



**DULUTH TRANSIT AUTHORITY
REQUEST FOR QUALIFICATIONS**

Fuel Tank Installation Observation Services

April 28, 2020

Duluth Transit Authority - Request for Qualifications
Fuel Tank Installation Observation Services 010-20-0010.0

Duluth Transit Authority
Request for Qualifications
Fuel Tank Installation Observation Services

The Duluth Transit Authority is seeking Statement of Qualifications from individuals or firms to provide Fuel Tank Replacement Installation Observation Services in anticipation of a fuel tank replacement project. Responses are due, on or before **1:00 p.m. on Tuesday, May 12, 2020**. Specifications and submission requirements are available from the Duluth Transit Authority and may be obtained by writing to: Procurement Manager, Duluth Transit Authority 2402 W. Michigan St., Duluth, MN 55806; or by email: nbrown@duluthtransit.com.

The Duluth Transit Authority hereby notifies all respondents that it will affirmatively ensure that in regard to any contract entered into pursuant to this advertisement, no person will be discriminated against on the grounds of race, color, creed, national origin, sex, age or disability in consideration for an award. The DTA encourages the participation of small and disadvantaged business enterprises.

The Duluth Transit Authority reserves the right to accept or reject any or all responses, or waive any informalities in the best interest of the DTA.

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1.0 INTRODUCTION, GENERAL INFORMATION

- 1.1 The Duluth Transit Authority (DTA) is seeking Statement of Qualifications from individuals and firms to provide Fuel Tank Installation Observation Services for the DTA in anticipation of a fuel tank replacement project in 2020. The DTA is seeking a qualified firm who can evaluate the applicable regulations, review technical drawings for compliance and adherence to DTA requirements, observe removal and decommissioning of existing Underground Storage Tanks (USTs), observe any remediation that may be required, observe installation of new tanks, verify all permits and regulatory submittals for compliance, and represent the DTA's interests in coordinating with the design-build contractor. Firms that meet the requirements as stated in this Request for Qualifications (RFQ) are encouraged to submit a Statement of Qualifications. Statements that include subcontractors for specific tasks are acceptable. Respondents shall not include cost per hour rates or cost proposals of any kind in their response.
- 1.2 This is a Qualifications-Based Selection process. All responses received by the deadline will be evaluated; an interview may be part of the evaluation process. The initial evaluation will be to identify the most qualified firm for the anticipated services. The DTA may select one firm, one firm with multiple subcontractors, or multiple firms for selected services or groups of services as most qualified to perform the Task Orders on behalf of the DTA.
- 1.3 Statement of Qualifications will only be considered from firms that are regularly engaged and licensed in the business of providing goods and/or services described in this RFQ for a reasonable period of time, and have sufficient financial support, equipment and organization to ensure they can satisfactorily execute the services if awarded a Contract under the terms and conditions herein.
- 1.4 The RFQ does not obligate the Duluth Transit Authority (DTA) to award a contract or contracts, or to proceed to specific projects.
- 1.5 The terms Consultant, Responder, Respondent or Offeror will be used interchangeably in this RFQ.
- 1.6 The DTA makes no representations as to the quantity of services to be performed, the timing for the services to be performed (within the Contract Term), past and projected usage, and any other representations of potential work under this Contract.
- 1.7 The terms equipment and organization as used herein shall be construed to mean a fully-equipped and well established individual or company in line with the best business practices in the industry as determined by the DTA. In making the award, the DTA may consider any evidence available to it of the financial, technical, and other qualifications and abilities of the Respondent, including past performance with the DTA and other similar customers. A record of nonperformance or poor performance may disqualify a Respondent from award.
- 1.8 This procurement is subject to a financial assistance contract between the DTA and the Federal Transit Administration (FTA) of the United States Department of Transportation (DOT).

