophy. The executive summary shall, at a minimum, include an identification of the facility to be owned or leased by the Company, and a summary of the proposed Services. This section should highlight aspects of this Proposal, which make it superior or unique in addressing the needs of THE COUNTY.

4.2.5. Background, Experience, and Project Approach.

The Proposal must provide a concise description of the proposing company, including origin, state of incorporation (if applicable), background, and current size. Include information concerning general organization and staffing as well as experience with Fixed-Route Commuter Bus Service. The balance of the technical Proposal should be organized around answering the questions found in Section 7.

The Service Provider should demonstrate an awareness of difficulties in the completion of this undertaking, and a plan for surmounting them. Special attention should be given to issues that will be encountered in such a project.

4.2.6. Exceptions

Any alternative approaches, deviations or exceptions taken by the Service Provider must be itemized in the technical Proposal. Details concerning it must be clearly presented. Each will be considered by THE COUNTY as to the degree of impact and total effect on the Proposal. THE COUNTY assumes that silence to alternative approaches; deviations or exceptions indicate that the Service Provider will comply with the RFP as presented.

Wage or minimum pay hour requirements the Service Provider may have with its employees will not affect THE COUNTY ability to pay the Service Provider on an individual revenue vehicle hour basis. THE COUNTY will not accept any restrictions or minimum servicing hour requirements either by day, or other time period or in any other way other than by individual Revenue Vehicle Hour.

4.2.7. Required Forms.

To be deemed responsive to this RFP, Service Providers must complete in detail all Proposal Forms listed in Section 4.0, items h through o. All forms are included in Section 10 of this RFP and must be submitted with your organization's response.

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SERVICE PROVISION SCOPE OF WORK.

5.A Purpose of Solicitation.

In issuing this RFP, THE COUNTY is seeking to contract with the best Service Provider to provide an easy to use and cost effective public transit solution both for THE COUNTY and the Passengers that use the Services. THE COUNTY reserves the right to contract with only one (1) Service Provider. The Service Provider will provide the fuel to be used for the described Service. THE COUNTY will provide the vehicles for the described service.

5.B General Description of Tasks to be Performed.

Work associated with this RFP shall include but not be limited to the following tasks:

5.B.1 Startup

The Service Provider shall be responsible for all preparations necessary to begin operation of the Services including identification of an operations and vehicle maintenance facility within the County. The Service Provider shall have complete responsibility for identifying and securing a facility at a site approved by THE COUNTY prior to the execution of any purchase or lease agreement by the Service Provider. All facility leasing or purchase expenses associated with this procurement effort shall be included in the Service Provider's price proposal. All personnel shall be drug tested, and trained. In addition, all facilities and equipment should be prepared; routes and schedules fine tuned, driver runs cut, and all other activities required for Service Provider start-up performed prior to the anticipated starting date of **January 7, 2008**.

5.B.2 Operate Service

The Service Provider shall coordinate, manage, and control all necessary Service activities, which shall include but not be limited to:

- a. Operating all services to the levels and standards required as described throughout this RFP as well as any additional service added to this contract by EPCRT;
- b. Providing drivers and maintenance, supervisory, and administrative personnel;
- c. Establishing all employment policies relative to Service Provider's personnel;
- d. Establishing a complaint response policy;
- e. Developing driver training and testing programs;
- f. Developing administrative, safety and security procedures, performance statistics, and financial records;
- g. Facility upkeep and maintenance;

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- h. Developing methods to maximize service efficiency and reliability;
- i. Providing vehicle cleaning and maintenance;
 - j. Performing or assisting EPCRT staff in carrying out operational planning, scheduling, blocking, run-cutting and other related functions, such as identifying running time and/or loading problems and recommending specific schedule and other adjustments to correct the problem;
- k. Executing data collection and gathering services as requested;
 - l. Implementing all Federally required programs such as FTA Drug and Alcohol Testing and ADA Compliance; and
- m. Providing required insurance.

5.B.3 Equipment Maintenance

The Service Provider will perform all activities associated with the maintenance of equipment required for the operation of the system (**identified in Section 6**). This shall include maintenance of Service Provider buses as well as any other equipment provided by EPCRT; office and computer equipment; non-revenue vehicles; and other equipment as needed.

5.B.4 Facility

The Service Provider may provide bus maintenance by subcontract or through a private automotive repair shop in a maintenance facility that maximizes the efficient provision of the services the Service Provider is awarded to provide. The Service Provider may choose to separately locate operating and maintenance facilities. The maintenance facility, maintenance subcontractor or automotive repair shop must either have a hydraulic lift or the Service Provider must provide a mobile lift capable of lifting the equipment it is assigned. The Service Provider is responsible for maintaining all of its facilities in good working order. Any repairs to any facilities/systems, or equipment related to the operating or maintenance of the vehicles shall be completed and paid for by the Service Provider.

5.B.5 Other Materials

The Service Provider will be required to obtain all parts, tools, equipment required for their duties. The Service Provider will be required to obtain or make available through any maintenance subcontractor all maintenance equipment necessary for the repair of vehicles. The Service Provider will be responsible for obtaining and complying with all required building, occupancy, and other governmental permits.

5.C Description of Services.

EPCRT will require the Service Provider to provide one (1) type of service:

- Fixed-Route Commuter Bus Service.

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5.C.1 Service Levels at Start of Contract.

EPCRT currently provides services to four (4) fixed-routes within the non-urbanized area of El Paso County. The Services detailed under this RFP are for certain fixed-routes. **The EPCRT will provide the vehicle fleet necessary to provide the desired level of service.** At the start of the contract, the vehicle fleet of seven (7) buses will be required for the desired level of service. As described within this RFP, THE COUNTY reserves the right to increase or decrease the level of Services throughout the term of this contract.

The range of service hours identified below includes an anticipated number for service hours. The EPCRT reserves the rights to increase or decrease service hours to meet the demand of the Service.

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Current Hours of Service for the Contract

	Peak Vehicles	Start Date	Current Approximate Annual Revenue Vehicle Hours – 9,962
1. Anthony/Canutillo 2. Montana Vista 3. Horizon city 4. Fabens/Tornuillo	(4)	16-18	1/7/08 pass.
Spare Vehicles for Fixed-Route Commuter Bus Service	3)	16-18	1/7/08 pass.

In no way does EPCRT intend to guarantee the hours listed above.

5.C.2. EPCRT-Fixed-Route Commuter Bus Service

From approximately 5:30 am until 8:30 pm Monday-Saturday EPCRT provides Fixed-Route Commuter Bus Service on four (4) non-urbanized routes within El Paso County. Service is provided to two (2) transfer centers operated by the local public transit agency (Sun Metro). The Service Providers will be expected to comply with the policy and procedures of the various transportation centers when providing Services into and out of these congested facilities.

EPCRT reserves the right to add any Fixed-Route Commuter Bus Service to the final Contract under the Adjustments in Service provisions in Section 5.E of the RFP.

EPCRT anticipates a fare system for the EPCRT Fixed-Route Commuter Bus Service of a \$2.00 one-way cash fare. No Sun Metro fare cards or passes will be accepted. The Service Provider will be responsible for the proper administration of the EPCRT fare structure. These vehicles will be mutually equipped with non-registering drop-type fare boxes.

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5.C.3. Service Operations Plan

All Routes and Schedules shall be Specified by EPCRT – A compilation of the existing routes and schedules to be operated initially under this contract are outlined on page 24 of the RFP. Routes are subject to change and modification as specified by EPCRT and new routes or services may be added in accordance with the requirements in this RFP.

- a. EPCRT will provide the headway and service frequency to the Service Provider during the performance of this contract. The Service Provider shall be responsible for developing driver shifts from the schedule provided by EPCRT.
- b. The Service Provider shall perform all scheduled service subject to EPCRT operating standards for service performance. Service shall be provided as requested or according to any adjusted schedule established by EPCRT, including route modifications required as a result of a declared emergency.
- c. The Service Provider shall not supply vehicle service hours when they are not scheduled, as such hours will not be paid for by EPCRT. Relief drivers are the responsibility of the Service Provider and shall not disrupt the continuity of Service. If a major disruption in service occurs, the Service Provider shall notify EPCRT immediately. If the Service Provider should be unable to provide alternative service, EPCRT may then elect to secure the necessary services. Should EPCRT elect to secure such service from other sources, the Service Provider shall be liable for all such costs incurred.
- d. All Services to be rendered by the Service Provider under this Agreement shall be as specified by EPCRT. The Service Provider shall advise EPCRT of matters of importance and make recommendations when appropriate; however, final authorization concerning Service parameters shall rest with EPCRT with input from the participating communities as appropriate.
- e. Service requirements include having a person available to answer the telephone and relay information to the driver during all hours when a vehicle is on the road, with no exceptions. Please refer to dispatching Section 5.C.7.
- f. The Service Provider is required to have a means of communication with all in-service vehicles including intra-vehicle communication between in-service vehicles (i.e.) cellular phone system or two-way radio system) during all hours when a vehicle is on the road, with no exceptions. All means of communication shall be the sole responsibility of the Service Provider.
- g. The Service Provider is expected to begin service on or about **January 7, 2008**.
- h. EPCRT reserves the right to revise and/or add any Service parameters as needed, in order to meet Service needs and regulations. The Service Provider may propose ways to improve the use of EPCRT vehicles in revenue service; however, such recommendations should minimize modifications to the existing bus route structure.

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5.C.4. Service Span

All Fixed-Routes Bus Service shall operate Monday through Saturday only, approximately 307 days of service annually. Details on these service plans are presented in the Appendix A. EPCRT may choose to add Sunday services at a later date during the Contract.

5.C.5. Holidays

Service which currently shall not be operated on the major holidays designated by EPCRT are: New Year's Day, Easter Sunday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. EPCRT reserves the right to modify the holiday schedule during the course of the contract.

5.C.6. Special Event Service

The Service Provider shall perform special services as requested by EPCRT. These services include but are not limited to seasonal routes, and special events assigned by EPCRT.

The Service Provider shall make available to EPCRT, buses and operators for these special marketing and promotional activities. The Service Provider shall bill EPCRT for the total hours required for the special activities. Such activities may involve operation of the vehicle as well as stationary exhibitions.

5.C.7. Dispatching

- a. EPCRT Fixed-Route Commuter Bus Service dispatching will be provided by the Service Provider including the sign-in/out of bus operators, vehicle route assignments, and vehicle assignment. Deviation requests will be limited to on-the-vehicle requests and scheduling but certain cancellations and other special exceptions may require telephone calls. Service Provider's customer service personnel shall adhere to all EPCRT customer service rules and regulations. The Service Provider shall provide a secure location to store all "lost and found" items left on the vehicles until they are claimed. The Service Provider will be responsible for all vehicle dispatching including sign-out/in of bus operators, vehicle route assignments, incident management and road calls.

5.C.8. Roadeos and Other Transit Industry Events

EPCRT highly encourages the Service Provider to participate in transit Roadeos and other industry events as a means of encouraging quality service and a spirit of enthusiasm, professionalism, and cooperation. Any EPCRT vehicle used for the practice or competition of Roadeo participation shall be approved by EPCRT.

5.D

Vehicle Description

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The table below lists the buses provided by EPCRT at the beginning of the contract.

<u>NO.</u>	<u>YEAR</u>	<u>MAKE</u>	<u>MODEL</u>	<u>Vehicle I.D. No</u>
1	2002	Ford	E450	1FDXE45S42HB65082
2	2003	Ford	E450	1FDXE45S23H885249
3	2003	Ford	E450	1FDXE45S93HB79299
4	2004	Ford	E450	1FDXE45S75HA66101
5	2004	Ford	E450	1FDXE45S23HA70042
6	2004	Ford.	E450	1FDXE45S74HA96343
7	2006	Ford	E450	1FDXE45S76HB30123

5.D.1 Vehicles

EPCRT will provide all revenue vehicles necessary for all Services at the outset of the Contract.

5.D.2. Service/Support Vehicles

The selected Service Provider must provide all other rolling stock used to support the service such as supervisor's and maintenance vehicles and bus operator relief cars. The Service Provider may not use EPCRT revenue vehicles for support functions, such as bus operator relief, without the express consent of EPCRT management. The Service Provider will furnish and maintain all necessary support vehicles in order to ensure field supervision mobility, bus operator field relief capability, road call maintenance, and vehicle towing throughout the service area at all times while the vehicles are operated. Towing and road call services may be handled by contractual agreement with local firms.

5.D.3. Communications Systems

The Service Provider will be responsible for providing a two-way communication system on all the revenue vehicles and any of its own supervisory vehicles and paying for the monthly service charge for air time. The system must allow for both vehicle-to-base and supervisor communication as well as multiple receiver/broadcast operation (i.e. two-way radio system or cellular phone system). The Service Provider shall be responsible for maintaining the communication systems in all revenue and Service Provider service vehicles, including provision of spare equipment. The Service Provider will be responsible for maintaining base stations and antennas, and other in-house equipment used for dispatching. In addition, hand held mobile units shall be provided for all field/street supervisors and other personnel as needed at the Service Provider's expense.

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5.E. Service Changes.

5.E.1 General

EPCRT reserves the right to adjust as necessary service level during the term of this contract. This includes any adjustment necessary in vehicles allocated to perform this Service. EPCRT shall have the option to implement new service, add or delete from the given schedule or to re-deploy the service to other areas based on demand or increase of service productivity. The Service Provider will provide Service subject to route changes, additions and deletions during the term of this contract.

5.E.2 Modifications

Modifications to the routes and schedules will be required from time-to-time. Service Provider shall provide field supervisory personnel at strategic locations whenever emergencies or other non-recurring events affecting normal service take place.

- a. **Minor Route and/or Schedule Changes** - While EPCRT will in most cases provide at least a one (1) week notice; as little as 24 hours notice may be given to respond to minor adjustments. Such changes will be such as to not require a revision of the bus operator work runs by the Service Provider, though they may occasionally “unhook” two pieces of work. Minor adjustments, depending on the time frame allowed, may be given verbally and then confirmed by a written memo. Route and service modifications necessitated by recurring events (e.g., street closure) are also the responsibility of the Service Provider, but must be approved by EPCRT.
- b. **Major Route and/or Schedule Changes** - Major route changes are those that may cause the Service Provider to revise the bus operator work runs. Except for emergencies, EPCRT will make every effort to implement major service changes on a fixed predictable schedule in coordination with the Service Provider’s periodic bus operator work run revisions. In most cases, EPCRT will give the Service Provider four (4) weeks to respond to major changes requiring more drivers or major adjustments to work shifts. Service Provider shall submit a proposed run cut within two (2) weeks of receiving a major change announcement from EPCRT. EPCRT shall endeavor to review, approve, and/or comment, if needed, within three (3) working days. EPCRT will give major changes to the Service Provider in writing. EPCRT reserves the right to approve all run cuts, as they serve as the basis for determining Service Provider payment.
- c. **Route and Service Modifications Caused by Non-Recurring Events** (e.g., freeway accidents, weather, etc.) are the responsibility of the Service Provider. In case of an emergency, the Service Provider shall respond to modifications to service immediately. When such non-recurring event will make other coordinated assignments of the vehicle more than 15 minutes

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late, the Service Provider shall dispatch supplemental vehicle(s) to ensure such trip(s) are minimally impacted by the event.

- d. **Contingency Plan** - The Service Provider is expected to take any necessary action to prevent or minimize inconvenience experienced by the passengers and make an effort to ensure their safety and comfort. In the event of a service disruption or delay that would prevent a driver from making all scheduled pick-ups or completing the trip on time, the Service Provider is expected to respond accordingly with a contingency plan. Contingencies might include “bumping up” driver trips assignments and/or dispatching replacement vehicles to cover late or “missed” trips in order to alleviate potential overcrowding which would otherwise result on trips scheduled to follow a missed trip. It may also include dispatching replacement vehicles from a staging area to reduce the time that passengers would otherwise spend waiting for the next trip. In the event of a disabled vehicle, it may involve diverting other buses to pick-up transferring passengers. Service disruptions or delays could include any of the following: an accident, mechanical failure, severe traffic back-up, detour or road closing, a driver’s failure to either report on-time or perform the run to which he was assigned, or improper training.
- e. **State, Regional or City-Wide Emergencies** – Upon declaration of any emergency by the Governor of Texas, the Mayor, or COUNTY Judge, the Service Provider may be responsible for a number of transportation-related activities, including the development of emergency travel routes and the coordination with other agencies supplying common carrier services. In the event of a declared emergency, the Service Provider shall deploy vehicles in a manner described by the EPCRT Manager or designee as part of an Emergency Operations Transportation Services Plan. However, EPCRT shall compensate the Service Provider for service, which significantly exceeds the normal expense of operating the Service during such period of declared emergency.
- f. **Vehicle Breakdown** - The Service Provider shall dispatch a spare vehicle in the event of a vehicle breakdown. The maximum response time from the moment a trouble call is received until a substitute vehicle arrives shall not exceed 30 minutes. EPCRT reserves the right to establish additional criteria regarding reliability of response in the event of breakdowns. The failure to respond to a vehicle breakdown within the allotted time will subject the Service Provider to liquidated damages outlined in Section 9.C

5.E.3 Services Not Operated

EPCRT will not compensate the Service Provider for services not operated.

5.F. PERSONNEL ORGANIZATION.

5.F.1 Wages and Policies

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Service Provider shall be obligated to pay the wages and provide benefits for its employees, and shall cause the withholdings to be made as required in the performance of this contract. Without any additional expense to EPCRT, the Service Provider shall comply with the requirements of employee liability, worker's compensation, unemployment insurance, social security and any other current and future legal requirements. The Service Provider must comply with the provisions of the Federal Transit Administration's Drug and Alcohol Testing Regulations. The Service Provider shall hold EPCRT harmless from any liability, damages, claims, costs, and expenses of any nature arising from alleged violations of personnel practices.

5.F.2 13C Agreement

THE COUNTY will not become a signatory party to any Transit Employee Agreement between service providers and organized labor units, pursuant to 490SC Section 5333(B) (Section 13C Provision of the Urban Mass Transportation Act of 1964).

5.F.3 Removal/Reassignments/Absences

EPCRT shall have the right to demand removal from the project, for reasonable cause, any personnel furnished by the Service Provider. EPCRT must be notified of new hires or reassignments of project personnel. Further, EPCRT must be notified of all extended absences of project personnel and any position vacancies of more than one week. The Service Provider is required to fully staff those positions proposed in its submittal. Any change in the Project Manager, Maintenance Manager, or other top-level management shall require written approval of EPCRT.

5.F.4 Vehicle Operators

Vehicles shall be operated with due regard for the safety, security, comfort, and convenience of passengers and the general public. Vehicle operators must have a valid Commercial Driver's License (CDL) with appropriate endorsement and each operator must submit to a medical examination every two years from the startup of service. Any drug testing and surveillance efforts on the part of the Service Provider shall be explained to vehicle operators. Vehicle operators must be trained in all operational procedures relating to the service. Training must include EPCRT instructed techniques for serving the public in a helpful and courteous manner.

The drivers must meet or exceed the following standards to perform under the EPCRT program:

- a. The Service Provider shall conduct pre-employment Department of Motor Vehicle (DMV) checks of all personnel, independent Service Provider or subcontractor employees hired for service and shall check DMV records at least every six (6) months for accidents, tickets for vehicle code violations, and review for valid drivers licenses of its

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employees whose job requires them to operate vehicles for this project. Each operator must meet the following requirements:

1. No more than one moving violation for each year of the last five (5) years prior to application for this program;
 2. No more than two moving violations within the last 12 months;
 3. If license has ever been suspended, applicant must have two full years with no violations; and
 4. Under no condition will an applicant be accepted as a driver for this program if (1) they have been convicted of a felony; and (2) and/or have any record of drug or alcohol offense even if evidence of rehabilitation is presented (e.g. driving while under the influence).
- b. Not being under the influence of alcohol, controlled substances, or prescription medication that impairs his/her ability to safely perform the Services.
- c. Not being subject to outstanding warrants for arrest.
- d. Be able to read, write, and speak English.
- e. Be able to count money and understand EPCRTS' fare structure.
 - f. Have thorough knowledge of EPCRT routes and service area. Drivers must be supplied with appropriate, up-to-date street maps, such as those produced by M&S street guide. Published by MAPS & STUFF, P.O. BOX 370001, Phone Number (915) 592-2186, EL PASO, TX 79937.
 - g. Be responsible for knowledge of the service system design.
 - h. Be sensitive to passenger needs.
 - i. Be able to handle complaints and problems as required. Personnel must also report all passenger complaints and operational problems to the EPCRT Manager within twenty-four (24) hours of discovery.
 - j. Maintain a courteous attitude, answering to the best of their ability any passenger questions regarding the provision of Service.
 - k. Character and Conduct of Employees.
 1. Employees of the Company who normally and regularly come into direct contact with the public and/or EPCRT employees shall be clearly identifiable by company picture identification cards.
 2. The Company shall assure that its employees serve the public and/or EPCRT employees in a courteous, helpful and impartial manner. All employees of the Company in both field and office shall refrain from belligerent behavior and/or profanity.