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- 1.9 Questions regarding this RFQ must be directed to the DTA procurement manager at 218-623-4329 or nbrown@duluthtransit.com. Email is the preferred means of communication. Oral explanations or instructions will not be binding upon the DTA.
- 1.10 Responsible Respondents must, at a minimum:
- a. Have adequate financial resources or have the ability to obtain such resources as required during the performance of the Contract;
 - b. Have a satisfactory record of past performance;
 - c. Have the necessary management and technical capacity to perform services described herein;
 - d. Be qualified as an established firm regularly engaged in the type of business for a period of not less than one year in the type of business to perform the duties under this Contract.
- A Respondent may be requested to submit written evidence verifying that it meets the minimum criteria necessary to determine a responsible Respondent. Refusal to provide requested information shall result in the Respondent being declared nonresponsive and the Statement of Qualifications will be rejected.
- 1.11 The DTA reserves the right to reject any or all Statements of Qualifications, to waive any defect, irregularity or informality in any Statement of Qualifications or RFQ procedures, extend the RFQ due date, cancel this RFQ, reissue a new RFQ, and/or procure any item or services by other means.
- 1.12 Initial selection shall be based on the evaluation criteria herein. After the DTA makes its initial selection, the DTA may elect to proceed to negotiate a Contract at a fair and reasonable price based on hourly rates, overhead, profit and other expense related to performance of these services. The DTA reserves the right to suspend negotiations with the Respondent should it not progress in a manner satisfactory to the DTA and commence negotiations with the next best rated Respondent.
- 1.13 Protests. In the event a Respondent desires to protest any procedure, the Respondent should present such protest in writing in accordance with the DTA's Protest Procedures, found on the DTA website, www.duluthtransit.com.
- 1.14 Pre-response Meeting. The DTA will host a Pre-Response meeting at **10:00 a.m.** on **Tuesday, May 5, 2020**, at the DTA offices, 2402 West Michigan Street, Duluth, MN 55806. Attendance is not mandatory, however, prospective respondents are strongly encouraged to attend. Interested parties unable to attend in person should contact nbrown@duluthtransit.com or 218-623-4329 for alternate arrangements for participation. **Note:** The DTA may, at its sole discretion, elect to conduct this meeting via electronic means due to the COVID-19 emergency. Instructions will be provided to all interested parties who request meeting access.
- 1.15 The DTA is not liable for any cost incurred by Respondents prior to final execution of the Contract. Costs incurred to prepare a response are the responsibility of the Respondent.

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- 1.16 If it becomes necessary to revise any part of this RFQ, addenda will be posted on the DTA website at www.duluthtransit.com. It is the Respondent's sole responsibility to obtain all documents applicable to this RFQ.
- 1.17 Economy of Preparation: Responses should be prepared simply and economically, providing a straightforward, concise, unambiguous description of the Respondent's ability to meet the requirements of RFQ. Responses may be submitted electronically in a pdf attachment prior to the due date and time to nbrown@duluthtransit.com, or in a sealed envelope clearly marked "Fuel Tank Installation Observation Services" and mailed or delivered to Procurement Manager, Duluth Transit Authority, 2402 West Michigan Street, Duluth, MN 55806.
- 1.18 Oral Presentation: Respondents may be required to make an oral presentation on their submittal to the DTA. Such presentations provide an opportunity for the Respondent to clarify the submittal to ensure thorough mutual understanding. The DTA Procurement Office will schedule any required presentations.
- 1.19 Disposition of Responses: All materials submitted in response to this RFQ will become property of the DTA and will become public record subject to 49 U.S.C 5325(b)(2)(D) and the Minnesota Data Practices Act.
- 1.20 Conflicts of Interest: The Responder must provide a list of all entities with which it has relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this RFQ. The list should indicate the name of the entity, the relationship, and a discussion of the conflict. The responder shall also review and concur with the DTA Vendor Code of Ethics as well as the Organizational Conflict of Interest on the DTA website.
- 1.21 News releases pertaining to this Contract shall not be made without prior written approval from the DTA General Manager.
- 1.22 Project Management: The DTA will provide a project manager who will provide ongoing project monitoring and will serve as the Consultant's liaison with the DTA.
- 1.23 All work performed under this Contract shall conform to all latest local, state, and federal safety requirements and shall, in all cases, meet OSHA requirements. It shall be the Consultant's responsibility to ensure complete compliance with these requirements by staff and subcontractors to this Contract.
- 1.24 A sample Contract is included in this RFQ. Respondents shall request any changes to the terms and conditions at the time of Response. The DTA reserves the right to disallow any or all requested changes.
- 1.25 Respondent shall complete the Questionnaire for Engineering Services found in Appendix A and attached herein. Failure to complete this form shall result in disqualification.

2.0 Term, Timing

- 2.1 The term of this Contract is June 1, 2020 through December 31, 2021 unless terminated sooner.
- 2.2 The selected Consultant shall assist the DTA Procurement Manager in evaluating the design build proposal documents scope of work, assist with technical questions during the procurement process, assist with evaluation of the responses and other duties requested herein during the construction and close out of the Fuel Tank Replacement project.
- 2.3 Upon completion and evaluation of the procurement of a Design-Build contractor, Consultant shall assist with project oversight as defined herein.
- 2.4 No Advance Payments: Payment for services will only be for services rendered. No advance payments will be permitted.

3. STANDARD SERVICE TERMS AND CONDITIONS

- 3.1 The selected Consultant shall perform all work in a manner consistent with applicable regulations and industry standards. All work shall be performed to the reasonable satisfaction of the DTA, and any defective or substandard performance shall be promptly remedied at no cost to the DTA.
- 3.2 The selected Consultant shall provide all such tools, equipment, materials, supplies, employees, management, and any other items of service necessary to enable the Consultant to provide the services required under this Contract.
- 3.3 The selected Consultant agrees that regardless of the work requests under the scope of this Contract, it shall not be the basis for deviating from the quoted unit prices. Consultant agrees to honor quoted unit prices for the duration of this Contract, including extensions unless agreed to by the selected Consultant and the DTA Procurement Manager in writing.
- 3.4 The selected Consultant shall not attach additional terms and conditions to service cost estimates requested by the DTA.
- 3.5 At all times during the term of this Contract, the Consultant shall be an independent contractor to the DTA, and shall not in any event be deemed an employee or other representative of the DTA. Any persons employed by the Consultant shall at all times hereunder be deemed to be employees of the Consultant and Consultant shall be solely liable for the payment of all wages and benefits made available to such employees in connection with their employment.
- 3.6 Consultant shall remain solely responsible for the supervision and performance of any such employees, subcontractors or third party providers in completing its obligations under this Contract. Consultant warrants that any such employees, subcontractors or third party

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providers shall be fully covered by applicable workers compensation insurance, and has been carefully screened as to character and fitness for the performance of the requested task.

4.0 STATEMENT OF QUALIFICATIONS

- 4.1 The DTA requests Statements of Qualifications through this RFQ from qualified firms able to provide the professional services required to assist the DTA with procurement of a design build contract for removal and replacement of underground fuel storage tanks (USTs) provide construction oversight services, monitor remediation efforts that may be required to ensure compliance with applicable regulations as promulgated by the U.S. Environmental Protection Agency (EPA) and U.S. Department of Transportation (DOT) by and through the Federal Transit Administration (FTA), along with applicable State of Minnesota regulations.
- 4.2. The DTA received approval of its application for a Categorical Exclusion (CE) as defined by the US EPA as a project that does not, individually or cumulatively have a significant effect on the human environment (40 CFR 1508.4) and applicable FTA regulation of CEs defined at 23 CFR 771.118. Adherence to these requirements shall be monitored by the selected Consultant.