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Correction of any such behavior and language shall be the responsibility of the Company.

3. In the event a report is received alleging an employee(s) of the Company was discourteous, belligerent, profane or in any way intimidating, either physically or verbally, the Company shall submit a written report to the EPCRT Manager outlining the complete details of the incident. Said report shall include the nature of the incident, time, date and location, and name, address and telephone number of the person alleging the violation. The report shall also include the name and title of the employee and what disciplinary action, if any, was taken.

Please note that Service Providers' ability to attract and retain an adequate number of qualified vehicle operators is essential to efficient and effective service delivery. Low wages, relative to other local transit operators and other similar driving positions in the area, are a significant factor that can adversely affect the quality of service. Results of inadequate driver workforce and extra-board results in excessive missed trips, late trips, under-trained operators, and work coverage by supervisors and other management personnel. FAILURE ON THE PART OF THE SERVICE PROVIDER TO MAINTAIN AN ADEQUATE AND APPROPRIATE VEHICLE OPERATOR WORKFORCE SHALL MEET WITH STRICT ENFORCEMENT OF LIQUIDATED DAMAGES FOR POOR PERFORMANCE.

5.F.5 Management

In addition to drivers, the Service Provider shall employ and train such other persons as may be necessary in order to enable the Service Provider to perform the Services provided for hereunder. Service Providers shall cause such persons to perform all necessary supervision, management, and coordination of all aspects of such Services. In addition to on-site personnel, additional training and certain administrative activities may be provided by regional or national Service Provider personnel, so long as plans for these centralized functions are spelled out as a clear part of the Service Provider's Proposal. The Service Provider should supply EPCRT with a job description for each proposed management or supervisory position dedicated to the project. EPCRT reserves the right to approve each member of the Service Provider's management staff and to require the Service Provider to add or to eliminate management positions.

Specific Management Positions Required Include:

- a. **Project Manager** – The Service Provider will designate a Project Manager who will oversee the proper operation of the Service. Due to the critical role of the position of Project Manager, it is required that this person be identified and his/her resume included in each Service

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Providers Proposal. EPCRT reserves the right to approve any change of the Project Manager for this Service, and will consider the award of Contract to be probationary pending full-time assignment of the Project Manager for a term of 120 days. The Service Provider must receive EPCRT' written approval prior to change of personnel of this position. The Project Manager will provide both on-line supervision and management of the project's accounts and operating records. The Project Manager must be available for an interview by the EPCRT selection team. The Company Project Manager must be accessible to EPCRT at a minimum during regular working hours (Monday through Friday 8:00 AM to 5:00 PM). The Project Manager must notify EPCRT Manager whenever they will be absent for longer than one (1) day.

On-line supervision shall include, but not be limited to the following duties:

- Training and scheduling of all regularly assigned project personnel;
- Arranging the assignment of backup personnel whenever necessary;
- Distribution and collection of operating reports; and
- Daily monitoring and security of the collection of all fares.

Project Management shall include, but not be limited to the following:

- Preparation of monthly summaries of operations data;
- Maintenance of project accounts;
- Preparation of a monthly invoice, which will document all charges;
- Immediate responsibility for any operational problems and/or passenger complaints and accurately reporting these problems in a timely manner;
- Accident review and analysis and reviews for accident chargeability; and the hiring and discipline of personnel;

- b. **Supervisory Staff** – The Service Provider shall include in their Proposal the resumes of additional supervisory staff (e.g., Manager of Operations, Manager of Maintenance) that shall play critical roles in the provision of the Service.

5.F.6 Maintenance Personnel

The Service Provider may subcontract for maintenance services, utilize a private automotive repair shop or employ technicians, shop and bus service attendants (cleaners), and other personnel to perform maintenance on the Service Provider vehicles. EPCRT requires that supervisory subcontractor technicians, supervisory private repair shop technicians or supervisory Service Provider technicians have Automotive Service Excellence (ASE) technician certification. Repair work on wheelchair-lifts must be performed by an authorized dealer of the specific wheelchair-lift manufacturer or a company approved by EPCRT with

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personnel knowledgeable in servicing wheelchair-lift mechanisms. EPCRT reserves the right to approve or reject a subcontractor relationship for the maintenance of its equipment.

The Service Provider shall provide an exclusive telephone and telephone number for access by the public in English and Spanish to obtain route and schedule information for all EPCRT sponsored routes. Phone access by the public should be available Monday through Saturday between the hours of 7:00 a.m. and 5:30 p.m. A recording device should also be provided to receive messages when the phone line is busy.

5.G EMPLOYEE TRAINING.

5.G.1 General Requirements

The Service Provider's requirements for Service orientation range from covering the completion of trip and vehicle reports to the operation of a vehicle communication system (i.e. cellular phones, two-way radio system) to the safe operation of all vehicles in the fleet to training in sensitivity to rider needs.

5.G.2 Vehicle Operation

The Service Provider shall provide a program of driver training in vehicle orientation, safe bus operation, passenger relations, fare collection, route and schedule orientation, and on-time performance prior to permitting any driver to operate any bus in revenue service. The Service Provider shall also provide an ongoing safety program to ensure a safe operating environment. Further, the Service Provider will retrain drivers in any of the above areas as required by changes in the Service, fares or operating environment or as demonstrated by unsatisfactory performance. The Service Provider shall make such changes in its safety and training program as EPCRT may, from time-to-time, reasonably request.

5.G.3 Safety and Customer Service Training

The Service Provider will provide bus operators with training on the safe operation of their vehicle prior to operating in scheduled Service and all training will be approved as to scope by EPCRT. As EPCRT values all its riders, the Service Provider must provide its drivers with customer relations/sensitivity training. Operators providing transit Service shall complete the Passenger Assistance Techniques (PAT) or equivalent training course. The Service Provider's training personnel may be certified to conduct such training. This training should include understanding how to best deal with riders who are physically or mentally challenged. Ongoing training in support of safe operations shall be an essential component of the operator's training program and all operators shall be subject to review based on their performance record.

5.G.4 Statistical Counts and Counting Devices

The Service Provider will require its bus operating personnel to make manual and automated counts on their buses of operating statistics that EPCRT shall deem necessary. Such statistics may be passenger counts by fare category; notations of

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boarding and alighting locations or changes in trip manifest information. These counts may be by observation and recorded manually, through the use of manually operated counting devices. EPCRT will provide training to the Service Providers designated supervisory and/or instructional personnel. The Service Provider shall provide this training to all of its affected bus operators, mechanics and other personnel that use or repair the equipment. Such statistical data, whether manually or electronically collected and/or recorded shall be made available to EPCRT daily and/or as otherwise specified. Such information shall be formatted as specified by EPCRT.

5.G.5 EPCRT Orientation

In order to encourage quality customer service EPCRT reserves the right for the Service Provider to make all employees available for orientation by EPCRT staff. These orientations will last up to a maximum of 2 hours. Any additional new employees may also be required to attend orientation training at EPCRT's request.

5.H. REPORTING REQUIREMENTS.

The Service Provider shall be required to maintain all project records as requested by EPCRT in approved formats. The Service Provider shall permit authorized representatives of EPCRT to examine all data and records related to the project upon request by EPCRT or according to the scheduled reporting periods. All project records prepared by the Service Provider shall be owned by EPCRT and be made available to EPCRT at no additional charge.

EPCRT may elect to authorize representatives of other project funding partners to inspect, audit, and analyze the records of the Service Provider in operating this Service. The Service Provider shall maintain all records within the EPCRT service area, and make them available to EPCRT for three (3) years following final payment. In addition to hard copies, records will be available in a PC compatible format that is compatible with (Microsoft Word, Microsoft Excel). The Service Provider shall supply all needed computer equipment, and peripherals and shall use software compatible with that used by EPCRT.

5.H.1 Financial Records

The Service Provider shall establish and maintain within a separate account all project expenditures and any other relevant financial records or documents. The Service Provider must conform with the Federal Transit Administration (FTA) Uniform System of Accounts.

5.H.2 Invoices

The Company Project Manager shall submit monthly invoices to EPCRT within ten (10) calendar days of the following month for Services rendered during the reporting period. The monthly invoices shall be supported by copies of invoices, payrolls, and other documents as may be required by EPCRT to establish that the amounts are allowable. Expenses and Vehicle Revenue Hours for the fixed-route services shall be shown separately on the invoice. The Service Provider must

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also provide a monthly mileage and fuel usage statistics by vehicle. Samples of the Service Provider's invoice and monthly mileage/fuel usage report are attached as Appendix E. Payment from EPCRT shall be received approximately thirty (30) days following approval of invoice. All invoices and related records are subject to audit by EPCRT or representatives of other funding partners.

5.H.3 Management Information System (MIS)

The Service Provider shall be responsible for producing and maintaining a current and relevant MIS database for EPCRT as required at no additional charge. The MIS will serve as a database for both EPCRT and the Service Provider to monitor and evaluate the productivity of the service. As a minimum, the Service Provider's key management personnel and subcontractors; management personnel shall be required to have e-mail and electronic file transmission capabilities with EPCRT at all times.

The following gives an indication of the general types of reports and submittal dates required. Since some overlap exists between required data elements, the Service Provider should exercise economy wherever possible by maintaining a single database from which various report data is extracted.

- a. **Daily Operations Report:** No later than 3:00 p.m. on the following business day, the Service Provider shall submit to EPCRTS' Manager a Daily Operations Report in a format approved by EPCRT. This report shall summarize the previous day's operations activities including a weather report, driver reporting, identified missed trips, road calls, additional/added miles and hours, number of vehicles in preventative maintenance status, number of on-time trips monitored, number of complaints/compliments received, traffic conditions, vehicle accidents/incidents, personnel levels, and driver training status. All unusual circumstances regarding the daily operations should be noted on this form. Identifying a missed trip on this form shall constitute a proper report of such error and avoid the "Non-Reporting" liquidated damage amount.
- b. **Weekly Trip Reports:** The daily portion of the MIS database shall be compiled on a trip-by-trip basis for each route operated by the Service Provider. Such reports shall be made in the format approved by EPCRT and submitted to EPCRT no later than 3:00p.m. each Wednesday for the previous seven (7) day period.
- c. **Monthly Report:** The completed monthly MIS shall be made available to EPCRT in a format approved by EPCRT and submitted to EPCRTS' Manager no later than the fifteenth (15th) day of the following month. Certain key monthly ridership statistics (ridership, complaints, breakdowns, and route revenue) must be included in the monthly report. In such cases as that day is a Saturday or Sunday the report must be submitted on the following Monday by 3:00 p.m.

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- d. **Operator Reports:** The Service Provider shall cause each driver of each bus to collect data and prepare a daily report to provide all necessary information to update the MIS database. The Service Provider shall at all times maintain such reports.
- e. **Performance Reports:** The Service Provider shall from time-to-time be requested by EPCRT to prepare and deliver bus service performance reports and other data in addition to or as a substitute for the data required to be reported as part of the MIS submissions.

5.H.4 Passenger Complaints

- a. **Complaints Received By The Service Provider:** The EPCRT office takes and documents all telephone, written, e-mail, or walk-up customer complaints. However, Service Provider employees may receive such kinds of complaints from time to time, and will always be the principal recipient of customer inquiries/complaints on the buses. All Service Provider employees shall document operational problems or passenger complaints using a form to be provided by EPCRT. Comments shall be transmitted to the EPCRT office within forty-eight (48) hours of the complaint via e-mail or fax. The failure to submit complaints will subject the Service Provider to liquidated damages outlined in Section 9.7.
- b. **Complaints Received By EPCRT:** In the typical case, EPCRT will receive and document passenger comments/complaints, log them into its customer complaint database and forward the paper copies to the Service Provider for investigation and response either via e-mail or fax. The Service Provider is required to maintain a computerized tracking mechanism to follow these forwarded complaints through the investigation process and follow-up to EPCRT. Within three (3) working days of receiving a documented customer comment, the Service Provider shall provide EPCRT with all required information regarding the bus operator's name, bus number, and location. The Service Provider will document a response to the comment noting any personnel actions such as discipline or retraining will occur. After EPCRT acts upon such complaints, EPCRT will provide the Service Provider with summary information from its complaint database for the Service Provider's use. EPCRT places great importance upon the timely and thorough resolution of passenger complaints. The Service Provider will be required to attach the same significance to each passenger complaint.

5.H.5 Vehicle Records

The Service Provider shall maintain a complete vehicle history of every vehicle provided within this program. The fleet maintenance system shall be automated and be part of the Service Provider's electronic MIS report. The Service Provider shall maintain an individual file for each revenue vehicle, to include by date of action, all preventive and repair maintenance functions including: warranty work, inspections, parts usage, unscheduled maintenance, fuel and oil usage, labor expended on each vehicle, and any other pertinent maintenance data. Paper and

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electronic versions of these files shall be organized by vehicle number. The Service Provider is responsible for keeping the vehicle file current throughout the term of the Contract and shall make available complete copies of all vehicle files to EPCRT at the end of the contract. EPCRT or its agent shall have immediate access to all vehicle maintenance records during planned or unannounced visits or inspections of the Service Provider's facility or EPCRT facility for the duration of the Contract.

5.H.6 Vehicle Defect Reports

The Service Provider shall maintain records regarding any vehicle defect that occurs. Vehicle defect cards shall be made available to drivers and staff on all vehicles operated under this contract. A vehicle defect report shall be completed daily on each vehicle prior to service and after service and filed chronologically by vehicle number. The vehicle defect reports shall be kept on file for the duration of the Contract term and copies of all defect reports shall be made available to EPCRT by request and upon completion of the Contract. The Service Provider shall submit a summarized vehicle maintenance report to EPCRT by the fifteenth (15th) of each month. The report shall be in a form mutually agreed to by both parties.

5.H.7 Accident/Incident Report

The Service Provider shall be required to notify EPCRT regarding any and all disruptions in Service provision, including but not limited to vehicle breakdowns, detours, accidents, delays, and missed runs. Notification must be made both by telephone within 1 hour and in writing within twenty-four (24) hours on an approved EPCRT accident or incident form.

The Service Provider(s) shall notify EPCRT of any of the following accident/incidents:

Collisions between a EPCRT vehicle and another vehicle, person or object;

Single vehicle accidents or incidents;

Passenger accidents, including falls while passengers are entering, occupying or exiting the vehicle; disturbances, fainting, sickness, deaths or assaults; accidents the driver witnesses; vandalism to the vehicle while in service; passenger complaints of injury or property damage or other circumstances likely to result in the filing of claims against the Service Provider or EPCRT; any passenger, driver, supervisor, and service complaint that arises from an accident. If the accident/incident involves injuries or extensive property damage, EPCRT shall be notified immediately (regardless of hour or day); and accidents or incidents that occur at the operating facility.

Failure to adhere to the above conditions will subject the Service Provider to liquidated damages outlined in Section 9.7.

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5.H.8 Disaster Recovery Plan

The Service Provider must provide EPCRT a copy of its written disaster recovery plan to be used in the event of a fire or any other disaster. This disaster recovery plan should include off-site storage or backup information.

5.H.9 Other

In addition to the above-mentioned formal reports, the Service Provider shall keep up-to-date and accurate records of the following (at a minimum):

- a. Driver pre-trip inspection logs;
- b. Daily dispatcher report;
- c. Daily driver logs by run;
- d. Daily road call reports;
- e. Farebox information by driver run by day;
- f. Records for bus operating personnel as required to meet USDOT Commercial Driver Regulations; and
- g. Other information as deemed appropriate.

This information need not be submitted to EPCRT on a regular basis, unless otherwise directed. However, such records shall be made available to EPCRT by the Service Provider at the request of EPCRT.

5.H.10 Quarterly and Annual Reports – The Service Provider shall assist EPCRT staff in compilation and submission of the quarterly and annual reports, due to TxDOT during the course of the year. Backup documentation from the Service Provider shall be provided immediately upon request and EPCRT insists upon ensuring its accuracy

5.I. COORDINATION.

5.I.1 Intergovernmental Relations

The Service Provider's designated Project Manager and/or authorized representative shall be responsible for all intergovernmental relations efforts with EPCRT. All correspondence from the Service Provider shall be directed to the EPCRT Manager and/or authorized representative's attention.

5.I.2 Service Coordination

Service Provider shall, as directed by EPCRT, coordinate closely with affected municipal, county, state, and private representatives on all service matters that affect the daily operation of EPCRT bus Services, such as road closures or inclement weather as they may affect the operation of EPCRT Service.

5.I.3 Passenger Surveys

Documentation of the Services will be provided through passenger surveys. These surveys will be administered by drivers, staff or other authorized

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representatives of EPCRT. It is the responsibility of the Service Provider to ensure the cooperation of all personnel with any operational procedures pertaining to survey work, including the distribution of survey questionnaires and other such tasks.

5.I.4 EPCRT Meetings

EPCRT staff/Service Provider meetings may be required in accordance with the Service Provider's timetable for completion of the Services. The Service Provider shall be available to attend public meetings at EPCRTs' request to discuss the status, performance and proposed improvements of the bus system.

5.I.5 Citizen Meetings

The Service Provider shall, upon request of EPCRT, attend citizen meetings to provide information concerning the transit system.

5.J USE OF VEHICLES/EPCRT ASSETS.

5.J.1 Customer Service

Periodically, EPCRT may conduct customer surveys of current and previous riders to ensure that the level of customer service is maintained to EPCRTs' satisfaction.

5.J.2 EPCRTS' Advertising Sales Program

EPCRT retains all rights to interior and exterior third party advertisement on any and all vehicle(s) for this Service. At the inception of the contract, no exterior advertisement is allowed. Solicitations are not allowed at any time. EPCRT has sole responsibility for the generation of revenue by advertising on the interior of EPCRT vehicles. The Service Provider will be required to place any and all advertising signs and literature, provided to the Service Provider by EPCRT and to remove said advertising on removal dates indicated by EPCRT. **The Service Provider is expected to adhere to EPCRT Advertisement Policy.**

5.J.3 Exclusive Use

The Service Provider shall not enter into an agreement with any other party for use of equipment and/or personnel dedicated to this Service without the approval of EPCRT. Charter bus service will comply with FTA requirements.

5.K MARKETING PUBLIC RELATIONS

All marketing and media relations are the responsibility of EPCRT. Marketing activities include but are not limited to: all advertisement media, business contacts to promote the Service(s), flyers, schedules, route maps, direct mail, banners, radio, TV, press releases, media contracts, trade publications, and any other such advertisement tools which may be utilized.

5.K.1 Schedules/Maps/Distribution

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Schedules and route maps are to be designed and printed by EPCRT. Distributions of maps are to be coordinated with EPCRT to ensure that distribution locations can be frequently supplied. These costs shall not be included in the Proposal costs. EPCRT may, from time-to-time, call upon the Service Provider to assist in delivering materials when drivers or supervisors will be passing distribution locations enroute to or from the start or end of a route.

5.K.2 Bus Promotions

The Service Provider shall provide buses under the Contract, as EPCRT may from time-to-time specify for promotional appearances, uses, and photographs.

5.K.3 Media Relations

The Service Provider shall refer all media requests to EPCRT and shall not provide any information without prior approval by EPCRT.

5.K.4 Timetables

The Service Provider shall make timetables, maps and other EPCRT-prepared marketing materials available on all buses used for the provision of the Service.

5.K.5 Notices/Rider Alerts

The Service Provider shall ensure that EPCRT-generated notices are properly distributed to passengers and posted in visible locations in each vehicle. Drivers should hand notices to riders as they board. Notices shall be removed on the stated removal date.

5.K.6 Telephone for Public Route and Schedule Information

The Service Provider shall provide an exclusive telephone and telephone number for access by the public in English and Spanish to obtain route and schedule information for all EPCRT sponsored routes. Phone access by the public should be available Monday through Saturday between the hours of 7:00 a.m. and 5:30 p.m. A recording device should also be provided to receive messages when the phone line is busy.

5.L. Appearance

All bus operators must wear a shirt identifying EPCRT as the Sponsor of the service. The shirt will be provided by the Service Provider and will be selected upon mutual agreement of EPCRT and the Service Provider after the Service Provider has been awarded the contract. At all times while performing their duties on the route, vehicle operators must maintain a clean and neat appearance. In addition, all operators must display a picture identification badge identifying EPCRT and the bus operator by name.

5M Fares and Fare Collection

5.M.1 Fare Policy

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EPCRT establishes all fare structures, policies, media, promotions, and discounts which may include passes, tickets, tokens, transfers, and coupons. All contract employees must be familiar with and adhere to all parts of the adopted fare structure. The Service Provider shall cooperate to ensure the sale of these passes and coupons. The Service Provider shall not utilize any tickets, transfers, tokens, passes, cards or other non-cash fare substitutes other than those specified by EPCRT.

5.M.2 Fare Collection and Accountability

The Service Provider's drivers or other authorized personnel will collect from all passengers on each bus the amount of fare (including collection of, and/or notation of use, upon any passes, cards, tickets, tokens, vouchers, coupons, and transfers) determined in accordance with specifications and schedules specified by EPCRT. Drivers shall record required information regarding the use of promotional fare media.

5.M.3 Procedure for Collecting Fares

All drivers shall inform passengers immediately upon boarding the bus to deposit the fare in the farebox. Drivers will be allowed to assist those passengers who are physically unable to deposit the fare in the farebox.

5.M.4 Correlation of Fares and Passengers

The Service Provider should ensure that each passenger is depositing the correct fare in the farebox. The Service Provider shall ensure that the amount of fares collected is consistent with the number of passengers utilizing the applicable EPCRT Service. Significant discrepancies between the number of reported passengers and the revenue collected shall constitute improper monthly reporting and is subject to liquidated damages outlined in Section 9.7.

5.M.5 Security and Ownership of Fares

All fares collected in connection with all categories of bus Services shall be the property of EPCRT and shall be deposited by passengers immediately upon boarding the buses in the fareboxes provided on each bus. The Service Provider shall maintain the security of such fareboxes and associated revenue collection system. The Service Provider shall be responsible for providing security over collected funds, equipment in service, and all inventoried fareboxes and associated equipment. This shall include all maintenance required on the fareboxes to insure optimal functioning.

5.M.6 Written Security Procedures and Fare Collection Monitoring

The Service Provider must maintain adequate internal controls for all operations, specifically including revenue handling. The Service Provider must establish security procedures acceptable to EPCRT and submit these procedures with its proposal. These procedures include methods to monitor fare collection and the utilization of controls and security devices that will prevent theft and expose pilferage. EPCRT, at its discretion, shall review Service Provider procedures and submit written findings of any deficiencies. The Service Provider is required to

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provide written responses to EPCRT within thirty (30) days and implement corrective actions within sixty (60) days of any EPCRT written findings. Should there be any discrepancies between actual count and data count and an investigation proves failure to adequately protect EPCRTS' revenues by the Service Provider, then the Service Provider is responsible for reimbursement to EPCRT.

5.M.7 Revenue Accounting and Reconciliation

The Service Provider must include a revenue handling plan as part of the response to this RFP. Some of the requirements to be incorporated in this plan include:

- a. All passes, tickets, tokens, vouchers, coupons, and transfers must be stored in secure areas.
- b. The revenue room or any other area where the Service Provider is handling fares shall be subject to random inspections by EPCRT staff and/or external auditors.
- c. The Service Provider shall forward a check to EPCRT totaling all the collected farebox revenues for the preceding week by Wednesday of the following week. All required revenue reconciliation reports outlined in this section must accompany the monthly Service Provider invoice.

Revenue accounting and reconciliation requires the Service Provider to do the following:

- a. The Service Provider shall separate and retain all cash and reimburse EPCRT for the total revenue of the preceding week on Wednesday of the following week. All passes, cards, tickets, tokens, vouchers, coupons, and transfers must be returned to EPCRT.
- b. Prepare daily reports and a weekly revenue reimbursement check.
- c. Submit the monthly revenue report to EPCRTs' Manager (See sample of report attached in Section 10 Form Seven).
- d. Perform weekly written reconciliations of revenue collected with ridership information. The format of the reconciliations must be reviewed and approved by EPCRT. These weekly written reconciliations must be available for review at EPCRTS' request.

5.M.8 Farebox System

Standard, manual fareboxes will be provided by EPCRT for all Fixed-Route Commuter vehicles.

5.N SUBSTANCE ABUSE TESTING.

The Service Provider must implement a written Drug and Alcohol Testing program that is in compliance with Federal Transit Administration Regulations found at 49 CFR Parts

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655. This Program must be submitted and approved by EPCRT prior to implementation of the final Contract. This includes having written policies describing which employees are subject to testing, what types of testing will occur, which behavior is prohibited and the consequences of violating the policy. The following types of tests must be included in the Service Provider's program:

- a. Pre- Employment;
- b. Post- Accident;
- c. Random;
- d. Reasonable suspicion;
- e. Return to Duty;
- f. Follow-Up; and

g. The Service Provider's Drug and Alcohol Testing Program must be project specific to the EPCRT project. Corporate-wide policies that have been found to comply with FTA regulations may be used as long as they are first modified to be specific to the EPCRT project. This includes identifying specific contact people, testing centers, and resources. The Service Provider's Policy shall not contradict any requirements of the EPCRTS' Drug and Alcohol Testing Policy.

- a. **Reporting** - The Service Provider must also maintain a variety of records to document compliance with the FTA's Drug and Alcohol testing requirements. Procedures need to be in place detailing, which records need to be kept, their duration, and when individual employee records may be released. The Service Provider must make use of the most recently approved U.S. DOT Drug Testing Custody and Control and the U.S. DOT Alcohol Testing Form (OMB No. 2105-0529) forms.
- b. **DAMIS Report Submission** – No later than January 31 of each calendar year, the Service Provider shall submit a properly completed FTA Drug and Alcohol Management Information System annual report summarizing the drug test results from the EPCRT project from the previous calendar year. This form, FTA-OH-26-0001-94-1, is available upon request. The Service Provider must fill out separate DAMIS Report forms for each subcontractor as well.
- c. **Proper Licensing** – The Service Provider must secure the services of a Department of Health and Human Resources certified Testing Laboratory, use an Evidential Breath Testing device approved by the National Highway Traffic Safety Administration (NHTSA). The Service Provider's Medical Review Officer (MRO), Breath Alcohol Technician (BAT), and Substance Abuse Professional (SAP) must all be properly certified and licensed according to 49 CFR Parts 655. Prior to the beginning of this Contract, the successful Service Provider shall submit copies of all required licenses and certifications for these individuals, labs, and devices to EPCRT. At any time should any of the individuals or firms listed above be changed, the Service Provider shall immediately notify EPCRT.

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- d. **Confidentiality** – To the extent permitted by law, EPCRTS' Manager should be documented in the Service Provider's Policy to have access to test results and other documentation that the Service Provider's Project Manager has access to. All EPCRT employees shall have access to the names of the Testing Laboratory, Medical Review Officer (MRO), Breath Alcohol Technician (BAT), and Substance Abuse Professional (SAP).

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6. MAINTENANCE SCOPE OF WORK.

6.A GENERAL REQUIREMENTS.

The Service Provider shall maintain the vehicles in the highest state of repair and conform to the maintenance requirements listed below.

6.A.1 Vehicle Condition

All vehicles and vehicle equipment required by this RFP shall be maintained by the Service Provider in proper repair and condition satisfactory to EPCRT. The Service Provider shall maintain all equipment in conformance with the manufacturer's warranty requirements throughout the life of the contract. The Service Provider must ensure that all vehicle manufacturer warranty work is accomplished to guarantee EPCRT compliance with necessary warranty requirements. If the Service Provider receives an unsatisfactory rating in regard to these standards, the Service Provider shall notify EPCRT immediately and state what is being done to correct the deficiency.

6.B APPLICABLE CODES AND REGULATIONS.

All vehicles required to be utilized for this Service shall be safe for operation on public streets and freeways and meet all requirements in the Federal and State Motor Vehicle Safety Standards for a bus. All parts of the vehicle and all equipment mounted on or in the vehicle shall conform to this vehicle safety standard.

6.B.1 Inspections

Each vehicle is required to be inspected annually by the Texas Department of Transportation (TxDOT). EPCRT shall be notified of inspections performed by any other governmental agency other than EPCRT. The results of those inspections shall be transmitted to EPCRT, and any applicable signed certification shall be displayed or carried on the vehicles. If a regulatory agency revokes the permits to operate the vehicles in this Service as a result of unsatisfactory inspection ratings, the buses shall not operate and liquidated damages will be applied.

6.B.2 Quality Assurance and Audits

EPCRT shall have immediate and unrestricted access to all vehicle maintenance records during planned or unannounced visits or inspections to vehicles and Service Provider's facility for the duration of the Contract. EPCRT shall be entitled, at all times, to conduct inspections of any bus in order to determine compliance with the provisions hereof. The Service Provider shall, upon request by EPCRT, immediately remove from operation any bus which is determined by EPCRT to not be in compliance herewith and shall repair, clean or take any other actions reasonably requested by EPCRT in order to cause such bus to be in compliance. Nothing in this provision or in any inspection or approval by EPCRT of any bus shall relieve the Service Provider of its obligation to maintain and operate each bus in strict compliance with the provisions hereof.

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6.B.3 Permit and Fee Structure

All drivers and vehicles operating in the State of Texas may be subject to State fees, which should be included in the Service Provider's base price. Other vehicle licensing fees from other governmental entities for vehicles operated in this service will also be paid for by the Service Provider. All vehicles must have applicable vehicle permits, EPCRT decals or paint scheme, and all drivers must have current CDL driver's licenses with all proper endorsements. The Service Provider must also have all applicable City, County, and State business licenses.

6.C PREVENTIVE MAINTENANCE (PM).

Through an approved Preventive Maintenance Program, the Service Provider shall cause all components of each bus, including its body, frame, furnishing, wheelchair-lift, mechanical, electrical, hydraulic or other operating systems to be maintained in proper working condition, free from damage and malfunction. In the response to this RFP, the Service Provider shall submit to EPCRT a complete and comprehensive preventive maintenance program.

6.C.1 Preventive Maintenance of Heating, Ventilation and Air Conditioning Systems

The Service Provider shall provide a separate preventive maintenance program for the vehicle heating, ventilation and air conditioning systems that meets or exceeds the manufacturer's recommended or specified PM program. This PM program shall be submitted within the response of this RFP. All repairs and maintenance shall be performed according to the laws established by the Texas Commission for Environmental Quality. The Service Provider shall describe by brand name and model number the refrigerant recycling system proposed and whether this system is currently in use by the Service Provider or is yet to be purchased as a result of the award of this Contract.

The Service Provider shall properly maintain operating heating, ventilation and air-conditioning systems on all revenue vehicles. At a minimum, vehicle heating systems shall be operable between October 15 and April 1 and vehicle air-conditioning systems shall be operable between April 2 and October 14. During winter service operation, the measured temperature anywhere within the interior of the coach will not be less than 65 degrees F. During summer service operation, the interior vehicle temperature shall be no greater than the higher of either 75 degrees F or 20 degrees below the ambient temperature (i.e., 100 degree ambient temperature = 80 degrees in the bus). No revenue vehicle shall be operated in revenue Service without a properly functioning heating or air-conditioning system.

6.D VEHICLE DAMAGE.

The Service Provider shall repair as required all vehicle damage that occurs through the performance of this Contract. The Service Provider shall institute repairs of any significant damage to vehicles prior to return to service in a reasonable time. All repairs made relative to vehicle damage shall be performed by competent repair facilities capable of restoring the damaged vehicles back to their original configuration, appearance, and

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structural integrity. All vehicle damage repair in excess of \$1000 should be photographed and reported to EPCRT prior to initiating the repair.

6.E. GENERAL REPAIRS.

Service Provider shall provide as required all general repairs to vehicles provided by this contract.

6.F RESPONSIBILITY.

In no event shall EPCRT be required to repair, replace or maintain any bus.

6.G FUEL.

The Service Provider will be responsible for supplying all fuel for buses at the selected Service Provider's site or off-site locations. EPCRT shall not pay for, nor reimburse the Service Provider for fuel purchased.

6.G.1 Escalation/De-escalation of unleaded Gasoline Cost (Revenue Vehicles).

- a. If the price for unleaded RFG gasoline fluctuates plus (+) or minus (-) \$0.15 from the stated price for that unleaded RFG gasoline as stipulated in the Oil Price Information Service (OPIS), PADD 3, Average price for El Paso, Texas effective on the date set for receipt of proposals then, the difference between the cost per gallon shall be multiplied by the actual number of gallons used in EPCRT Transportation service for each month. There shall be no payments made for any fluctuations in the price of any alternative fuels or diesel fuels utilized during the term of this contract. Payment for adjustments shall be made every six months. Amounts owed by EPCRT or the Service Provider shall be subject to the same payment terms as specified elsewhere in this contract. The OPIS is published weekly by United Communications Group, 11300 Rockville Pike, Suite 1100, Rockville, MD. 20852-3030. Such fuel costs shall be the base rate from which fuel cost adjustments may be made.
- b. Escalation/De-escalation adjustments shall be made each month, with the first adjustment being effective on the first day of the contract service. The first adjustment will be predicated on the OPIS issue published for the Monday immediately preceding the commencement of contract service. All subsequent adjustments will be predicated on the OPIS issue published on the first Monday of each month thereafter.
- c. The Service Provider agrees to submit such documentation of fuel usage as EPCRT may require, including copies of receipts, charge slips, fuel supplier or vendor names and addresses, vehicular mileage figures, and test confirming quality of fuel equal to that required by this contract, and other data which may substantiate the use of appropriate fuel. EPCRT will not be

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obligated to make any fuel cost adjustments absent such documentation. EPCRT reserves the right to calculate and determine exact increase or decrease adjustment based on such documentation and other data developed or gathered by EPCRT. The Service Provider covenants that it will, to the maximum extent practicable, obtain fuel at the lowest price available to the Service Provider, and agrees that EPCRT may require certification by the Service Provider of its fuel usage on each invoice submitted.

6.G.2 Place Holder

6.H PARTS LUBRICANTS SUPPLIES

Service Provider, at its sole cost and expense, shall provide lubricants, repairs, parts, and supplies required for the maintenance and operation of all buses and service vehicles utilized in providing the Fixed-Route Commuter Bus Service.

6.H.1 Tires

The Service Provider shall be responsible for providing replacement tires for the transportation of all revenue vehicles without additional cost to EPCRT.

6.H.2 Place Holder

6.I PAINTING OF VEHICLES.

Any needed decals or paint after the start of the Contract will be the responsibility of the Service Provider. If any vehicle cannot be used to perform Services due to physical damage or needed repairs it will be the responsibility of the Service Provider to locate and acquire a replacement vehicle approved by EPCRT to perform the Services at no additional cost to EPCRT.

All buses in Revenue Service must have the appropriate decals, paint, and EPCRT insignia approved by EPCRT prior to any vehicle going into service.

6.J VEHICLE CLEANING

The Service Provider shall be responsible for maintaining the cleanliness of all vehicles used in the provision of the service in order to provide a positive public image and appearance. The Service Provider shall be assessed liquidated damages for any vehicle deemed unclean by EPCRT.

6.J.1 Vehicle Exteriors

The exteriors shall be washed every week unless circumstances warrant a more frequent service. The exterior of each vehicle shall be kept clean from road dust, mud, tar, grime and graffiti. The Service Provider shall remove all graffiti from the exterior and interior of the vehicles as soon as it is found or as soon as it is practical at the end of the day or before it goes in Service the next day. If the graffiti is offensive or vulgar and cannot be removed, that vehicle shall be taken out of service immediately. If graffiti is etched or scratched into the surface of the glass rather than paint, that piece of glass must be replaced as soon as

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possible. Replacement shall take no longer than one (1) week unless parts are unavailable.

6.J.2 Vehicle Interiors

At a minimum, but more often as needed, interiors shall be swept, cleaned of trash, dusted and spot-mopped once daily. Weekly, each vehicle shall be deep cleaned, which includes, but is not limited to ceiling, walls, floors, seats, driver area and dash, ancillary equipment, and windows. The Service Provider shall provide all upholstery cleaner to clean each seat once a week during this deep cleaning process. Additionally, the Service Provider will be required to remove all noticeable trash, such as newspapers and litter from each vehicle after each run.

6.J.3 Interior Pest and Odor Control

The interior passenger compartment of each vehicle shall be free of roaches and other insects or vermin as well as noxious odors from cleaning products, pest control products, and exhaust fumes emitted by the engine of such vehicle. The Service Provider is expressly prohibited from using any pest control product, or application procedure for such product, that would be hazardous to the health and well being of the passengers and driver of such vehicle.

6.J.4 Unclean Buses

Any vehicle found by EPCRT to not be in compliance with these vehicle appearance provisions will be removed from service immediately without limiting the Service Provider's Service obligations. In addition, the Service Provider shall be subject to the liquidated damage provisions concerning vehicle appearance and/or deficient vehicle condition. Once all required actions have been completed by the Service Provider to correct any deficiencies found within this provision, EPCRT must inspect and approve all actions taken prior to the vehicle being eligible for use in scheduled Service.

6.K FACILITY CLEANING

The Service Provider shall maintain the interior and exterior of its facilities, including kitchens, bathrooms, and lounges in neat and clean conditions, free of trash and debris at all times. This includes the employee parking areas, bus yard and all other areas clean and clear of debris. The Service Provider is completely responsible for all custodial trash removal and waste handling. All floors shall be swept once a day and oil spills shall be cleaned immediately.

6.L MODIFICATION AND REPAIR OF DESTINATION SIGNS

In the event of route changes that affect the destination sign readings, EPCRT will specify the change in writing and the Service Provider will revise the destination sign to reflect that change. EPCRT will reimburse the Service Provider for rescreening of roller curtain destination names due to additions or changes but not for any installation or repair. The Service Provider shall perform any required maintenance to ensure constant display operation of all revenue vehicle destination signs.

6.M Vehicle Status Board.

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The Service Provider shall maintain a status board in the operating facility from which vehicles are dispatched. The status board shall contain, but not be limited to the following:

- Vehicle Number;
- Vehicle Mileage;
- Current Mileage;
 - Date and Mileage of last Lube, Oil and Filter change;
 - Date and Mileage of last Preventive Maintenance;
 - Date and Mileage of last safety inspection;
 - Date and Mileage of next Lube, Oil and Filter change;
 - Date and Mileage of next Preventive Maintenance;
 - Date and Mileage of next safety inspection; and
 - Vehicle documentation, warranty information, registration, and all other
 - Vehicle related documents.

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7. PROPOSING ORGANIZATION'S BACKGROUND AND EXPERIENCE.

Please answer the following questions as completely as possible, placing your answer immediately after the question to which it applies. **If you wish to add supplemental information, it shall be labeled "Supplemental Information."**

7.1. Official Name.

Provide the legal name and address of the company and state of incorporation submitting the proposal. Also identify all subcontractors or joint venture partners.

7.2. Guarantor.

The nature of the relationship between the Service Provider and its guarantor is crucial to protect THE COUNTY in the event that the contracting Service Provider defaults on its obligations. If the parent company of a proposing Service Provider is serving as the guarantor, then the parent company **must indicate in a letter its willingness to guarantee all contractual obligations of the Service Provider.** If the Company that is serving as guarantor has a relationship with the Service Provider other than a parent/subsidiary relationship, then a detailed explanation of all past and present relationships between the Service Provider and its guarantor must be provided, in addition to a letter from the guarantor indicating its willingness to guarantee all contractual obligations of the Service Provider.