5.0 CURRENT CONDITIONS

- 5.1. The DTA has three twenty-thousand gallon underground storage tanks; two for diesel fuel and one for heating oil, that were installed when the building was constructed in 1980. The DTA also has a 500-gallon above ground gasoline tank that is NOT part of this project.
- 5.2. UST Cathodic Protection System Evaluations are performed annually on the fuel tanks, (exceeding the State of Minnesota requirement.) No issues have been found to date. A copy of the most recent inspection report is attached for reference
- 5.3 The fuel tanks are accessible at the northeast corner of the DTA Operations Center, adjacent to the employee parking lot. Diesel is piped underground to an interior fueling station for buses, and an interior boiler for building heat.
- 5.4. The fueling tank system is monitored by a Veeder Root system for tracking and reporting fuel usage.
- 5.5. The fuel tanks were cleaned in 2015 as a proactive measure to protect the tanks and preserve the integrity of the fuels. No issues were discovered during the cleaning process.
- 5.6. The DTA anticipates that new tanks will be above ground in the general area where the existing fuel tanks are.

6. SCOPE OF WORK

- 6.1. The selected Consultant must be able to demonstrate an understanding of the applicable regulations and processes, and provide the services in order for the DTA to complete the removal and replacement of the fuel tanks.
- 6.2 The selected Consultant must be able to perform all of the necessary services, including, but not limited to:
 - a. Perform an analysis of regulations, laws and requirements applicable to the proposed project.
 - b. Review existing conditions, evaluate scope of design build procurement documents, attend procurement meetings as requested, assist with technical questions during the procurement process.
 - c. Conduct a technical evaluation of the design build drawings and specifications, confirm compliance with applicable Code requirements.
 - d. Review of the applicable federal, state and local applications and submittals for regulatory approval of the project by FTA and the State of Minnesota.
 - e. Attend the preconstruction meeting, answer any questions relative to the specifications and drawings, review and approve or disapprove all shop drawings and submittals, verify warranty provisions of proposed products. Evaluate value engineering alternates where requested.
 - f. Perform construction observation services to monitor the construction. Responsibilities include acting as a liaison between the DTA and the Contractor, observe the work in progress, prepare reports on observations, progress and compliance with technical specifications, attend construction update meetings as may be required.
 - g. Observe and document any geotechnical testing for contaminated materials. Document compliant disposal of contaminated materials as required by local, state and federal laws and regulations. Verify all documentation has been submitted to the applicable authorities.
 - h. Review pay applications, schedule of values, verify work completed.
 - i. Review requests for additional costs or time extensions, work with the DTA to determine allowability of change requests.
 - j. Upon substantial completion, issue a punchlist of outstanding work for correction.
 - k. Observe commissioning of new system, verify compliance with warranty and training requirements.
 - l. Assist with contract close out, submit reports as may be required.
 - m. Other duties germane to this scope of work as may be requested.

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7. RESPONSE CONTENTS

- 7.1. One original of your response must be received by **1:00 p.m. on Tuesday, May 12, 2020**. Responses may be submitted electronically via a pdf attachment to nbrown@duluthtransit.com, or may be sealed in an envelope with the Responder's name and address clearly written on the outside. Responses must not include any discussion of proposed rates, costs or other pricing data. Late responses will not be accepted.
- 7.2 The anticipated date for awarding the Contract(s) is June 1, 2020.
- 7.3 Responses must include:
- a. Provide the Responder's full company name and address, indicate main contact people with titles and phone numbers and email contact information, Federal I.D. number, DUNS number, and Minnesota tax I.D. number (if applicable), along with the names of the individual(s) to be directly responsible for providing services under the Contract. Include a summary of prior experience and educational training that may be proposed.
 - b. A summary of previous work conducted by the Consultant and the individuals directly responsible for providing services similar in scope to that requested here, along with references. Examples should include prior experience on commercial or industrial buildings, and transit-related services.
 - c. The names of subcontractors (firms and individuals) who will assist in performing the required work and a resume of each, or a history of the firm and a list of examples of similar projects performed by the proposed staff for proposed projects.
 - d. A list of current projects under the direct management of the Respondent.

All responses must include the following:

- Signed Certificates A through E.
- Documentation of the company and statement of qualifications
- Names and qualifications of the designated staff
- Three (3) references for work similar in nature
- Completion of Appendix A, Engineering Services Questionnaire

8. EVALUATION

This is a Qualifications-Based Selection. Responses will be evaluated based on the following criteria:

- | | |
|--|-----|
| • Qualifications and experience to perform needed services | 50% |
| • Key Personnel qualifications handling similar projects | 30% |
| • Response to Appendix A, Engineering Services Questionnaire | 15% |
| • References, Other Matters | 5% |

At the DTA's option, interviews may be required to determine the successful firm.