Any financial information requested of the Service Provider in the following section must similarly be provided for the guarantor. In the event of a joint submission or Proposal, all proposing entities must provide statements specifying the extent to which each entity will act as guarantor and provide all relevant financial documents for all entities involved in the joint venture. Additionally, if there is more than one (1) guarantor, then the guarantors must be jointly and separately obligated.

7.3. Proposed Project Team.

If the Service Provider's Proposal submission will be from a team composed of more than one (1) company or if any subcontractor will provide more than fifteen percent (15%) of the Services, all participating companies must be identified. Provide a description, which includes the teaming relationships, form of partnership, each team member's contribution, and the experience of each team member, which qualifies them to fulfill their responsibility. Provide descriptions and references for the projects on which team members have previously collaborated.

7.4. Proposal Response Items.

Please organize your Proposal by responding to the following items:

7.4.1. Qualifications of Proposing Firm.

- a. Explain the general character of work performed by your firm.

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Background and Experience

- b. Describe your firm's qualifications and experience to perform the work described in this RFP. Information about experience should include direct experience with the specific subject-matter area.
- c. Describe the performance standards your firm has established for its contract operations.
- d. How is the performance of your managers and other contract management personnel evaluated?
- e. What would be your initial response to a request by the client to remove the project manager?
- f. Does your firm have an Equal Employment Opportunity and Affirmative Action Program? If yes, explain your firm's program and accomplishments in detail.
- g. List other contracts under which services similar in scope, size or discipline to the required services were performed.
- h. List at least three (3) State, Municipal, Federal Government, and/or commercial references that your firm has had contracts with within the past three (3) years where services were similar in scope, size or discipline to EPCRT required services described in this RFP. Include information regarding improvement in ridership, on-time performance, safety record, cost containment, and productivity.
- i. Can your firm meet the proposed start date as indicated in Section 5?
- j. Describe how your firm will meet the stated insurance requirements and provide proof of insurability by a qualified insurance provider.

7.4.2. Proposed Staff Qualifications and Organization of the Operation.

- a. Who will be the Project Manager for this project? Explain this person's background and experience, and include a resume.
- b. What percent of the Project Manager's time will be devoted to this project? Explain.
- c. Is there an Operations Manager or other member(s) of the Management Team for this project? Explain each of these person's background and experience, and include a resume.
- d. Who will be the Maintenance Manager? Explain this person's background, experience, and include a resume.

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- e. Who will be in charge of data reporting required by EPCRT? Explain this person's background, experience and include a resume.
- f. Provide an organizational chart for your firm and the division, which will be in charge of this project. Explain the nature of the Project Manager's relationship with Corporate Management and how and with whom will EPCRT interact with regarding Corporate Support.
- g. Provide an organization chart and staffing plan, which describe the Service Provider's proposed on-site staff distribution to accomplish this work. The staffing plan should indicate a chart, which partitions the time commitment of each professional staff member across the proposed tasks. This section should also quantify a listing of the number of full-time equivalent personnel by title proposed for the on-going management and operation of the system including:
 - Drivers;
 - Maintenance Personnel (by title);
 - Dispatchers;
 - Street Supervisors; and
 - Administrative/Clerical (by title).
- h. Who in your management team will have responsibility for the hiring and training of bus operators? Explain and provide a resume, if this person is different from a proposed team member described above.
- i. Supply EPCRT with a detailed transition plan and timeline to assume the responsibilities of the existing Service Provider.
- j. Identify any additional personnel, if any, who will be required for full-time employment on a subcontract or consultant basis. The technical areas, character and extent of subcontract or consultant activity will be indicated and the anticipated sources will be specified and qualified. Special mention shall be made of direct technical supervisors and key technical personnel, and approximate percentage of the total time each will be available for this project.
- k. Service Provider shall provide to EPCRT a list of all joint venture agreements that may provide service to the Service Provider under this agreement with EPCRT. One party in a joint venture must be identified as the lead Service Provider who EPCRT will hold responsible for the performance of the subcontractors. This applies to a prime Service Provider with subcontractors and will be considered a submittal requirement.

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Background and Experience

7.5. **Operation Methodology.**

- a. Provide a written understanding of the project. A description of all major activities to be performed during the ongoing system management and operation shall be included.
- b. Provide the location, address, size, and detailed description of all facilities, which will be utilized in conjunction with this project.
- c. How many support vehicles will the Service Provider provide for this project? Explain.
- d. Describe your firm's ongoing safety program for this project.
- e. Describe how your firm resolves customer complaints.
- f. As appearance is important to the passenger, tell us how your firm will maintain the appearance of its personnel.
- g. As reporting requirements in the proposed Contract are quite extensive, please explain how your firm intends to meet these requirements.
- h. Describe in detail your firm's plan to comply with EPCRTS' requirements regarding farebox, fare collection, security and reconciliation.
- i. Present your firm's drug testing policy and program for this Contract.
- j. Describe how your firm will respond to vehicle breakdowns including your plan for on-street supervision and staging of extra vehicles and drivers.
- k. Describe in detail your firm's plan regarding preventive maintenance of revenue vehicles.
- l. Describe the heating and air conditioning program to be followed under this Contract.
- m. Describe internal (on-site) and corporate quality control programs designed to ensure that Service performance standards are met.
- n. Include a detailed description of driver hiring, training, retraining, and evaluation processes including minimum driver qualifications. Include a detailed description of mechanic hiring, training, and retraining processes including minimum mechanic qualifications and trade certifications. State whether you intend to hire any existing personnel and if so, present your plan for hiring and training (retraining) such individuals.
- o. Provide a detailed description of your vehicle communications system.

Background and Experience

- p. Provide a detailed description of your proposed bus and equipment maintenance program and the maintenance record keeping system.
- q. Provide a description of all major activities to be performed during system start-up. Include a detailed project schedule for start-up of the system including estimation of the minimum amount of time required to complete start-up activities.
- r. Provide a description of all major equipment to be provided including non-revenue vehicles, maintenance and other equipment such as radios for vehicles, and computers.

7.6. **Proposed Costs.**

Complete Section 10 Form Seven Cost Proposal and include in your response under title Proposed Costs. To ensure a standardized basis for the comparison of various proposals, all proposed costs must be specified in Section 10 Form Six A. Attachment A is broken out into three (3) schedules:

- 1. Revenue Vehicle Hour Costs;
- 2. Cost Schedule Breakdown for Initial Number of Revenue Vehicle Hours; and
- 3. Driver Wage & Benefits Proposal.

Wage or minimum pay hour requirements the Service Provider may have with its employees will not affect EPCRT'S ability to pay the Service Provider on an individual revenue vehicle hour basis. EPCRT will not accept any restrictions or minimum servicing hour requirements either by day, or other time period or in any other way other than by individual Revenue Vehicle Hour.

7.7 **Past or Pending Judgments.**

For all matters involving local governments, submit declarations of the current status of any past or pending criminal, civil, or administrative litigation against the parent company and all subsidiaries of the parent company. In addition, submit declarations of the current status of all pending criminal, civil or administrative litigation that commenced within the past five (5) years in North America, whether or not it involves local governments, against the parent company, current officer and all subsidiaries of the parent company. (For the purpose of the declarations, the current officer, shall be defined to include those individuals who are presently serving or who have served within the past two (2) years as an officer of the company.) Please state whether there are any cases pending against the Service Provider or it's Guarantor, subsidiaries, or officers that, if adversely resolved, would pose a material risk of insolvency to either the Service Provider or Guarantor or materially affect the Service Provider's or Guarantor's ability to perform their obligations.

The respondent may choose not to submit records for matters that were resolved prior to the time that the subsidiary or affiliate became associated with the parent company, as long as that subsidiary or affiliate will not be involved in the provision of Services to

Background and Experience

EPCRT. All records for subsidiaries or affiliates of the parent company that may be involved in the provision of Services to EPCRT must be included.

EPCRT reserves the right to request additional information to explain any of the above citations/violations.

Section 8

Proposal Evaluation Criteria

8. PROPOSAL EVALUATION CRITERIA.

Proposals will be evaluated by a selection committee based on the Service Provider 's ability to meet the requirements of this RFP. This section provides a description of the evaluation criteria that will be used by the evaluation team to evaluate the Proposals. To be deemed responsive, it is important for the Service Provider to provide appropriate detail to demonstrate satisfaction of each criterion and compliance with the performance provisions outlined in this RFP. Proposals must contain information specifically related to the proposed Services and specifically requested herein. Failure of any Service Provider to submit information requested may result in the elimination of the Proposal from further evaluation.

Each Proposal will consist of a technical part and a cost part. The technical part will be evaluated as described below. The cost part of the proposals will be evaluated based on the cost per Revenue Vehicle Hour.

The EPCRT selection committee will review and evaluate all proposals based on the criteria listed below and will include EPCRT staff and other stakeholders.

Representatives from selected firms may be interviewed and given an opportunity to present their Proposal and to answer questions from the committee. As soon as practical after opening the Proposals, the committee will recommend one firm for contract award.

Proposals will be evaluated using the following criteria that are listed in descending order of importance:

- a. Experience record and references: 40%
- b. Cost per Revenue Vehicle Hour: 35%
- c. Proposed personnel abilities/experience: 15%
- d. Financial qualifications: 5%
- e. Safety record/training programs: 3%
- f. Proposal quality and completeness: 2%

EPCRT requires Service Providers to submit any or all of the following: a certified financial statement; an experience record; a certified statement disclosing all ownership interests whether direct, indirect or beneficial and including intermediate and ultimate ownership interests where several levels of ownership exist, disclosing any single source in excess of 30% of outstanding debt and disclose any person or entity that has guaranteed in excess of 30% of the Service Provider's outstanding debt; furthermore, such disclosures shall contain any information of or relating to any and all common ownership, control, management or common pecuniary benefit said proposing entity, its owners, management or representatives possess or retain in any other entity now participating in transit service contracts. EPCRT Selection Committee shall be the sole judge as to eligibility of the Service Provider and the responsibility of the Service Provider to satisfactorily perform the work specified within the Contract timeframe.

Section 8

Proposal Evaluation Criteria

8.1. **Experience Record and References.**

Proposers will be evaluated based upon their experience and qualifications in performing the Services, as reflected by experience in performing such Services and by the qualifications and abilities of the key individuals proposed for service performance. The evaluation will include the availability of business references and the experience of key individuals in the company. The experience of the Service Provider in delivery of similar Services and references from other local governments or private companies will be used in the criteria to determine a Service Provider.

8.2. **Proposed Personnel Abilities and Experience.**

The qualifications and experience of key personnel will be important to the effective delivery of Services. EPCRT will evaluate the Proposals based on the information provided about key personnel in the Proposal.

8.3. **Cost Effectiveness and Value.**

Under this criterion, Proposals will be compared in terms of the proposed revenue vehicle hour rates. The calculation of total cost will include the cost to EPCRT as well as any indirect costs of EPCRT associated with monitoring the Contract.

Contract award will be subject to negotiation and subject to availability of sufficient funds. Service Providers should be prepared to provide detailed cost information, including audited overhead rates, if they are selected for negotiation.

EPCRT will pay the rate for each hour of service operated as proposed in the tables found in Section 10 Form Seven. There will not be separate pay rates for weekday versus weekend Service or special trip requests or for any other service.

EPCRT intends to pay the Service Provider the fixed rate proposed for all hours within the ranges shown in Section 10 Form Seven tables' rows. Should Service be increased or decreased such that the annual total would fall out of this range, the new service level rate would be applied. The "Current Hours" given are for total number of estimated revenue vehicle hours for a complete year of Service. Current hours are approximate, at the start of the Service.

For Example, (Fixed-Route Commuter) EPCRT plans to operate 9,962 revenue vehicle hours of Service. EPCRT will pay for these hours at the rate shown in the middle row. However, should EPCRT increase or decrease the service for (Fixed-Route Commuter) it would either grow to over 14,000 annual hours or fall below 6,000 revenue vehicle hours, EPCRT would adjust the hourly rate to the new tier.

8.3.1. **Definition of Revenue Hour.**

Billable time is the time the vehicle is in Service carrying passengers (revenue time). Time between separate pieces of revenue work, and the time it takes to go to and come from the point or points where vehicles are garaged or parked to the point or points where the vehicle goes into and out of service (deadhead time) are not billable. In most instances, this means that billable hours will be the "first stop to the last stop" on EPCRT approved pieces of work.

Section 8

Proposal Evaluation Criteria

8.3.2. Calculation of Payment.

The multiplication of the scheduled vehicle revenue hours actually operated each month times the Service Provider's proposed rate per vehicle revenue hour shall equal the monthly payment (less any liquidated damages or other justified withholdings). The revenue hourly prices proposed shall remain firm and shall include all charges that may be incurred in fulfilling the terms of this Contract. The Contract amount may vary according to the number of revenue hours of service identified by EPCRT.

No wage or minimum pay hour requirement the Service Provider may have with its employees will affect EPCRT's ability to pay an individual revenue vehicle hour basis. EPCRT will not accept any restrictions or minimum servicing hour requirements either by day, or other time period or in any other way other than by individual Revenue Vehicle Hour.

8.3.3. Availability of Funding.

Notwithstanding the above, continued performance of all phases of this Contract is conditioned on the availability of EPCRT funding. If such funding appropriations are not granted or if no funds remain for performance, then the affected multi-year Contract will be terminated.

8.3.4. Strike.

In the event of a strike by employees of the Service Provider that causes a disruption in the provision of Service as outlined in the Contract, EPCRT may, at its discretion, terminate the Contract without penalty, provided EPCRT shall comply with the terms and conditions of any transit employee protection requirements applicable to this Contract as determined by the United States Department of Labor.

8.3.5. Changes in Responsibility.

Mutually agreed upon changes in the division of responsibilities between EPCRT and the Service Provider shall require a change in either the base and/or marginal contract rates.

8.4. **Financial Qualifications.**

This criterion includes an evaluation of the financial qualifications of the Service Provider. The evaluation will take into account the financial strength of the Service Provider and its ability to meet the short and long-term financial requirements of the Agreement. EPCRTS' Auditor will issue a finding on the financial strength of each Service Provider based on the data submitted in the Service Provider Proposal.

8.5. **Safety Record and Training Programs.**

The Service Provider's training program and safety record will be evaluated during the Proposal response evaluation.

Section 8

Proposal Evaluation Criteria

8.6. **Interviews.**

A Selection Committee consisting of EPCRT staff will review the Proposals. The panel may request an interview with one or more Service Provider(s). At the interview, the selected Service Provider(s) will be required to make a brief presentation detailing how they would approach the program objectives outlined in this RFP's scope of work. This interview will provide the Service Provider(s) an opportunity to elaborate and clarify issues and ideas submitted in their Proposal and to answer questions from the Selection Committee.

8.7. **Proposal Quality and Completeness.**

EPCRT will evaluate the Proposals for compliance with the terms, conditions, requirements, and specifications stated in this RFP. Regardless of exceptions taken, Service Provider(s) shall provide pricing based on the terms set forth in this RFP. Exceptions shall be identified in accordance with Section 2.6.15 of this RFP.

Section 9

The EPCRT Contracting Requirements

9. **EPCRT CONTRACTING REQUIREMENTS.**

EPCRT will enter into a Contract with the successful Service Provider that contains the terms and conditions set forth in this RFP. Each Service Provider must state specifically in its Proposal any exceptions to the terms and conditions included in this Section, and any proposed additional terms or conditions deemed important by the Service Provider. EPCRT will take any such exceptions and proposed additions into account during the evaluation and selection process. Any terms and conditions that the Service Provider does not specifically object to will be incorporated into the Contract. Notwithstanding the foregoing, EPCRT reserves the right to change the proposed contractual terms and conditions prior to or during contract negotiations if it is in EPCRT's best interest to do so during contract negotiations.

The terms and conditions set forth in this section are not all inclusive. Contractual Services will be competitively negotiated in compliance with the terms of the Federal Transit Administration's Master Agreement. Since federal funds may be used, any additional federal requirements will also apply. EPCRT reserves the right to reject any and all Proposals received, although EPCRT also reserves the right to waive irregularities.

EPCRT may propose additional terms and conditions based on the responses to this RFP and EPCRT's analysis of the successful Service Provider's proposal.

As used in this Section of the RFP, the term "Agreement" shall refer to the Contract entered into between EPCRT and the successful Service Provider, and the term "Company" shall refer to the successful Service Provider. The term "Services" shall mean Contract Provider for Fixed-Route Commuter Services to be performed by the Company under the Contract.

9.1. **Description of Services.**

The Contract will set forth the Services to be provided in detail. The Services will include those described in this RFP and the successful Proposal, and any modifications agreed to by the parties.

The Service Provider shall be responsible for all other functions necessary for the safe, reliable, and efficient operation of the Service that are not specifically discussed herein.

9.2. **Term.**

The initial term of the Agreement will be five (5) years with EPCRT retaining the right of renewal for a five (5) year term or any part thereof with the understanding that the cost per revenue service hour be negotiated between THE COUNTY and the Service Provider.

9.3. **Invoices to EPCRT.**

By the fifteenth (15th) day of the month, the Service Provider shall submit a monthly invoice to EPCRT for Services performed the previous month. EPCRT shall pay the Service Provider within thirty (30) days of receipt of an accurate, properly submitted, uncontested invoice. Payment shall be based on the total number of Revenue Vehicle Hours provided. EPCRT shall deduct any assessments due from the payment owed the Service Provider. EPCRT will not be penalized for late payments.

The EPCRT Contracting Requirements

Monthly reports due EPCRT must be included with the invoice. No invoice will be paid until the monthly reports due to EPCRT and the revenue reimbursement check that correspond with the monthly revenue reports from the prior month are confirmed to have been forwarded to EPCRT by the Service Provider.

Original invoices shall be sent to:
Bob Geyer, Manager
El Paso County Rural Transit
800 E. Overland, Suite 208
El Paso, Texas 79901

EPCRT will attempt to pay all accurate, properly submitted, uncontested invoices within thirty (30) days of receipt.

9.4. **Company Personnel Removal or Replacement.**

EPCRT Point of Contact will have the right to require the removal and replacement of any “Key Personnel” of the Company or the Company’s subcontractor Providers who are assigned to provide Services to EPCRT. As used in this Agreement, the term “Key Personnel” shall mean the Company Project Manager and any other personnel of the Company or its subcontractor Providers fulfilling a key role in the Project, whom EPCRT designates to the Company as “Key Personnel.”

9.5. **General Warranties.**

Company represents and warrants that:

- 9.5.1. It is a corporation duly incorporated, validly existing and in good standing under the laws of the state of its incorporation, and is qualified to do business in Texas;
- 9.5.2. It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- 9.5.3. The execution, delivery, and performance of this Agreement have been duly authorized by Company;
- 9.5.4. No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Agreement;
- 9.5.5. In connection with its obligations under this Agreement, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses; and
- 9.5.6. The Company shall not violate any agreement with any third party by entering into or performing this Agreement.

9.6. **Additional Representations and Warranties.**

Section 9

The EPCRT Contracting Requirements

Company represents warrants and covenants that:

- 9.6.1. The Services shall satisfy all requirements set forth in this Agreement, including but not limited to the attached Exhibits;
- 9.6.2. For the Term of the Contract, the Company will perform in conformity with the “Specifications and Requirements” defined in this RFP; and
- 9.6.3. All work performed by the Company and/or its subcontractor Providers pursuant to this Agreement shall meet industry accepted standards, and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge.

9.7. **Liquidated Damages.**

EPCRT and the Company acknowledge and agree that EPCRT will incur damages if the Company fails to meet the requirements set forth in the RFP. EPCRT and the Company agree that EPCRT will incur damages if the Company fails to perform the Services. The parties further acknowledge and agree that the damages, which might be reasonably anticipated to accrue as a result of failure to meet one or more of the above, are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the Company agrees to pay liquidated damages at the rates set forth below:

EPCRT shall monitor its bus Services in order to assess the performance of the Service Provider in delivering the Service. The monitoring activities shall include but not be limited to vehicle cleanliness, schedule adherence, completed vehicle trips, the on-time and accurate submission of reports, heating, ventilation and air conditioning system performance, and unsatisfactory/unsafe performance by a driver. EPCRT shall maintain the right to assess liquidated damages against the Service Provider, as set forth herein, based on the Service Provider’s failure to meet the established standards. These standards and liquidated damages applicable thereto shall include the following performance criteria and be assessed on the basis of spot checks or the specified number of verifiable passenger complaints in each category.

The intent of this program is to ensure high quality service, not reduce EPCRTS’ costs. NOTE: With the exception of inadequate staffing infractions (Section 9.7.6.7.), liquidated damages shall be waived for the first 90 days of in-service operation, assuming the Service Provider has made a good faith effort to effect a smooth transition and start-up.

- 9.7.1. **Waiving Damages** - EPCRT reserves the right to waive the imposition of liquidated damages at its discretion. Waiver or failure to assess liquidated damages in any circumstance does not negate or abridge EPCRTS’ right to assess such damages in the future for the same infraction or infractions of the Contract for which EPCRT previously waived or failed to assess such damages. This provision shall not abridge or affect any other remedy, which EPCRT may have for any damages, which EPCRT may incur in consequence of the failure of the Service Provider to perform in accordance with contract specifications.

The EPCRT Contracting Requirements

- 9.7.2. **Earnback of Liquidated Damages** – In the event liquidated damages are imposed by EPCRT, then the Service Provider may have the right to recover, at the discretion of EPCRT, any sums assessed against it as liquidated damages by demonstrating either:

9.7.2.1. **Incorrect Assessment** - The Service Provider had met the applicable service standard and/or that the Service had been delivered in accordance with the Contract.

9.7.2.2. **Beyond Service Provider's Control** – The event which resulted in a liquidated damage assessment was caused by or attributable to mitigating circumstances beyond the Service Provider's control. The Service Provider shall not be held responsible for failure to provide on-time service due to accidents, unusual weather or traffic conditions, unavoidable vehicle malfunctions (such as flat tires due to unavoidable road hazards), or naturally occurring disasters, if sufficient documentation is provided to EPCRT.

- 9.7.3. **Concerns** – Service Provider shall cooperate with EPCRT to fully explore any concerns regarding the Service and performance standards. In its evaluation of liquidated damage assessment, EPCRT will consider the Service Provider's efforts to complete the following:

9.7.3.1. **Correction Plans** – The Service Provider may complete written corrective plans for corrective action. Deadlines for corrective action will be established based on what is considered by EPCRT to be an acceptable amount of time.

9.7.3.2. **Dispute** - In the event of a dispute over the assessment of liquidated damages, any amount of the monthly billing not in dispute shall be made according to normal payment terms.

- 9.7.4. **Liquidated Damage Basis** - Notwithstanding the above, EPCRT shall impose liquidated damages on the following basis:

All liquidated damage assessments will be made based upon either: one (1) EPCRT staff or agent observation, or two (2) reports/complaints regarding the same infraction by riders, the general public or Service Provider notification.

- 9.7.5. **Adherence to Schedule** - The Service Provider shall strive to maintain on-time performance and every reasonable effort is expected to be made by the Service Provider to operate all Service on schedule. Operational difficulties that result in missed trips or vehicles not operating as required by the RFP must be reported immediately to EPCRT.

The EPCRT Contracting Requirements

EPCRT understands that frequently, the Service Provider often has little control over the variable traffic conditions. EPCRT will focus schedule adherence monitoring efforts on the following:

- a. Beginning routes/runs on time; and
- b. Not leaving scheduled stops (pick up points) early.

However, for all Services, liquidated damages will be assessed for other schedule adherence performance failures due to:

- a. Drivers being inadequately trained (resulting in unnecessarily slow operation or getting lost);
- b. Vehicles being improperly maintained (resulting in breakdowns);
- c. Vehicles being refueled while in service;
- d. Relief driver tardiness.

Please note that EPCRTS' bus service monitors will obtain the correct time by calling 533-7744. It is expected that the Service Provider's drivers, dispatchers and other supervisory personnel will set their watches by using the same number.

Liquidated damages shall be imposed if the Service Provider does not meet the following general schedule adherence standards.

9.7.5.1. **Early Trip** - If a service trip departs in advance of the scheduled departure time at any designated time point, or any scheduled bus stop (boarding location) the liquidated damages shall be two hundred dollars (\$200) per occurrence.

9.7.5.2. **Late Trip >5 Minutes, <15 Minutes** - If a service trip departs more than five (5) minutes, but less than fifteen (15) minutes following the scheduled departure time at any designated time point, the liquidated damages shall be twenty five dollars (\$25) per occurrence.

9.7.5.3. **Late Trip >15 Minutes** - If a service trip departs more than fifteen (15) minutes following the scheduled departure time at any designated time point the liquidated damages shall be fifty dollars (\$50) per occurrence.

9.7.5.4. **Incomplete Trips** - If a service trip is not completed in its entirety, the trip shall be considered a Missed Trip and subject to liquidated damages of one hundred fifty dollars (\$150).

9.7.5.5. **Missed Trip** - If the Service Provider fails to operate a trip, liquidated damages will be assessed in the amount of two hundred dollars (\$200) per occurrence. The scheduled Revenue Vehicle Hour time for that trip will also be deducted and not paid to the Service Provider. Missed trips also include, interlined, passed, or combined trips.

The EPCRT Contracting Requirements

If a service trip departs later than next scheduled departure, at any location along a route it shall also be deemed a missed trip.

9.7.5.6. **Use of Supervisory Personnel to Cover Trips** - If the Service Provider is unable to meet the pull-out requirement with regularly scheduled drivers supervisory or other personnel may be utilized as substitute drivers.

9.7.5.7. **Failure to Report Missed Trips** – If the Service Provider fails to report any Missed Trips on the Daily Operations Report submitted to EPCRT, then all liquidated damages assessed above shall be doubled in amount.

9.7.5.8. **Vehicle Breakdown** - If a replacement vehicle is not provided within 2 hours of a reported breakdown, a liquidated damage of two hundred dollars (\$200) for the Missed Trip will be assessed. Service revenue vehicle hours not completed will also be deducted.

9.7.6. Personnel/Duties

9.7.6.1. **Uniforms/Grooming** - If any Service Provider employee fails to comply with EPCRTs' policies regarding appearance or grooming, the requirement to wear a uniform or the requirement to wear an identification badge, the liquidated damages will be fifty dollars (\$50) per occurrence.

9.7.6.2. **Collecting Correct Fares** - If any Service Provider employee fails to collect the correct fare or does not correctly record the fare collected, the liquidated damages will be fifty dollars (\$50) per occurrence. Liquidated damages for incorrect fare collection may only be invoked on the second or later documented occurrence with any one (1) operator.

9.7.6.3. **Proper Destination Signs** – For failing to show the proper vehicle message sign(s), including front and side signs, the liquidated damages will be one hundred dollars (\$100) per occurrence.

9.7.6.4. **Driver Unsafe Operation of Vehicles** - Unsafe operation of a vehicle will result in three hundred dollars (\$300) in liquidated damages per occurrence.

9.7.6.5. **Notice/Rider Alert Distribution/Posting** – Failure to post EPCRT notices in highly visible places and distribute such notices to each boarding passenger shall result in a penalty of twenty-five dollars (\$25) per occurrence.

The EPCRT Contracting Requirements

9.7.6.6. **Driver Training/Records** – If the Service Provider uses inadequately or improperly trained vehicle operators in revenue Service (except during training when accompanied by a supervisor or trainer) a liquidated damage assessment of two hundred dollars (\$200) shall be imposed per occurrence. Failure to initially check or monitor vehicle operators' driving records or using vehicle operators with unacceptable driving records in revenue service shall also result in liquidated damages of two hundred dollars (\$200) per occurrence.

9.7.6.7. **Inadequate Management/Administrative Staffing** – As described in Section 5.F, the Service Provider is responsible for maintaining key personnel administrative positions filled and immediately notifying EPCRT of any absences or vacancies. Failure to have key personnel on staff at least two (2) weeks prior to the first day of Service of the project (**December 3, 2007**) or later, or failure to replace vacancies in key personnel within sixty (60) days with approved replacements will result in EPCRT deducting one and a half times (1.5X) the daily prorated amount of that position's salary and fringe benefits from current moneys owed to the Service Provider.

9.7.6.8. **Telephone Route and Schedule Information**
If the Service Provider fails to provide an exclusive telephone and telephone number, a message-recording device or adequate personnel to communicate in English and Spanish with the public concerning all EPCRT routes, Monday through Saturday between the hours of 7:00 a.m. and 5:30 p.m., liquidated damages of \$100.00 per day of non-compliance will be assessed.

9.7.7. Reporting

9.7.7.1. **Late/Inaccurate Reports** - If the Service Provider fails to comply with EPCRTS' reporting requirements either by submitting reports after the due date and time or by submitting inaccurate reports, the liquidated damages will be fifty dollars (\$50) for each day the report is overdue.

9.7.7.2. **Accident/Incident Reporting** - If Service Provider fails to report an accident or incident according to EPCRTS' requirements the liquidated damages will be fifty dollars (\$50) for the first occurrence, one hundred dollars (\$100) for the second occurrence and two hundred dollars (\$200) for each occurrence thereafter during the Contract term.

9.7.7.3. **Complaint/Customer Comment Reporting** – If the Service Provider fails to maintain the required Passenger Comment Database, or if the Service Provider fails to report customer comments to EPCRT as required in Section 5.H.4, the liquidated damages will be fifty

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dollars (\$50) for the first occurrence, and one hundred dollars (\$100) for the second and subsequent occurrences.

9.8. **Maintenance.**

Observation of vehicle maintenance related infractions may be made by EPCRT staff, two (2) verifiable passenger complaints, EPCRTS' agent, or a regulatory/inspection agency:

9.8.1. **Vehicle Cleaning** - If any bus fails to comply with the requirements regarding vehicle cleaning, the liquidated damages will be one hundred dollars (\$100) per occurrence.

9.8.2. **Preventive Maintenance Intervals** – Preventive maintenance shall be performed according to Service Provider's preventive maintenance program submitted with the RFP, which must be approved by EPCRT prior to start of the Contract. Failure to complete preventive maintenance at the approved intervals shall result in a liquidated damage assessment of two hundred dollars (\$200) per occurrence and a fifty-dollar (\$50) liquidated damage assessment for each day the maintenance is overdue.

9.8.3. **Vehicles Taken Out of Service**– The Service Provider shall meet or exceed the standards set forth for the operation of all vehicles. The Service Provider shall maintain the vehicles so as to pass an inspection and all vehicles must be in compliance with Texas Standards. If any Service vehicle is shut down as a result of a failed inspection by any regulatory agency, EPCRT or an agent of EPCRT acting on EPCRTS' behalf, the liquidated damages will be three hundred (\$300) per day per vehicle during the shutdown. If the Texas Department of Public Safety, TxDOT or other regulatory agency revokes the permits to operate the vehicles in this service as a result of unsatisfactory inspection ratings, the buses shall not operate and a three hundred dollars (\$300) per vehicle per day penalty shall be assessed until a satisfactory inspection report is obtained.

9.8.4. **Deficient Vehicle Condition** - In the event any revenue vehicle is rejected temporarily by EPCRT as a result of deficient vehicle condition or appearance, two hundred dollars (\$200)/day/vehicle in liquidated damages will be assessed until the condition is satisfactory to EPCRT.

9.8.5. **Heating and Air Conditioning Performance** -If a vehicle is reported to operate without heating or air conditioning or is otherwise in violation of the heating and air conditioning standards, one hundred dollars (\$100) in liquidated damages will be assessed per incident.

9.8.6. **Vehicle Records** – The Service Provider shall maintain a complete and up to date vehicle file. Failure to do so shall result in liquidated damages of fifty dollars (\$50) for each day the records are not available or updated.

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- 9.8.7. **Safety Related Items** – Vehicles inspected by EPCRT or its agent which are found to have serious safety defects shall result in that vehicle being pulled out of Service immediately and liquidated damages of three hundred dollars (\$300) per vehicle shall be imposed on the Service Provider. If that vehicle is found in Service with the same problem or the same problem is found at the next inspection by EPCRT, the liquidated damage assessment shall be five hundred dollars (\$500) for the second offense and ensuing offenses.
- 9.8.8. **Wheelchair-Lifts** – The Service Provider shall ensure that all vehicles in service have operating wheelchair lifts to safely load and unload wheelchair passengers. Failure to do so shall result in a liquidated damage assessment of three hundred dollars (\$300) per occurrence. Failure to cycle a wheelchair-lift as part of each vehicle's pre-trip inspection shall result in a liquidated damage assessment of one hundred dollars (\$100) per occurrence.
- 9.8.9. **Graffiti** –. Failure to remove graffiti from vehicles according to EPCRT standards, whether interior or exterior, shall result in an assessment of liquidated damages of one hundred dollars (\$100) per occurrence.

The Liquidated Damages set forth in the Contract will not be intended to compensate EPCRT for any damages other than inconvenience. The existence or recovery of such Liquidated Damages shall not preclude EPCRT from recovering other damages which EPCRT can document as being attributable to the above-referenced failures, including but not limited to the cost of internal staff hours or amounts paid to third parties as a result of such problem or delay.

9.9. **Non-Appropriation of Funds.**

If EPCRT funding sources do not appropriate the funding needed by EPCRT to make payments under this Agreement for a given fiscal year, EPCRT will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, EPCRT will promptly notify the Company of the non-appropriation and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by EPCRT which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

9.10. **Termination.**

9.10.1. **Termination With or Without Cause.**

THE COUNTY may terminate the Contract for any reason after determining that termination is in EPCRT's best interest. Any such termination shall be effected by the delivery to the Service Provider of a written notice of termination at least thirty (30) days before the date of termination, specifying the date upon which such termination becomes effective.

In the event of a termination without cause, EPCRT shall negotiate an equitable settlement of termination costs. Such costs shall not include (a) non-project-

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specific overhead; (b) punitive, exemplary, special, indirect, consequential or incidental damages; or (c) loss of anticipatory profit.

9.10.2. Termination for Default by Either Party.

By giving written notice to the other party, either party may terminate this Agreement upon the occurrence of one or more of the following events:

- (a) The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Agreement, provided that, unless otherwise stated in this Agreement, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or
- (b) The other party attempts to assign, terminate or cancel this Agreement contrary to the terms hereof; or
- (c) The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Agreement shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

Any notice of default shall identify this Section of this Agreement and shall state the party's intent to terminate this Agreement if the default is not cured within the specified period.

9.10.3. Additional Grounds for Default Termination by EPCRT.

By giving written notice to the Company, EPCRT may also terminate this Agreement upon the occurrence of one or more of the following events (which shall each constitute grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):

- (a) The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Agreement, Company's proposal, or any covenant, agreement, obligation, term or condition contained in this Agreement; or
- (b) The Company takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Agreement, including

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but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Agreement, or failure to provide the proof of insurance as required by this Agreement; or

- (c) Fails to fulfill or maintain in a timely and proper manner any obligations, duties or provisions of or under this contract.
- (d) EPCRT may terminate this Contract upon the Company's default of any material duty or obligation of the Company under this Contract and the Service Provider's failure to cure such default within thirty (30) calendar days of EPCRTS' written notice to the Service Provider of such default. If the default is not capable of cure within said thirty (30) calendar days, the Service Provider shall provide written notice to EPCRT together with a schedule of cure within fifteen (15) calendar days of EPCRTS' notice of default, shall begin action to cure the default within said thirty (30) calendar days, and shall diligently proceed to cure the default. EPCRT may accept the Service Provider's schedule of cure, may make a written demand that the Service Provider cure the default within a time period set by EPCRT, or may terminate this Contract at the end of the thirty-day default period.
- (e) The Company fails to consistently meet the Service response time requirements for transporting passengers or the reporting requirements of the RFP.

9.10.4. Obligations Upon Expiration or Termination.

Upon expiration or termination of this Agreement, the Company shall promptly (a) return to EPCRT all computer programs, files, documentation, data, media, related material and any other material and equipment that is owned by EPCRT; and (b) allow EPCRT or a new Service Provider access to the systems, software, infrastructure, or processes of the Company that are necessary to complete the Services.

9.10.5. Substitute Performance.

The parties acknowledge that time is of the essence in performing the Services, and that if the Company fails to meet response times as set forth in the RFP, EPCRT may take any of the following actions with or without terminating this Agreement, and in addition to and without limiting any other remedies it may have. If the Service Provider fails to provide the service as described in this contract on any day (or days) for which this contract calls for service to be provided, the Service Provider will be in default and EPCRT may take any of the following actions:

- (a) Employ such means as it may deem advisable and appropriate to obtain alternative Services until the matter is resolved and the Company is again able to perform its obligations under this Agreement; and

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- (b) Deduct any and all expenses incurred by EPCRT in obtaining alternative Services from another Service Provider from any money then due or to become due the Company and, should EPCRT's cost of continuing the operation exceed the amount due the Company, collect the amount due from the Company and also to assert a lien on all real and personal properties of the Company.

9.10.6. Cancellation of Orders and Subcontracts.

In the event this Agreement is terminated by EPCRT for any reason prior to the end of the term, the Company shall upon termination immediately discontinue all Services in connection with this Agreement and promptly cancel all existing orders and subcontracts, which are chargeable to this Agreement.

9.10.7. Authority to Terminate.

The El Paso County Commissioners Court is authorized to terminate this Agreement on behalf of EPCRT.

9.10.8. No Effect on Taxes, Fees, Charges, or Reports.

Any termination of this Agreement shall not relieve the Company of the obligation to pay any fees, taxes or other charges then due to EPCRT, nor relieve the Company of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve the Company from any claim for damages previously accrued or then accruing against the Company.

9.10.9. Specific Performance and Injunctive Relief.

The Company agrees that the Services are important to EPCRT's operation and that monetary damages are not an adequate remedy for the Company's failure to provide Services as required by this Agreement, nor could monetary damages be the equivalent of the performance of such obligation. Accordingly, the Company hereby consents to an order granting specific performance of such obligations of the Company in a court of competent jurisdiction within the State of Texas. The Company further agrees that a failure by it to perform the Services in the manner required by this Agreement will entitle EPCRT to injunctive relief.

9.10.10. Other Remedies.

Upon termination of this Agreement, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedies.

9.11. **Publicity or Statements To the Press.**

No advertising, sales promotion or other materials of the Company or its agents or representatives may identify or reference this Agreement or EPCRT in any manner absent EPCRT's prior written consent.

As a condition of entering into this Agreement, the Company further agrees to refrain from the following absent EPCRT's prior written approval: (1) making any statement to

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the media regarding the subject matter of this Agreement or EPCRT's position on any issue relating to this Agreement; or (2) making any statement to the media on any issue which in EPCRT's judgment is likely to cause the Company or EPCRT staff to be viewed as anything other than neutral with respect to the subject matter of this Agreement, or cast doubt on the competence or integrity of THE COUNTY.

Failure to comply with this Section by the Company shall constitute a material breach and, without limiting any other remedies EPCRT may have, shall entitle THE COUNTY to terminate this Agreement for default.

9.12. **Transition Services Upon Termination.**

Upon termination or expiration of this Agreement, the Company shall cooperate with EPCRT to assist with the orderly transfer of the Services, functions and operations provided by the Company hereunder to another provider or to EPCRT as determined by EPCRT in its sole discretion. Prior to termination or expiration of this Agreement, EPCRT may require the Company to perform and, if so required, the Company shall perform certain transition services necessary to migrate the work of the Company to another provider or to EPCRT itself as described below (the "Transition Services"). Transition Services may include but shall not be limited to the following:

- (a) Pre-Migration Services.
 - i. Working with EPCRT to jointly develop a mutually agreed upon Transition Services Plan to facilitate the termination of the Services; and
 - ii. Notifying all affected Service Providers and subcontractors of the Company.
- (b) Migration Services.
 - i. Performing the Transition Service Plan activities.
- (c) Throughout Process and Post-Migration Services.
 - i. Answering questions regarding the Services on an as-needed basis; and
 - ii. Providing such other reasonable Services needed to effectuate an orderly transition to a new Service Provider.