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Qualifications and ability to perform needed services

Respondent should have specific experience with commercial fuel tank replacement projects, monitoring remediation of contaminated materials, and associated activities. The Respondent should have specific construction observation experience in large commercial projects and be able to demonstrate the ability to review technical drawings and specifications, shop drawings, and other construction observation reporting.

Key Personnel

The Respondent should provide Key Personnel for specific tasks, their qualifications and experience with similar projects.

Response to Appendix A, Engineering Services Questionnaire

Responses will be evaluated on past performance, licensing, answers to questions.

References, Other

The Respondent should provide any other information that will assist the Evaluation Committee in understanding the Respondent's ability to successfully carry out this project in the best interests of the DTA. References are required.

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9. SELECTION PROCESS

- A. Response Evaluation: This is a Qualifications-Based Selection. All responses to this RFQ will be reviewed for completeness prior to referral to the selection committee. A committee consisting of DTA representatives and/or others will then evaluate all responses for technical qualifications and project approach; the DTA designee will then conduct negotiations with the most qualified offeror. This award may be subject to approval by the DTA Board of Directors.
- B. The DTA encourages the participation of Small and Disadvantaged Business Enterprises in DTA contracts. Respondents who are certified as a Small or Disadvantaged Business Enterprise and listed on the Minnesota, Wisconsin or other DOT state Unified Certification Program, the City of Minneapolis CERT program, the Minnesota Targeted Business Program, or the Small Business Administration § 8a certification, should submit proof of certification at the time of response.
- C. Responders to this RFQ may be required to give an oral presentation of their submittal to the selection committee. This provides an opportunity for the Respondent to clarify or elaborate on their submittal. This is a fact finding and explanation session only and does not include negotiation. Oral presentations are strictly at the option of the DTA and may or may not be conducted.
- D. Negotiation: After the DTA has selected the most responsive Respondent, DTA will negotiate final rates with the most qualified Respondent to the point that the DTA deems fair and reasonable. If the most qualified Responder does not agree to said terms, then the DTA will negotiate with the next most qualified Respondent. If negotiations do not produce an agreement, the DTA will negotiate with the successive qualified Respondent(s) as it deems in its best interests. Only after failing to agree on a fair and reasonable price may negotiations be conducted with the next most qualified Respondent.
- E. Firms responding to this solicitation must comply with the Federal Acquisition Regulations Part 31 cost principles and audit of indirect cost rates for purposes of contract estimation and administration in accordance with 49 U.S.C. 5325 (b)(2)(B).
- F. Data provided for indirect cost rates shall be kept confidential in accordance with 49 U.S.C. 5325(b)(2)(D) and shall not be accessible or provided by the DTA except by written permission of the audited firm.

10. FEDERAL TRANSIT ADMINISTRATION REQUIRED CONTRACT CLAUSES

A.1 ACCESS TO RECORDS AND REPORTS

- a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than six (6) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

A.7 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT, 42 U.S.C. §§ 7401 . 7671q 33 U.S.C. §§ 1251-1387, 2 C.F.R. part 200, Appendix II (G)

The Clean Air and Clean Water Act requirements apply to each contract and subcontract exceeding \$250,000.

The Clean Air Act and Federal Water Pollution Control Act requirements extend to all third-party contractors and their contracts at every tier and subrecipients and subcontracts at every tier.

The Contractor agrees:

1. It will not use any violating facilities
2. It will report the use of facilities placed on or likely to be placed on the U.S. EPA List of Violating Facilities;+
3. It will report violations of use of prohibited facilities to FTA; and
4. It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§7401-7671q); and the Federal Water Pollution Control Act as amended (33 U.S.C. §§1251-1387.)