Transition Services will include but not be limited to the following:

Access - The Service Provider shall provide EPCRT and any new service provider reasonable access to the operating facility and EPCRT revenue vehicles.

Data - The Service Provider shall share (to the extent permitted by law) with the new service provider wage, benefit, employee records and other relevant information relating to any Service Provider employees who at any time engaged in providing EPCRT Services.

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Documents - The Service Provider shall provide EPCRT and the new service provider copies of all leases, permits, licenses, and other relevant documents.

Substance Testing - The Service Provider shall provide EPCRT with all documents pertaining to FTA Drug and Alcohol requirements including a completed FTA Drug and Alcohol summary MIS report for its period of operations on the FTA form FTA-OH-26-0001-94-1, or subsequent revision.

Maintenance - The Service Provider shall provide EPCRT all records associated with the Contract including all FTA required maintenance documentation.

Record Retention - The Service Provider shall retain all records associated with this EPCRT project not given to EPCRT at the transition in its possession for a minimum of three (3) years.

9.13. **Vehicles.**

If the Service Provider uses any EPCRT vehicles then the Service Provider shall return to EPCRT all vehicles in sound mechanical and operating condition less normal wear and tear, in accordance with the standards of the Contract. The condition of EPCRT vehicles shall be determined by a fleet inspection conducted by an independent maintenance consultant selected by EPCRT (the "Independent Inspector"). The Independent Inspector shall not be a competitor of the Service Provider in provision of transportation services. The Independent Inspector shall, after examining the vehicle fleet, prepare and submit to the parties:

1. A written report identifying any corrective work necessary to return EPCRT Vehicles to sound mechanical and operating condition, less ordinary wear and tear; and
2. An estimate of the cost of any repairs necessary to meet the standard set forth above.

The Service Provider at its sole cost and expense shall do such identified repairs or the Service Provider shall, at its election, pay to EPCRT the sums set forth in the inspection report for such repairs. The Service Provider shall notify EPCRT within thirty (30) days of the date it receives the Independent Inspector's report whether it intends to complete the repair work itself or whether it intends to pay EPCRT for the cost of said work. In the event the Service Provider elects to do the work itself, the Service Provider shall, within five (5) days of such election, post a letter of credit or other security acceptable to EPCRT in an amount equal to the estimated repair costs, to be payable to EPCRT if the repairs are not completed by the conclusion of the Contract. In the event the Service Provider elects to pay EPCRT for the cost of the repairs, the Service Provider shall do so in full within five (5) days of such election.

The parties together with the Independent Inspector shall conduct a final acceptance of EPCRT vehicles on or about the date the Contract expires to determine that the repair work required to be done pursuant to the inspection report is in fact complete. If the Service Provider elects to complete the repair work itself and any repair work remains incomplete as of the date EPCRT vehicles are returned to EPCRT, then the Service Provider shall pay to EPCRT on that date an amount equal to the cost of the remaining

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repair work as determined by the Independent Inspector or EPCRT shall use the security posted by the Service Provider.

Provided the Service Provider either posts security acceptable to EPCRT or pays to EPCRT any payments required to complete the repair work as stated in this subparagraph, EPCRT shall not withhold or deduct any sums otherwise due to the Service Provider pursuant to the invoices rendered by it for Services completed up to and including the date the Contract terminates, and all such invoices shall be paid in accordance with the Contract.

9.14. Audit.

During the term of this Agreement and for a period of three (3) years after termination or expiration of this Agreement for any reason, EPCRT shall have the right to audit, either itself or through a third party, the books and records (including but not limited to the technical records) of the Company to ensure the Company's compliance with all the terms and conditions of this Agreement, including but not limited to the terms of this Section 9.

9.15. Licensing.

The Company shall provide notarized copies of all valid licenses and certificates required for performance of the work. The notarized copies shall be delivered to the EPCRT Point of Contact no later than ten (10) days after the Service Provider receives the notice of award from EPCRT. Current notarized copies of licenses and certificates shall be provided to EPCRT within twenty-four (24) hours of demand at any time during the contract term. Licenses and certificates required for this contract include, by way of illustration and not limitation, the following: 1) a business license valid in Texas; 2) any additional licenses pertaining to or that may be required to be held by field professionals participating in the contract work.

9.16. Compliance with Laws and Codes.

The Company shall ensure that the Services are in compliance with all local, state and federal laws and regulations. In performing the Services, the Company shall comply with all local, state and federal laws and regulations.

The Service Provider shall at a minimum apply risk management practices accepted by the transit industry.

9.17. Relationship of the Parties.

The relationship of the parties established by this Agreement is solely that of independent Service Providers, and nothing contained in this Agreement shall be construed to (i) give any party the power to direct or control the day-to-day activities of the other; or (ii) constitute such parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking; or (iii) make either party an agent of the other for any purpose whatsoever. Neither party nor its agents or employees is the representative of the other for any purpose, and neither has power or authority to act as agent or employee to represent, to act for, bind, or otherwise create or assume any obligation on behalf of the other. The Company shall be fully and solely responsible for its own acts and omissions

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and those of its employees, officers, agents and subcontractor. All personnel supplied by Company subcontractor shall be considered employees or agents of Company. The Company shall be responsible for the payment of all salaries, withholding taxes, worker's compensation, disability benefits and other compensation and related taxes for such persons.

9.18. **EPCRT Right To Approve Equipment.**

The Service Provider agrees to allow EPCRT staff members to inspect and approve all equipment to be used to perform the Services. EPCRT reserves the right to inspect all Vehicles to make sure that they meet or exceed EPCRT expectations with regard to appearance, operation, and any other physical aspect of the vehicle that EPCRT may deem appropriate. At any time, EPCRT may require vehicles to be pulled from active Service until such time as the Service Provider resolves such problems with vehicle as determined by EPCRT. If such vehicle remains in service against the recommendation of EPCRT, the Service Provider will be subject to fines in the amount of one hundred (\$100.00) per day of use beginning seven (7) days after receipt of letter. EPCRT reserves the right to inspect all vehicles before Services begin and randomly throughout the length of the Contract without notice. Failure to comply will result in the vehicle being required to be removed from Service, fines as referenced above or breach of the Contract.

9.19. **Assignment.**

The obligations of the Company pursuant to this Contract are not to be transferred, sub-contracted or assigned to any person or organization without the express written consent of EPCRT.

In the event of any such assignment, the assignee shall comply with any conditions that EPCRT may reasonably require for assignment of the Contract, and shall accept such assignment and perform all work and other obligations of the Service Provider as fully as if the Contract were originally made by assignee. Any such assignment shall not relieve or excuse the Service Provider from responsibility for performance to EPCRT in the event the assignee does not fully perform all work and other obligations of the Service Provider under this Contract.

9.20. **Successors and Assigns.**

This Contract shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto; provided, however, this provision shall not be deemed to authorize the assignment or other transfer of this Contract which may only be accomplished as expressly provided in this Contract.

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9.21. **Indemnification.**

The Company shall indemnify, defend and hold harmless EPCRT and EPCRT's officers, employees and agents from and against any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations and other liabilities (including settlement amounts) that arise directly or indirectly from:

- 9.21.1. any infringement of any copyright, trademark, patent, or other proprietary rights, or any misappropriation of any trade secrets, in connection with any software, documentation, services or other products supplied directly or indirectly by the Company in connection with this Agreement, or any allegation of any of the foregoing (collectively referred to as "Infringement Claims");
- 9.21.2. any act(s) of negligence or willful misconduct by the Company or any of its agents, employees or subcontractor Providers (or any allegations of any of the foregoing), including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal;
- 9.21.3. lawsuits resulting from criminal misbehavior by any Company employee;
- 9.21.4. lawsuits resulting from the violent or criminal behavior of passengers while in performance of the Services;
- 9.21.5. EPCRT's refusal to produce any item of "Confidential Information" (as defined in the Confidentiality and Non-Disclosure Agreement) of the Company after receiving a request for such item and after being instructed by the Company not to produce it; or
- 9.21.6. any claims by any persons or entities supplying labor or material to the Company in connection with the performance of the Company's obligations under this Agreement.

If an Infringement Claim occurs, the Company shall either: (i) procure for EPCRT the right to continue using the affected product or service; or (ii) repair or replace the infringing product or service so that it becomes non-infringing, provided that the performance of the Services or any component thereof shall not be adversely affected by such replacement or modification.

The Service Provider agrees to assume complete and absolute liability and to indemnify and save harmless EPCRT, its agents and employees from and against any and all claims, demands, suits, judgments, and settlements for sums of money for or on account of any matter or issue pertaining to or arising from or in any way connected with the performance of the Services described in this RFP unless due to the negligence or intentional wrongdoing of EPCRT.

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9.22. **Subcontracting.**

Should the Company choose to subcontract, the Company shall be the prime Service Provider and shall remain fully responsible for performance of all obligations, which it is required to perform under this Agreement. Any subcontract entered into by the Company shall name EPCRT as a third party beneficiary.

9.23. **Insurance.**

9.23.1. Types of Insurance.

The Company shall obtain and maintain during the life of the Agreement, with an insurance company authorized to do business in Texas the following insurance:

9.23.1.1. Automobile Liability.

Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than one million dollars (\$1,000,000) bodily injury each person, each accident and one million dollars (\$1,000,000) property damage, or two million dollars (\$2,000,000) combined single limit - bodily injury and property damage.

9.23.1.2. Automobile Collision and Comprehensive Coverage.

The Service Provider agrees to maintain automobile collision and comprehensive coverage equal to the full replacement value of all revenue and non-revenue vehicles with a \$5,000 deductible. Said deductible shall be the responsibility of the Service Provider.

9.23.1.3. Commercial General Liability.

Bodily injury and property damage liability as shall protect the Company and any subcontractor Provider performing work under this Agreement, from claims of bodily injury or property damage which arise from operation of this Agreement, whether such operations are performed by the Company, any subcontractor Provider, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than one million dollars (\$1,000,000) bodily injury each occurrence/aggregate and one million dollars (\$1,000,000) property damage each occurrence/aggregate, or one million dollars (\$1,000,000) bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, operations, personal injury liability and contractual liability, assumed under the indemnity provision of this Agreement. Completed operations liability endorsement shall continue in force for three years following completion of the contract.

9.23.1.4. Fidelity Bond.

Providing blanket employee dishonesty, including faithful performance covering the Service Provider, its agents and all

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employees, officers, directors and any independent Service Providers in an amount of not less than one hundred thousand (\$100,000).

9.23.1.5. Worker's Compensation and Employers Liability.

The Company shall meet the statutory requirements of the State of Texas and provide Employer's Liability insurance with a limit of one million dollars (\$1,000,000) per occurrence.

The Company shall not commence any work in connection with this Agreement until it has obtained all of the foregoing types of insurance and proof of such insurance has been approved by EPCRT. The Company shall not allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been obtained and approved.

9.23.2. Liability Limits.

Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.

9.23.3. Other Insurance Requirements.

9.23.3.1. EPCRT shall be exempt from, and in no way liable for any sums of money, which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Company and/or subcontractor providing such insurance.

The Service Provider is advised that if any part of the work under this contract is sublet, the subcontractor shall be required to meet all insurance requirements as listed above. However, this will in no way relieve the Service Provider from meeting all insurance requirements or otherwise being responsible for the subcontractor.

9.23.3.2. EPCRT shall be named as an additional insured for operations or services rendered under the general liability coverage. The Company's insurance shall be primary of any self-funding and/or insurance otherwise carried by EPCRT for all loss or damages arising from the Company operations under this Agreement.

9.23.3.3. Certificates of such insurance will be furnished to EPCRT and shall contain the provision that EPCRT is given thirty (30) days written notice of any intent to amend or terminate by either the insured or the insuring company.

9.23.3.4. Should any or all of the required insurance coverage be self-funded/self-insured, a copy of the Certificate of Self-Insurance or other documentation from the Texas Department of Insurance shall be furnished.

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9.23.3.5. If any part of the work under this Contract is sublet, the subcontractor shall be required to meet all insurance requirements set forth in this Agreement, provided that types and amounts of insurance to be maintained by each subcontractor shall be adjusted to an amount reasonably necessary to cover the risks associated with such subcontractor's role in the project. However, nothing contained herein shall relieve the Company from meeting all insurance requirements or otherwise being responsible for the subcontractor.

9.24. **Notices.**

Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by telefax to the intended recipient at the address set forth below:

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Notice shall be effective upon the date of receipt by the intended recipient, provided that any notice which is sent by telefax or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

9.25. **Non-Discrimination.**

9.25.1. The Company agrees that it has adopted and will maintain and enforce a policy of nondiscrimination on the basis of race, color, religion, sex, age, national origin, or disability.

9.25.2. The Company agrees that it will inform EPCRT of any alleged violation(s) of employment practices involving any employees who work on the Project which are asserted in any claims filed with the Equal Employment Opportunity Commission, Labor Department or any other federal or state compliance agency. The Company will also inform EPCRT of the final disposition of such cases.

9.26. **Drug-Free Workplace.**

THE COUNTY is a drug-free workplace employer. EPCRT has adopted a policy requiring EPCRT Service Providers to provide a drug-free workplace in the performance of any EPCRT contract.

In order to be eligible to submit a Proposal for a EPCRT service contract, a prospective Service Provider must certify that it will, if awarded the Contract, provide a drug-free workplace during the performance of the Contract. The Company hereby certifies that it has or it will within thirty (30) days after execution of this Agreement:

9.26.1. Notify employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace and specifying actions that will be taken for violations of such prohibition;

9.26.2. Establish a drug-free awareness program to inform employees about (i) the dangers of drug abuse in the workplace, (ii) the Company's policy of maintaining a drug-free workplace, (iii) any available drug counseling, rehabilitation, and employee assistance programs, and (iv) the penalties that may be imposed upon employees for drug abuse violations;

9.26.3. Notify each employee that as a condition of employment, the employee will (i) aRFPe by the terms of the prohibition outlined in 9.26.1, and (ii) notify the Company of any criminal drug statute conviction for a violation occurring in the workplace not later than five (5) days after such conviction;

9.26.4. Impose a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by, an employee convicted of a drug crime;

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9.26.5. Make a good faith effort to continue to maintain a drug-free workplace for employees; and

9.26.6. Require any party to which it subcontracts any portion of the work under the Contract to comply with the above provisions.

By submitting a Proposal, a prospective Service Provider certifies that it will comply with EPCRT's drug-free workplace requirement. A false certification or the failure to comply with the above drug-free workplace requirements during the performance of this Agreement shall be grounds for suspension, termination or debarment.

If the prospective Service Provider is an individual, the drug-free workplace requirement is met by not engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract.

The EPCRT Contracting Requirements

9.27. Miscellaneous.

9.27.1. Entire Agreement.

This Agreement and the Contract Documents, including all Exhibits, and Attachments, all of which are hereby incorporated herein by reference, constitute the entire Agreement between the parties with respect to its subject matter, and there are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral.

9.27.2. Amendment.

No amendment or change to this Agreement shall be valid unless in writing and signed by both parties to this Agreement.

9.27.3. Governing Law and Jurisdiction.

The parties acknowledge that this Agreement is made and entered into in El Paso County of Texas, and will be performed in El Paso County of Texas. The parties further acknowledge and agree that Texas law shall govern all the rights, obligations, duties and liabilities of the parties under this Agreement, and that Texas law shall govern the interpretation and enforcement of this Agreement and any other matters relating to this Agreement (all without regard to Texas conflicts of law principles).

The parties further agree that any and all legal actions or proceedings relating to this Agreement shall be brought in a state or federal court sitting in El Paso County of Texas. By execution of this Agreement, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections, which they may have with respect to venue in any court sitting in El Paso County of Texas.

9.27.4 Binding Nature and Assignment.

This Agreement shall bind the parties and their successors and permitted assigns. Neither party may assign this Agreement without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void.

9.27.5 Amendments To the Contract.

Any changes in this Contract must be mutually agreed upon by the parties and must be incorporated by written amendments to this Contract.

9.27.6 EPCRT Not Liable for Delays.

It is agreed that EPCRT shall not be liable to the Company, its agents or representatives or any subcontractor for or on account of any stoppages or delay in the performance of any obligations of EPCRT or any other party hereunder.

9.27.7 Force Majeure.

The Company shall not be excused from performance under this Agreement by virtue of force majeure events. The Company shall take precautions sufficient

The EPCRT Contracting Requirements

to ensure that force majeure events (including but not limited to fire, flood, earthquake, hurricane, elements of nature, strikes, labor disputes, and acts of God) do not result in any failure or delay in the performance of the Company's obligations pursuant to this Agreement. Failure to comply with this provision will constitute a default under this Agreement, and grounds for immediate termination.

The Company shall not be liable for any failure or delay in the performance of its obligations pursuant to this Agreement and such failure or delay shall not be deemed a default of this Agreement or grounds for termination hereunder if all of the following conditions are satisfied:

- (a) if such failure or delay:
 - i. could not have been prevented by reasonable precaution;
 - ii. cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and
 - iii. if, and to the extent, such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or court order.
- (b) an event which satisfies all of the conditions set forth above shall be referred to as a "Force Majeure Event." Upon the occurrence of a Force Majeure Event, the Company shall be excused from any further performance of those of its obligations which are affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the Company continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
- (c) upon the occurrence of a Force Majeure Event, the Company shall immediately notify EPCRT by telephone (to be confirmed by written notice within two (2) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Company from performing its obligations for more than five (5) days, EPCRT shall have the right to terminate this Agreement by written notice to the Company.

Strikes, slowdowns, lockouts, walkouts, industrial disturbances and other labor disputes shall not constitute Force Majeure Events and shall not excuse the Company from the performance of its obligations under this Agreement. The parties also expressly acknowledge that Year 2007-related interruptions in operations or in the supply of products or services necessary to fulfill the obligations of this Agreement are not excused under this provision.

The EPCRT Contracting Requirements

- 9.27.8 Severability.
The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of this Agreement so long as the material purposes of this Agreement can be determined and effectuated. If any provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.
- 9.27.9 Approvals.
All approvals or consents required under this Agreement must be in writing.
- 9.27.10 Waiver.
No delay or omission by either party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Agreement shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party waiving the rights.
- 9.27.11 Survival of Provisions.
Those Sections of this Agreement and the Exhibits which by their nature would reasonably be expected to continue after the termination of this Agreement shall survive the termination of this Agreement, including but not limited to all definitions and, a list of surviving Sections which will be included in the final Contract.
- 9.27.12 Interests of the Parties.
The Company covenants that its officers, employees and shareholders have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.
- 9.27.13 No Bribery.
The Company certifies that neither it, any of its affiliates or subcontractor Providers, nor any employees of any of the forgoing has bribed or attempted to bribe an officer or employee of EPCRT in connection with this Agreement.
- 9.27.14 Change in Control.
In the event of a change in “Control” of the Company (as defined below), EPCRT shall have the option of terminating this Agreement for default by written notice to the Company. The Company shall notify EPCRT within ten (10) days after it becomes aware that a change in Control will occur. As used in this Agreement, the term “Control” shall mean the possession, direct or indirect, of either:
- 9.27.14.1 the ownership of or ability to direct the voting of, as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in the Company; or

Section 9

The EPCRT Contracting Requirements

9.27.14.2 the power to direct or cause the direction of the management and policies of the Company whether through the ownership of voting securities, by contract or otherwise.

9.27.15 Familiarity and Compliance with Laws and Ordinances.

The Company agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. The Company further agrees that it will at all times during the term of this Agreement be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all Occupational Safety and Health Administration (OSHA) regulations applicable to the work.

9.27.16 Taxes.

The Company shall pay all applicable federal, state and local taxes, which may be chargeable against the performance of the service.