A.8 CIVIL RIGHTS AND EQUAL OPPORTUNITY

The DTA is an Equal Opportunity Employer. As such, the DTA agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the DTA agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion,

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national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, ~~%~~Age Discrimination in Employment Act,+29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, ~~%~~Non-discrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,+45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

4. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

A.9 DISADVANTAGED BUSINESS ENTERPRISE

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

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

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

A. 11 ENERGY CONSERVATION

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

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A.13 DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, Nonprocurement Suspension and Debarment, 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the DTA. If it is later determined by the DTA that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the DTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

A.14 LOBBYING RESTRICTIONS 31 U.S.C. § 1352 2 C.F.R. § 200.450 2 C.F.R. part 200 appendix II (J) 49 C.F.R. part 20

The lobbying requirements apply to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this agreement, the payor must complete and submit the Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

The lobbying requirements mandate the maximum flow down pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5).

Lobbying Restrictions

The undersigned 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 an 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 influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an

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officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, %Disclosure Form to Report Lobbying,+in accordance with its instructions.

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

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 section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

A.15 NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

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

A.18 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

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

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

A.20 RECYCLED PRODUCTS

The Resource Conservation and Recovery Act, as amended, (42 U.S.C. § 6962 *et seq.*), requires States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.

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These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000.

Recovered Materials

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), Comprehensive Procurement Guideline for Products Containing Recovered Materials, 40 C.F.R. part 247.

A.21 SAFE OPERATION OF MOTOR VEHICLES

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company- rented vehicles, or personally operated vehicles. The terms ~~company-owned~~ and ~~company-leased~~ refer to vehicles owned or leased either by the Contractor or DTA.

Distractions Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

A. 22 TERMINATION

A. Termination for Convenience (General Provision)

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

Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the DTA may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only 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 DTA that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the DTA, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

Opportunity to Cure (General Provision)

The DTA, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) days in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to DTA's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from DTA setting

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forth the nature of said breach or default, DTA shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude DTA from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach

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

Termination for Convenience or Default (Cost-Type Contracts)

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

If the termination is for the convenience of DTA, the Contractor shall be paid its contract close-out 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 DTA determines that the Contractor has an excusable reason for not performing, the DTA, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

A.26 VIOLATION AND BREACH OF CONTRACT 2 C.F.R. § 200.326 2 C.F.R. part 200, Appendix II (A)

All contracts in excess of the Simplified Acquisition Threshold (currently set at \$250,000) shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

The Violations and Breach of Contracts clause flow down to all third party contractors and their contracts at every tier.

Rights and Remedies of the Duluth Transit Authority

The Duluth Transit Authority shall have the following rights in the event that the Duluth Transit Authority deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the Duluth Transit Authority, the Contractor expressly agrees that no default, act or omission of the Duluth Transit Authority shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the Duluth Transit Authority directs Contractor

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to do so) or to suspend or abandon performance.

Remedies

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the Duluth Transit Authority will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before the Duluth Transit Authority takes action contemplated herein, the Duluth Transit Authority will provide the Contractor with sixty (60) days written notice that the Duluth Transit Authority considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

Disputes

Example 1: Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the Duluth Transit Authority, Procurement Manager. This decision shall be final and conclusive unless within 10 days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Duluth Transit Authority General Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the General Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

Example 2: The Duluth Transit Authority and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the Duluth Transit Authority and the Contractor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Duluth Transit Authority acted in an arbitrary, capricious or grossly erroneous manner. Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the Duluth Transit Authority's direction or decisions made thereof.

Performance during Dispute

Unless otherwise directed by the Duluth Transit Authority, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages

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

Remedies

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Duluth Transit Authority and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Duluth Transit Authority is located.

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Rights and Remedies

The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Duluth Transit Authority or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

DULUTH TRANSIT AUTHORITY

Required Certificates

Fuel Tank Installation Observation Services

**A. Small or Disadvantaged Business Enterprise, Veteran-owned Business
(including Service Disabled Veteran Business Enterprises)**

1. Is the Contractor's firm or organization registered as a Small Business under the Small Business Administration's 8(a) Business Development Program, HUBZone business, or other development program through the SBA? No____ Yes____ (If yes, please provide a copy of the registration.)