9.27.17 Contract Monitoring.

EPCRT shall have the right to audit the Company's compliance with the terms and conditions of this Agreement, including but not limited to all provisions related to payment and performance. EPCRT shall have the right to conduct such audits, either through its own staff or through an independent auditor, at such times as EPCRT deems appropriate. The Company shall fully cooperate with all such audits, and shall make available for copying and inspection all books and records requested by EPCRT or its designated agent. The Company shall further allow EPCRT or its designated agent to inspect the Company's facilities in connection with such audits. EPCRT shall pay its own expenses relating to such audits, but shall not have to pay any expenses or additional costs of the Company. Notwithstanding the foregoing, in the event an audit reveals an overcharge to EPCRT in excess of five thousand dollars (\$5,000) or a failure to perform services that has cost EPCRT more than ten thousand dollars (\$10,000), the Company shall reimburse EPCRT for all costs relating to the audit, including but not limited to internal staff hours and amounts paid to an outside auditor.

On demand of all books of account, computer files and other records, reports and financial statements of the Service Provider in any way pertaining to the provisions of the Services described in this RFP shall be made available to EPCRT for audit. Such records shall be clearly identified, readily accessible and be retained by the Service Provider for at least three (3) years after the termination of the Contract.

9.27.18 Harassment.

The Company agrees to make itself aware of and comply with EPCRT's Harassment Policy. EPCRT will not tolerate or condone acts of harassment based upon race, sex, religion, national origin, color, age, or disability. Violators of this policy will be subject to Contract termination.

Section 9

The EPCRT Contracting Requirements

9.27.19 Waiver of Right to Jury Trial.

EPCRT and the Company waive and will waive all rights to have a trial by jury in any action, proceeding, claim or counterclaim brought by either of them against the other on any matter whatsoever arising out of or in any way related to or connected with this Agreement.

Section 10

Required Forms – Form One

REQUEST FOR PROPOSALS ACKNOWLEDGEMENT FORM

RFP

The Service Provider hereby certifies receipt of the RFP package for the El Paso County Rural Transit **RFP**, "Contract Provider for Fixed-Route Commuter Bus Services". This form should be completed upon receipt of EPCRT's RFP package and faxed or mailed in time for THE COUNTY to receive it by or before **October 16, 2007**. Please fax or mail the completed RFP Acknowledgement Form to the attention of:

Piti Vasquez
Purchasing Director
El Paso County
500 E. San Antonio, Suite 500
El Paso, Texas 79901

Fax: 915-546-8180

Date: _____

Authorized Signature: _____

Title: _____

Company Name: _____

Please check the appropriate space provided below and provide the requested information:

____ We plan to submit a Proposal in response to the RFP "Fixed-Route Commuter Bus Services"

Primary Contact Name: _____

Contact E-mail address: _____

Contact phone: _____

Fax number: _____

Secondary Contact Name: _____

Contact E-mail address: _____

Contact phone: _____

Fax number: _____

____ We do not plan to submit a Proposal in response to RFP "Fixed-Route Commuter Bus Services."

Reason:

Section 10
Required Forms – Form One

Required Forms - Form Two

ADDENDA RECEIPT CONFIRMATION FORM

RFP

Contract Provider for Fixed-Route Commuter Bus Services

ADDENDUM #:

DATE:

I certify that this proposal complies with the General and Specific Specifications and Conditions issued by THE COUNTY except as clearly marked in the attached copy of all addenda for this RFP. It is the responsibility of the Service Provider to be sure they have reviewed all the addenda associated with this RFP.

(Please Print Name)

Date

Authorized Signature

Title

Company Name

Required Forms - Form Three

PROPOSAL SUBMISSION FORM

RFP

Contract Provider for Fixed-Route Commuter Bus Services

This Proposal is submitted by:

Service Provider: _____

Signed: _____

Name: (Typed) _____

Address: _____

City/State/Zip: _____

Telephone: _____

(Area Code) Telephone Number

Facsimile: _____

(Area Code) Telephone Number

It is understood by the Service Provider that THE COUNTY reserves the right to reject any and all proposals, to make awards on all items or on any items according to the best interest of THE COUNTY, to waive formalities, technicalities, to recover and re-bid this RFP. Proposals will be considered valid for one hundred and eighty (180) calendar days from the date of Proposal submission.

Service Provider _____

Date _____

Authorized Signature _____

Please type or print name

SERVICE PROVIDER AND INSURANCE AGENT STATEMENT FORM

RFP

Contract Provider for Fixed-Route Commuter Bus Services

We the Company's insurance provider, understand the insurance requirements of these Specifications. Evidence of the insurability of the Company shall be provided to THE COUNTY prior to Contract execution. If our client is awarded this Contract, we agree to provide THE COUNTY with a thirty (30) day written notice of any intent to amend, terminate, or non-renew coverage by the insuring company.

Service Provider: _____

Insurance Agency: _____

Signature of Service Provider: _____

Signature of Service Provider's Agent: _____

Agent's Errors and Omission Policy:

Signature of Texas Resident Agent: _____

Amount of Coverage: _____

Number: _____

Date: _____

Coverage: _____

Name and Location and Address of Agency:

Telephone Number: _____

Section 10

Required Forms - Form Five

Project Functional Requirements

RFP

THE COUNTY has created a matrix to help the Proposers understand the expectations of THE COUNTY and to aid in the comparison of the Proposals.

Each Proposal must include the matrix in this Exhibit with the appropriate code denoted by the Proposer for each requirement of the Services.

The inability of a Proposer to successfully meet all of the functional requirements listed in this Exhibit will not invalidate the Proposal, although those Proposals, which do meet all of the functional requirements, will be given priority.

Service Providers are to provide their response under each and every subsection with one of the following response codes:

Code	Employee Training – Section 5.G
“N”	Proposer cannot meet the requirement.
“Y”	Proposer currently meets this requirement.
“F”	This requirement will be met if awarded a contract. (Explanation Required)
“X”	The requirement will be met by the proposed solution in some other way. (Explanation Required)

If the Proposer does not completely comply with a requirement, then state the reason why on an attached sheet. Service Providers should clearly identify any inability to meet defined requirements. For the clauses requiring detailed information or description, provide as much information as is necessary to adequately answer the question. If additional response space is needed, the Service Provider must provide the response on a separate page and reference the attached response by section number.

Section 10

Required Forms - Form Five

		<u>Feature Code</u>
	<i>Will the Service Provider be able to comply with the following:</i>	
1.	General tasks - Section 5.B.1	
2.	General tasks - Section 5.B.2	
3.	General tasks - Section 5.B.3	
4.	General tasks - Section 5.B.4	
5.	Services - Section 5.C	
6.	Employee training - Section 5.G	
7.	Reporting - Section 5.H	
8.	Coordination - Section 5.I	
9.	Use of assets - Section 5.J	
10.	Uniforms - Section 5.L	
11.	Fares and fare collection - Section 5.M	
12.	Maintenance scope of work – Section 6.A	
13.	Preventative maintenance - Section 6.C	
14.	Vehicle damage - Section 6.D	
15.	Parts, lubricants, and supplies – Section 6.H	
16.	Vehicle cleaning – Section 6.J	
17.	EPCRT Maintenance auditing – 6.B.2.	
18.	Maintenance – Section 9.8	
19.	Vehicles – Section 9.13	

Section 10

Required Forms - Form Six

ATTACHMENT A COST PROPOSAL FORM

1. REVENUE HOUR COSTS

Please complete the following forms to indicate scheduled revenue hour charge. Fill out all tables.

Prior to the beginning of each contract year, EPCRT will determine the scheduled number of annual vehicle hours to be performed and inform the Service Provider which rate will be applicable for the following year. Should EPCRT significantly alter the service plans or the amount of service is modified for any reason at any time during the year, EPCRT will revise its estimate of scheduled annual revenue hours and determine if a different rate should apply.

EPCRT intends to pay the Service Provider the fixed rate proposed for all hours within the ranges shown in each tables' rows. Should service be increased or decreased such that the annual total would fall out of this range, the new service level rate would be applied. The "Current Hours" given are for total number of estimated revenue vehicle hours of service.

For Example, (Fixed-Route Commuter Bus Service), EPCRT plans to operate 9,962 revenue vehicle hours of service. EPCRT will pay for these hours at the rate shown in the middle row. However, should EPCRT increase or decrease the service the estimated annual hours of service either grew to over 14,000 annual hours or fell below 6,000 revenue vehicle hours, EPCRT would adjust the hourly rate to the new tier.

(Fixed-Route Commuter Bus Service)		
Scenario	Annual Revenue Hours	Proposed Rate
Estimated maximum hours to be provided during term of Contract	>14,000	
Estimated hours = 9,962 (approximate) MIDPOINT	6,000-14,000	
Estimated minimum annual hours to be provided during term of Contract	<6,000	

Section 10

Required Forms - Form Six

COST SCHEDULE BREAKDOWN FOR MIDPOINT REVENUE HOURS

Complete the attached forms detailing unit and total costs for key items in your proposal. Your total costs, divided by the annual revenue hours, should total to the fixed revenue hourly rate for the Mid-Point Estimated Hours (current estimated hours) you specified in the Revenue Hour Cost Table.

Personnel	Number	Base or Starting Salary	Fringe & Health Benefits	Total Annual Cost
Drivers				
Street Supervisors				
Dispatchers				
Lead Mechanic				
Mechanics				
Fleet Servicing Attendants				
Administrative/Clerical				
a.				
b.				
c.				
Other				
a.				
b.				
c.				
Subtotal				

Section 10

Required Forms - Form Six

COST SCHEDULE FOR MIDPOINT REVENUE HOURS (Cont.)

Note: Assume the midpoint Daily Scheduled Revenue Hours (current hours) for the service to propose for.

Maintenance	Number			Total Cost
Facility				
a. Lease or acquisition cost				
b. Utilities				
c. Maintenance / Upkeep				
d.				
e.				
Description of Major Shop Equipment				
a.				
b.				
c.				
d.				
e.				
f.				
Description of Subcontracted Services				
a.				
b.				
c.				
d.				
e.				

Section 10

Required Forms - Form Six

Tires				
Parts & Supplies				
Other Equipment & Service Vehicles				
Bus Wash Supplies & Other Consumables				
Oil & Lubricants				
Other				
a.				
b.				
c.				
Subtotal				

Section 10

Required Forms - Form Six

ATTACHMENT A COST SCHEDULE FOR MIDPOINT REVENUE HOURS (Cont.)

Note: Assume the midpoint Daily Scheduled Revenue Hours (current hours) for the service to propose for.

Administrative Expenses	Number	Unit Costs	Total Costs
Office Equipment			
a.			
b.			
c.			
d.			
e.			
f.			
Subcontracted Services			
a.			
b.			
c.			
d.			
e.			
Telephone			
Insurance			
Printing			

Section 10

Required Forms - Form Six

Office Supplies			
Permits/Licenses			
Profit			
Other Costs			
a.			
b.			
c.			
d.			
Subtotal			
TOTAL			

Section 10

Required Forms - Form Seven

SAMPLE MONTHLY REVENUE REPORT

FOR THE MONTH OF / /

DATE	FAREBOX REVENUE
/ /	
/ /	
/ /	
/ /	
/ /	
/ /	
MONTHLY TOTAL	\$

Federal Transit Administration Clauses and Forms

FEDERAL CLAUSES

Federal Clauses are a necessary part of RFP specifications for this RFP and it is the responsibility of the Service Provider to be in compliance with these clauses.

The Service Provider is asked to review, understand and comply with any certifications and/or disclosures as requested per these clauses.

FEDERAL TRANSIT ADMINISTRATION

- Fly America Requirements
- Energy Conservation Requirements
- Clean Water Requirements
- Lobbying
- Access to Records
- Federal Changes
- Clean Air
- No Obligation by the Federal Government
- Program Fraud and False or Fraudulent Statements or Related Acts
- Termination
- Government-Wide Debarment and Suspension (Nonprocurement)
- Civil Rights Requirements
- Breaches and Dispute Resolution
- Incorporation of Federal Transit Administration (FTA) Terms
- Certification for Contracts, Grants, Loans, and Cooperative Agreements

- **Fly America Requirements** – The Service Provider agrees to 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 Consultants are required to use U.S. 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 travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Service Provider shall submit, if a foreign air carrier was 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 Service Provider agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

- **Energy Conservation Requirements** – The Service Provider agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the

Federal Transit Administration Clauses and Forms

state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

● **Clean Water Requirements** –

- (1) The Service Provider 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 Service Provider 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.
- (2) The Service Provider also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

● **Lobbying** – RFPs or offers exceeding \$100,000 require the Service Provider to sign the attached Certification for Contracts, Grants, Loans, and Cooperative Agreements form attached at the end of this document.

● **Access to Records** – The following access to records requirements apply to this Contract:

1. Where the procuring agency is not a State but a local government and is a FTA recipient or a subgrantee of THE COUNTY in accordance with 49 C.F.R. 18.36(i), the Service Provider agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Service Provider which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Service Provider also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Service Provider access to Service Provider's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where any procuring agency which is the FTA recipient or a subgrantee of the recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive RFPing, the Service Provider shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
3. The Service Provider agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
4. The Service Provider agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising

Federal Transit Administration Clauses and Forms

from the performance of this contract, in which case the Service Provider agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

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

- **Federal Changes** – Service Provider 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 FTA Master Agreement (FTA MA (7) dated October, 2000) between Purchaser and FTA, as it may be amended or promulgated from time to time during the term of this contract. Service Provider's failure to so comply shall constitute a material breach of this contract.

- **Clean Air -**

- (1) The Service Provider 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 Service Provider 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.
- (2) The Service Provider also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

- **No Obligation by the Federal Government –**

- (1) The Purchaser and Service Provider acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Service Provider, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (2) The Service Provider 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 Provider who will be subject to its provisions.

- **Program Fraud and False or Fraudulent Statements or Related Acts –**

- (1) The Service Provider acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.* and U.S.DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Service Provider certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may

Federal Transit Administration Clauses and Forms

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 Service Provider 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 Service Provider to the extent the Federal Government deems appropriate.

- (2) The Service Provider 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 Service Provider, to the extent the Federal Government deems appropriate.
- (3) The Service Provider 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 Provider who will be subject to the provisions.



Termination –

a. Termination for Convenience

THE COUNTY may terminate this contract, in whole or in part, at any time by written notice to the Service Provider when it is in the Government's best interest. The Service Provider shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The Service Provider shall promptly submit its termination claim to THE COUNTY to be paid to the Service Provider. If the Service Provider has any property in its possession belonging to THE COUNTY, the Service Provider will account for the same, and dispose of it in the manner THE COUNTY directs.

b. Termination for Default

If the Service Provider does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Service Provider fails to perform in the manner called for in the contract, or if the Service Provider fails to comply with any other provisions of the contract, THE COUNTY may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Service Provider setting forth the manner in which the Service Provider is in default. The Service Provider will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by THE COUNTY that the Service Provider had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Service Provider, THE COUNTY, after setting up a new

Federal Transit Administration Clauses and Forms

delivery of performance schedule, may allow the Service Provider to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure

THE COUNTY in its sole discretion may, in the case of a termination for breach or default, allow the Service Provider thirty (30) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If the Service Provider fails to remedy to THE COUNTY's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by the Service Provider of written notice from THE COUNTY setting forth the nature of said breach or default, THE COUNTY shall have the right to terminate the Contract without any further obligation to the Service Provider. Any such termination for default shall not in any way operate to preclude THE COUNTY from also pursuing all available remedies against the Service Provider and its sureties for said breach or default.

d. Waiver of Remedies for any Breach

In the event that THE COUNTY elects to waive its remedies for any breach by the Consultant of any covenant, term or condition of this Contract, such waiver by THE COUNTY shall not limit THE COUNTY's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience

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

f. Termination for Default

If the Service Provider fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Service Provider fails to comply with any other provisions of this contract, THE COUNTY may terminate this contract for default. THE COUNTY shall terminate by delivering to the Service Provider a Notice of Termination specifying the nature of the default. The Service Provider will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Service Provider was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of THE COUNTY.

g. Termination for Convenience of Default

Federal Transit Administration Clauses and Forms

THE COUNTY may terminate this contract, or any portion of it, by serving a notice or termination on the Service Provider. The notice shall state whether the termination is for convenience of THE COUNTY or for the default of the Service Provider. If the termination is for default, the notice shall state the manner in which the Service Provider has failed to perform the requirements of the contract. The Service Provider shall account for any property in its possession paid for from funds received from THE COUNTY, or property supplied to the Service Provider by THE COUNTY. If the termination is for default, THE COUNTY may fix the fee, if the contract provides for a fee, to be paid the Service Provider in proportion to the value, if any, of work performed up to the time of termination. The Service Provider shall promptly submit its termination claim to THE COUNTY and the parties shall negotiate the termination settlement to be paid the Service Provider.

If the termination is for convenience of THE COUNTY, the Service Provider shall be paid its contract closeout costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, THE COUNTY determines that the Service Provider has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the Service Provider, after setting up a new work schedule, may allow the Service Provider to continue work, or treat the termination as a termination for convenience.

● **Government-Wide Debarment and Suspension (Nonprocurement) –**

Instructions for Certification –

1. By signing and submitting this RFP or proposal, the prospective lower tier participant is providing the signed certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, THE COUNTY may pursue available remedies, including suspension and / or debarment.
3. The prospective lower tier participant shall provide immediate written notice to THE COUNTY if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction”, “debarred”, “suspended”, “ineligible”, “lower tier covered transaction”, “participant”, “persons”, “lower tier covered transaction”, “principal”, “proposal”, and “voluntarily excluded”, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. Service Provider may contact THE COUNTY for assistance in obtaining a copy of those regulations.

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5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized in writing by THE COUNTY.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titles “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction”, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction; unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government THE COUNTY may pursue available remedies including suspension and / or debarment.

“Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction”

1. The prospective lower tier participant certifies, by submission of this RFP or proposal, that neither it nor its “principals” [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.



Civil Rights Requirements

Civil Rights – The following requirements apply to the underlying contract:

Federal Transit Administration Clauses and Forms

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 Service Provider 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 Service Provider Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. Equal Employment Opportunity – The following equal employment opportunity requirements apply to the underlying contract:
 - a. Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Consultant 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 Service Provider 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 Consultant agrees to comply with any implementing requirements FTA may issue.
 - b. Age – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Service Provider agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Service Provider agrees to comply with any implementing requirements FTA may issue.
 - c. Disabilities – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Service Provider 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 Service Provider comply with any implementing requirements FTA may issue.

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3. The Service Provider 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.

● Breaches and Dispute Resolution

Disputes – Disputes arising in the performance of this Contract the authorized representative of the Attorneys office shall decide which are not resolved by agreement of the parties in writing. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Service Provider mails or otherwise furnishes a written appeal to the County Attorney's office. In connection with any such appeal, the Service Provider shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of THE COUNTY shall be binding upon the Service Provider who shall abide by the decision.

Performance During Dispute – Unless otherwise directed by THE COUNTY, Service Provider shall continue performance under this Contract while matters in dispute are being resolved.

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

Remedies – Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between THE COUNTY and the Service Provider arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which THE COUNTY is located.

Rights and Remedies – The duties and obligations imposed by the Contract Documents and the rights and remedies available there under 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 COUNTY or Service Provider 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 there under, except as may be specifically agreed in writing.

Contract Assurance - The Service Provider or subcontractor Provider shall not discriminate on the basis of race, color, national origin, sex or disability in the performance of this contract. Failure by the Service Provider to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as THE COUNTY or USDOT deems appropriate.

Prompt Payment - The prime Service Provider agrees to pay each subcontractor Provider under this prime contract for satisfactory performance of its contract no later than 7 days from the receipt of each payment the prime Service Provider receives from THE COUNTY. The prime Service Provider agrees further to return retainage payments to each subcontractor Provider within 7 days after THE COUNTY has released their retainage. Any delay or postponement of payment from the set time frame will result in penalties and sanctions as stipulated in

Federal Transit Administration Clauses and Forms

RFP/contract documents. Exceptions may occur only for good cause following written approval by THE COUNTY.

- **Incorporation of Federal Transit Administration (FTA) Terms** – The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any COUNTY requests, which would cause THE COUNTY to be in violation of the FTA terms and conditions.

- **CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND
COOPERATIVE AGREEMENTS**

(Federal Transit Administration, Best Procurement Manual, Appendix A, 49 CFR Part 20)

The undersigned, _____ (Service Provider), certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence as officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any 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 [as amended by “Government-wide Guidance for New Restrictions on Lobbying,” 61 Federal Regulation 1413 (1.19.96).
Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

Federal Transit Administration Clauses and Forms

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

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Service Provider, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Service Provider understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

(Signature of Service Provider's Authorized Official)

(Name and Title of Service Provider's Authorized Official)

ESTIMATED REVENUE HOURS			
1. Fixed-Route Commuter Bus Service			
• Anthony/Canutillo	Weekday/Saturday	6:20	Revenue Hours
• Montana Vista	Weekday/Saturday	8:70	Revenue Hours
• Horizon City	Weekday/Saturday	11:15	Revenue Hours
• Fabens/Tornillo	Weekday/Saturday	6:40	Revenue Hours
Total Daily Revenue Hours:		32:45	Weekday Revenue Hours
Total Saturday Revenue Hours		32:45	Saturday Revenue Hours
Total Weekly Hours:		195	Weekly Revenue Hours
Total Annual Hours:		9,962	Annual Revenue Hours

No Sunday Service

No Holiday Service (Includes New Year's Day, Easter Sunday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day & Christmas Day)

Sample of Service Provider's Invoice

FIXED-ROUTE BUS SERVICE	
Base Revenue Hrs.	_____
Multiplied by	
Base Rate	\$ _____
SUB-TOTAL BASE	\$ _____
Excess Revenue Hrs.	_____
Multiplied by	
Base Rate	\$ _____
SUB-TOTAL EXCESS	\$ _____
TOTAL	\$ _____

COUNTY OF EL PASO, TEXAS

CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; DRUG-FREE WORKPLACE REQUIREMENTS; FEDERAL DEBT STATUS, AND NONDISCRIMINATION STATUS AND IMPLEMENTING REGULATIONS*

Instructions for the certifications:

General Requirements

The County of El Paso, Texas is required to obtain from all applicants of federal funds or pass-through certifications regarding federal debt status, debarment and suspension, and a drug free workplace. Institutional applicants are required to certify that they will comply with the nondiscrimination statutes and implementing regulations.

Applicants should refer to the regulations cited below to determine the certifications to which they are required to attest. Signature of the form provides for compliance with certification requirements under 21 CFR part 1405, "New Restrictions on Lobbying," 21 CFR part 1414, Government wide Debarment and Suspension (Non procurement), Certification Regarding Federal Debt Status (OMB Circular A-129), and Certification Regarding the Nondiscrimination Statutes and Implementing Regulations. The certifications shall be treated as a material representation of fact upon which reliance will be placed when the County of El Paso determines to award the covered cooperative agreement

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented in 21 CFR part 1405, for persons entering into a cooperative agreement over \$100,000, as defined at 21 CFR Part 1405, the applicant certifies that;

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

(b) 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 Congress, or an employee of a Member of Congress in connection with this Federal Grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award document for all sub-awards at all tiers (including sub-grants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

1. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension and implemented at 21 CFR Part 1404, for prospective participants in primary covered transactions

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or and a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State, or local) transaction or contract under a public transaction violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to the application.

2. DRUG-FREE WORKPLACE

As required by the Drug Free Workplace Act of 1988, and implemented at 21 CFR Part 1404 Subpart F.

A. The applicant certifies that it will or will continue to provide a drug free workplace by:

(a). Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the applicant's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(b) Establishing an on-going drug free awareness program to inform employees about:

- (1) The dangers of drug abuse in the workplace;
- (2) The applicant's policy of maintaining a drug free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (4) The penalties that may be imposed upon employees for drug abuse violation occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee must

- (1) Abide by the terms of the statement; and
- (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such convictions. Employers of convicted employees must provide notice including position title, to: The County of El Paso, Texas, 500 East San Antonio Street, Suite 406, El Paso, Texas 79901. Notice shall include the identification number of each affected grant

(f) Taking one of the following actions within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal State, or local health, law enforcement, or other appropriate agency

(g) Making a good faith effort to continue to maintain a drug free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

3. CERTIFICATION REGARDING FEDERAL DEBT STATUS (OMB Circular A-129)

The Applicant certifies to the best of its knowledge and belief, that it is not delinquent in the repayment of any federal debt.

4. CERTIFICATION REGARDING THE NONDISCRIMINATION STATUTES AND IMPLEMENTING REGULATIONS

The applicant certifies that it will comply with the following nondiscrimination statutes and their implementing regulations: (a) title VI of the Civil right Act of 1964 (42 U.S.C. 2000D et seq.) which provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of or be otherwise subjected to discrimination under any program or activity for which the applicant received federal financial assistance; (b) Section 504 of the rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicap in programs and activities receiving federal financial assistance; (c) title IX of the Education Amendments of 1972m as amended (20 U.S.C. 1981 et seq.) which prohibits discrimination on the basis of sex in education programs and activities receiving federal financial assistance; and (d) the Age Discrimination Act of 1975, and amended (42 U.S.C. 6101 ec seq.) which prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance, except that actions which reasonably take age into account as a factor necessary for the normal operation or achievement of any statutory objective of the project or activity shall not violate this statute.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

Business Name

Date

Name of Authorized Representative

Signature of Authorized Representative

COUNTY OF EL PASO PURCHASING DEPARTMENT

COUNTY COURTHOUSE, 500 EAST SAN ANTONIO,
ROOM PU500, EL PASO, TEXAS 79901
(915) 546-2048, FAX: (915) 546-8180

PITI VASQUEZ, PURCHASING AGENT
JOSE LOPEZ, JR. ASST. PURCHASING AGENT
LINDA GONZALEZ, INVENTORY BID TECHNICIAN

PROPOSAL CONDITIONS

This is the only approved instruction for use on your invitation to bid. Items below apply to and become a part of the terms and conditions of the bid.

1. BY SUBMITTING A PROPOSAL, EACH BIDDER AGREES TO WAIVE ANY AND ALL CLAIMS IT HAS OR MAY HAVE AGAINST THE COUNTY OF EL PASO, AND ITS OFFICERS, AGENTS AND EMPLOYEES, ARISING OUT OF OR IN CONNECTION WITH: THE DOCUMENTS, PROCEDURES, ADMINISTRATION, EVALUATION, OR RECOMMENDATION OF ANY PROPOSAL; THE WAIVER BY EL PASO COUNTY OF ANY REQUIREMENTS UNDER THE PROPOSAL DOCUMENTS OR THE CONTRACT DOCUMENTS; THE ACCEPTANCE OR REJECTION OF ANY PROPOSAL; AND THE AWARD OF THE CONTRACT.
2. Proposal must be in the Purchasing Department **BEFORE** the hour and date specified. Faxed proposals will not be accepted.
3. Late proposals properly identified will be returned to bidder unopened. Late proposals will not be considered under any circumstances.
4. All proposals are for new equipment or merchandise unless otherwise specified (merchandise only).
5. Quotes F.O.B. destination. If otherwise, show exact cost to deliver (merchandise only).
6. Proposal unit price on quantity specified-extend and show total. In case of error in extension, unit prices shall govern. RFP subject to unlimited price increases will not be considered.
7. Proposals must give full firm name and address of offeror. Failure to manually sign the proposal will disqualify it. Person signing should show title or authority to bind his firm in a contract.
8. No substitutions or cancellations permitted without written approval of County Purchasing Agent for merchandise.
9. The County reserves the right to accept or reject all or any part of the proposal, waive minor technicalities and award the proposal to the lowest responsible proposer. The County of El Paso reserves the right to award by item or by total proposal. Prices should be itemized.
10. RFP \$100,000.00 and over, the proposer shall furnish a certified cashiers check made payable to the County of El Paso or a good and sufficient bid bond in the amount of 5% of the total contract prices and execute with a surety company authorized to do business in the State of Texas. The bid bond must be included with the bid at the time of the opening.
11. This is a quotation inquiry only and implies no obligation of the part of the County of El Paso.

12. The County of El Paso reserves the right to reject any proposal due to failure of performance on deliveries. The County Purchasing Agent will justify this.
13. Brand names are for descriptive purposes only, not restrictive (merchandise only).
14. The County of El Paso is an Equal Opportunity Employer.
15. Any proposal sent via express mail or overnight delivery service must have the RFP number and title clearly marked on the outside of the express mail or overnight delivery service envelope or package. Failure to clearly identify your proposal may be cause for disqualification.
16. PURSUANT TO TEXAS GOVERNMENT CODE SECTION 2253.021, A PRIME CONTRACTOR WHO IS AWARDED A PUBLIC WORKS CONSTRUCTION CONTRACT SHALL, PRIOR TO BEGINNING THE WORK, EXECUTE TO THE COUNTY:
 - 1) A PERFORMANCE BOND, IN THE FULL AMOUNT OF THE CONTRACT, IF THE CONTRACT IS IN EXCESS OF \$100,000; AND
 - 2) A PAYMENT BOND, IN THE FULL AMOUNT OF THE CONTRACT, IF THE CONTRACT IS IN EXCESS OF \$25,000.
17. PURSUANT TO TEXAS LOCAL GOVERNMENT CODE SECTION 262.032(b), ANY SUCCESSFUL BIDDER WHO IS AWARDED ANY CONTRACT IN EXCESS OF \$50,000 MAY BE REQUIRED TO EXECUTE A PERFORMANCE BOND TO THE COUNTY. SAID BOND SHALL BE IN THE FULL AMOUNT OF THE CONTRACT AND MUST BE FURNISHED WITHIN 30 DAYS AFTER THE DATE A PURCHASE ORDER IS ISSUED OR THE CONTRACT IS SIGNED AND PRIOR TO COMMENCEMENT OF THE ACTUAL WORK. ANY PERFORMANCE BOND REQUIRED PURSUANT TO THIS SECTION SHALL BE NOTED IN THE ATTACHED DETAILED BID SPECIFICATIONS OR SCOPE OF WORK. THIS SECTION DOES NOT APPLY TO A PERFORMANCE BOND REQUIRED BY CHAPTER 2253, TEXAS GOVERNMENT CODE.
18. "Beginning January 1, 2006, in order to implement HB 914 (adding new Local Government Code Chapter 176), ALL VENDORS MUST SUBMIT A CONFLICT OF INTEREST QUESTIONNAIRE (Form CIQ) disclosing its affiliations and business relationships with the County's Officers (County Judge and Commissioners Court) as well as the County employees and contractors who make recommendations for the expenditure of County funds. The names of the County Officers and of the County employees and contractors making recommendations to the County Officers on this contract are listed in the Specifications.

THE CONFLICT OF INTEREST QUESTIONNAIRE MUST BE FILED WITH THE COUNTY CLERK AND A COPY OR PROOF OF FILING MUST BE ATTACHED TO THE BIDDER'S RESPONSE SUBMITTED TO THE PURCHASING DEPARTMENT.

Bidders should be aware that this bidding condition is not intended to cover or to advise you about all situations in which Local Government Code Chapter 176 would require you to file a Form CIQ. You should consult your private attorney with regard to the application of this law and your compliance requirements. Failure to comply is punishable as a Class C misdemeanor.

NOTICE:

ALL COMMUNICATIONS BY A VENDOR TO THE COUNTY, ITS OFFICIALS, AND DEPARTMENT HEADS REGARDING THIS PROCUREMENT SHALL BE DONE THROUGH THE EL PASO COUNTY PURCHASING DEPARTMENT. **THE EL PASO COUNTY CODE OF ETHICS PROHIBITS ALL PRIVATE COMMUNICATION BETWEEN VENDORS AND CERTAIN COUNTY OFFICIALS AND EMPLOYEES AS DESCRIBED BELOW:**

No vendor, its representative, agent, or employee shall engage in private communication with a member of the El Paso County Commissioners Court or county department heads regarding any procurement of goods or services by the County from the date that the bid, RFP, or RFQ is released. No private communication regarding the purchase shall be permitted until the procurement process is complete and a purchase order is granted or a contract is entered into. Members of the commissioners court are required to make a reasonable effort to inform themselves regarding potential procurements and have a duty to inquire of vendors, their representatives or employees, the nature of any private communication being sought prior to engaging in any communication. "Private Communication" means communication with any vendor outside of a posted meeting of the governing body, a regular meeting of a standing or appointed committee, or a negotiation with a vendor which has been specifically authorized by the governing body.

Health Insurance Benefits Provided By Bidder

Consideration of Health Insurance Benefits*

1. Do you or your subcontractor(s) currently offer health insurance benefits to your employees?

If so, please describe those health insurance benefits that you or your subcontractor(s) currently provide/offer to your employees.

2. What percentage, if any, of your of your subcontractor's employees are currently enrolled in the health insurance benefits program?

El Paso County may consider provision of health insurance benefits as part of the overall "best value" determination. Failure to provide health insurance benefits will not disqualify you from participating in this bid selection process.

Business Name

Date

Name of Authorized Representative

Signature of Authorized Representative

*

* This page must be included in all responses.



COUNTY OF EL PASO
County Purchasing Department
500 East San Antonio, Suite PU500
El Paso, Texas 79901
(915) 546-2048
(915) 546-8180 Fax

RE: RFP #07-133, Fixed-Route Commuter Bus Service

Dear Vendor:

As of January 1, 2006, the Texas Local Government Code Chapter 176 requires all vendors and potential vendors who contract or seek to contract for the sale or purchase of property, goods, or services with any local government entity to complete and submit a Conflicts of Interest Questionnaire. A copy of the requirements regarding vendors is attached. Also attached is a copy of the Questionnaire which needs to be filed and was prepared and approved for statewide use by the Texas Ethics Commission.

In filing out the Questionnaire, the following are the County Officers that will award the bid and the employees which will make a recommendation to the Commissioners Court:

County Officers:	County Judge Anthony Cobos Commissioner Luis C. Sariñana Commissioner Veronica Escobar Commissioner Miguel Teran Commissioner Dan Haggerty
County Employees:	Piti Vasquez, Purchasing Agent Jose Lopez, Jr., Assistant Purchasing Agent Peter Gutierrez, Buyer II Linda Gonzalez, Inventory Bid Technician Rosemary Neill, Director of Family and Community Bob Geyer, Rural Transit Manager

Please note that the state law requires that the Questionnaire be filed with the **COUNTY CLERK** no later than **the 7th business day after submitting an application, response to an RFP, RFQ or bid** or any other writing related to a potential agreement with the County. Failure to file the questionnaire within the time provided by the statute is a Class C misdemeanor

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

OFFICE USE ONLY

Date Received

This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person doing business with the governmental entity.

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

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

1 Name of person doing business with local governmental entity.

2

☐

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

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than September 1 of the year for which an activity described in Section 176.006(a), Local Government Code, is pending and not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3

Name each employee or contractor of the local governmental entity who makes recommendations to a local government officer of the governmental entity with respect to expenditures of money AND describe the affiliation or business relationship.

4

Name each local government officer who appoints or employs local government officers of the governmental entity for which this questionnaire is filed AND describe the affiliation or business relationship.

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor or other person doing business with local governmental entity

FORM CIQ

Page 2

5

Name of local government officer with whom filer has affiliation or business relationship. (Complete this section only if the answer to A, B, or C is YES.

This section, item 5 including subparts A, B, C & D, must be completed for each officer with whom the filer has affiliation or other relationship. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income from the filer of the questionnaire?

☐

Yes

☐

No

B. Is the filer of the questionnaire receiving or likely to receive taxable income from or at the direction of the local government officer named in this section AND the taxable income is not from the local governmental entity?

☐

Yes

☐

No

C. Is the filer of this questionnaire affiliated with a corporation or other business entity that the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐

Yes

☐

No

D. Describe each affiliation or business relationship.

6

Signature of person doing business with the governmental entity

Date

Tex. Local Gov't Code § 176.006 (2005)

§ 176.006. Disclosure Requirements for Vendors and Other Persons; Questionnaire

(a) A person described by Section 176.002(a) shall file a completed conflict of interest questionnaire with the appropriate records administrator not later than the seventh business day after the date that the person:

(1) begins contract discussions or negotiations with the local governmental entity; or

(2) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the local governmental entity.

(b) The commission shall adopt a conflict of interest questionnaire for use under this section that requires disclosure of a person's affiliations or business relationships that might cause a conflict of interest with a local governmental entity.

(c) The questionnaire adopted under Subsection (b) must require, for the local governmental entity with respect to which the questionnaire is filed, that the person filing the questionnaire:

(1) describe each affiliation or business relationship the person has with each local government officer of the local governmental entity;

(2) identify each affiliation or business relationship described by Subdivision (1) with respect to which the local government officer receives, or is likely to receive, taxable income from the person filing the questionnaire;

(3) identify each affiliation or business relationship described by Subdivision (1) with respect to which the person filing the questionnaire receives, or is likely to receive, taxable income that:

(A) is received from, or at the direction of, a local government officer of the local governmental entity; and

(B) is not received from the local governmental entity;

(4) describe each affiliation or business relationship with a corporation or other business entity with respect to which a local government officer of the local governmental entity:

(A) serves as an officer or director; or

(B) holds an ownership interest of 10 percent or more;

(5) describe each affiliation or business relationship with an employee or contractor of the local governmental entity who makes recommendations to a local government officer of the local governmental entity with respect to the expenditure of money;

(6) describe each affiliation or business relationship with a person who:

(A) is a local government officer; and

(B) appoints or employs a local government officer of the local governmental entity that is the subject of the questionnaire; and

(7) describe any other affiliation or business relationship that might cause a conflict of interest.

(d) A person described by Subsection (a) shall file an updated completed questionnaire with the appropriate records administrator not later than:

- (1) September 1 of each year in which an activity described by Subsection (a) is pending; and
- (2) the seventh business day after the date of an event that would make a statement in the questionnaire incomplete or inaccurate.
- (e) A person is not required to file an updated completed questionnaire under Subsection (d)(1) in a year if the person has filed a questionnaire under Subsection (c) or (d)(2) on or after June 1, but before September 1, of that year.
- (f) A person commits an offense if the person violates this section. An offense under this subsection is a Class C misdemeanor.
- (g) It is a defense to prosecution under Subsection (f) that the person filed the required questionnaire not later than the seventh business day after the date the person received notice of the violation.

Tex. Local Gov't Code § 176.001 (2005)

§ 176.001. Definitions

In this chapter:

- (1) "Commission" means the Texas Ethics Commission.
- (2) "Family member" means a person related to another person within the first degree by consanguinity or affinity, as described by Subchapter B, Chapter 573, Government Code.
- (3) "Local governmental entity" means a county, municipality, school district, junior college district, or other political subdivision of this state or a local government corporation, board, commission, district, or authority to which a member is appointed by the commissioners court of a county, the mayor of a municipality, or the governing body of a municipality. The term does not include an association, corporation, or organization of governmental entities organized to provide to its members education, assistance, products, or services or to represent its members before the legislative, administrative, or judicial branches of the state or federal government.
- (4) "Local government officer" means:
 - (A) a member of the governing body of a local governmental entity; or
 - (B) a director, superintendent, administrator, president, or other person designated as the executive officer of the local governmental entity.
- (5) "Records administrator" means the director, county clerk, municipal secretary, superintendent, or other person responsible for maintaining the records of the local governmental entity.

COUNTY OF EL PASO, TEXAS

Check List

Fixed-Route Commuter Bus Service RFP #07-133

THIS CHECKLIST IS PROVIDED FOR YOUR CONVENIENCE

- _____ Responses should be delivered to the County Purchasing Department by 2:00 p.m., Wednesday, October 24, 2007. Did you visit our website (www.epcounty.com) for any addendums?
- _____ Did you sign the Bidding Schedule?
- _____ Did you sign the "Certifications Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements; Federal Debt Status, and Nondiscrimination Status And Implementing Regulations" document?
- _____ Did you sign the "Consideration of Insurance Benefits" form?
- _____ Did you file a copy of the completed Conflict of Interest Questionnaire (Form CIQ) with the El Paso County Clerk (in person or by mail to 500 E. San Antonio, Suite 105, El Paso, TX 79901 or by fax to 915-546-2012 attention Joann) and write the confirmation number given as proof of filing on your bidding schedule? Please include the completed and signed form with your response whether a relationship exists or not.
- _____ If your bid totals more than \$100,000, did you include a bid bond?
- _____ Did you provide one original and five (5) copies of your response?
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