2. Is the Contractor's firm or organization certified or registered as Small Business, a Disadvantaged Business Enterprise, or a Veteran-owned business (including Service-Disabled Veteran-owned business) by a government agency authorized to certify or register the above noted entities?

No ____ Yes____ (If yes, please provide details and copies of the applicable registration or certification.)

The Contractor agrees to take all necessary steps to ensure that DBEs have the opportunity to complete for and perform work under this Contract.

The Contractor or Subcontractor shall not discriminate on basis of race, color, national origin or gender in the performance of this contract. Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT assisted contracts. Failure by the Contractor or Subcontractor to carry out these requirements is a material breach of the contract, which may result in the termination of this contract or such other remedy as the DTA deems appropriate.

Signed this ____ day of _____, 20__:

Title _____

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B. DEBARRED BIDDERS

Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters:

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, Nonprocurement Suspension and Debarment, 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by the DTA. If it is later determined by the DTA that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the DTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Type Name and Title

Signature

Subscribed and sworn to before me
this ____ day of _____, 20__

Notary Public
My Commission Expires _____, 20__

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C. COMPLIANCE WITH SPECIFICATIONS

The respondent hereby states that it will comply with the RFQ requirements and specifications issued by the Duluth Transit Authority in all areas except those where approved equals were granted by the DTA.

SIGNED _____

FIRM NAME _____

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Certificate D. Anti-Lobbying Disclosure

APPENDIX A, 49 CFR PART 20. CERTIFICATION REGARDING LOBBYING
Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned 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 an 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 influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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 section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

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Certificate E

The respondent hereby states that it has read and will comply the DTA's Vendor Code of Ethics and Organizational Conflict of Interest (both on the DTA website) as well as the applicable Federal Clauses and Requirements contained herein.

SIGNED _____

FIRM NAME _____

DULUTH TRANSIT AUTHORITY

Example Contract

Fuel Tank Installation Observation Services

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CONTRACT FOR PROFESSIONAL SERVICES (example for RFQ)

THIS CONTRACT, by and between the Duluth Transit Authority, an authority of the City of Duluth, Minnesota, located at 2402 West Michigan Street, Duluth, MN 55806, hereinafter referred to as "DTA"; and _____, ("Consultant"), a _____ corporation located at _____.

WHEREAS, the DTA desires to utilize Consultant's professional services for Fuel Tank Installation Observation Services; and

WHEREAS, Consultant has represented that it is qualified and willing to perform these services under the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereto agree as follows:

Article I. Contract Documents

The Contract Documents in priority order consist of Federal Transit Administration Contract Clauses, this Contract, Request for Qualifications 010-20-0010.0 dated April __, 2020, all addenda issued prior to and all modifications issued after execution of this Contract, Consultant's Response to Request for Qualifications dated __, 2020, including executed Required Certificates, and negotiated cost proposal, all as fully a part of the Contract and as if attached to this Contract or repeated herein.

Article II. Scope of Professional Services

Consultant will perform the services identified in the Contract documents as set forth in Article I.

Article III. _____ Professional Fees and Payment

In consideration of the provision of the services referenced in Article I above in an acceptable manner, the DTA hereby agrees to reimburse Consultant for said services as set forth on Exhibit A attached hereto and made a part hereof. Consultant shall invoice the DTA for services provided and/or services and equipment purchased based on actual and allowable costs. Requests for reimbursements shall be made no more frequently than monthly and shall be accompanied by supporting documentation providing evidence of hours worked and associated hourly rates as set forth in Exhibit A, as well as any documentation of actual costs incurred and paid by Consultant in

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performing the services hereunder, and such other documentation as the DTA shall reasonably request. A final invoice will be submitted by the Consultant within thirty (30) days of project completion or termination of this Contract. Upon receipt of said request and the appropriate documentation, DTA shall promptly reimburse Consultant for the approved expenses in the amounts set forth in Exhibit A. Funding for this project is provided by an operating grant from the Federal Transit Administration (%TA+). The DTA will not be held liable for any damages incurred due to changes in state or federal funding, including (but not limited to) a reduction or cancellation of the project.

Article IV. Assignability

Consultant shall not assign or transfer any of its rights or interests under this Contract in any way whatsoever, without the prior written consent of the DTA's General Manager.

Article V. Term

This Contract shall be effective upon written %Notice to Proceed+from the DTA, and shall remain in effect until December 31, 2021 unless terminated earlier as provided herein.

Article VI. Standard of Performance

Consultant agrees that all services to be provided to the DTA pursuant to this Contract shall be in accordance with the generally accepted standards of the profession for provision of services of this type.

Article VII. Reports and Inspection

A. Establishment and Maintenance of Records

Records shall be maintained by the Consultant in accordance with the requirements prescribed by the DTA and with respect to all matters covered by this Contract. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Contract.

B. Documentation of Costs.

Consultant will ensure that all costs shall be supported by properly executed payrolls, time reports, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

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C. Reports and Information.

Consultant shall be responsible for furnishing to the DTA, records, data and information as the DTA may require pertaining to matters covered by this Contract.

D. Audits and Inspection.

Consultant shall ensure that at any time during normal business hours and as often as the DTA may deem necessary, there shall be made available to the DTA for examination, all of its records with respect to all matters covered by this Contract.

Consultant will also permit the DTA to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Contract.

E. Confidentiality of Information.

Consultant must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the DTA under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Consultant under this Agreement. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by the Consultant. If Consultant receives a request to release the data referred to in this clause, Consultant must immediately notify the DTA General Manager and consult with the DTA as to how Consultant should respond to the request. Consultant's response to the request must comply with applicable law.

F. Ownership of Data

All notes, reports, design plans, specifications, special studies, records and other data prepared under this Contract shall become the property of the DTA when prepared, and shall be delivered to the DTA General Manager upon completion or termination of the service of Consultant or at such earlier time as requested by the DTA.

Article VIII. Independent Contractor

It is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting Consultant as an agent, representative or employee of the DTA for any purpose or in any manner whatsoever. Consultant and any officers or employees thereof shall not be considered an employee of the DTA, and any and all claims that may or might arise under the Workers' Compensation Act of the State of

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Minnesota on behalf of Consultant arising out of employment or alleged employment, including without limitation, claims of discrimination against the DTA, its officers, agents, contractors and employees shall in no way be the responsibility of the DTA. Consultant and its officers, agents, contractors and employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Workers Compensation, Unemployment Insurance, disability pay or severance pay. Furthermore, DTA shall not, in any way, be responsible to defend, indemnify or save harmless Consultant from liability or judgments arising out of the intentional or negligent acts or omissions of Consultant while performing the work specified by this Contract.

Article IX. Subcontractors

- A. Disclosure. Consultant shall disclose all subcontractors it desires to perform work under this Contract at the time of execution of this Contract. Thereafter Consultant shall promptly report any desired changes to the subcontractors of any tier in accordance with FTA requirements. Such changes shall also require the prior written approval of the DTA Procurement Manager. Consultant shall insert the required Federal and State provisions into every subcontract of any tier in accordance with FTA requirements.
- B. Prompt Payment to Subcontractors. Consultant shall pay any subcontractor or material supplier within ten (10) days of receipt by the party responsible for payment of payment of undisputed services provided by the party requesting payment.

Article X. Indemnity and Insurance

- A. Indemnity. The Consultant shall defend, indemnify and save harmless, the DTA, ATE Management of Duluth, and First Transit, Inc., from all costs, charges, damages and loss of any kind that may grow out of the matters covered by this Contract. Said obligation does not include indemnification of the DTA, ATE Management of Duluth and First Transit, Inc. for claims of liability arising out of the sole negligent or intentional acts or omissions of the DTA, ATE Management of Duluth and First Transit, Inc., but shall include, but be limited to, the obligation to defend, indemnify and save harmless the DTA, ATE Management of Duluth and First Transit, Inc. which are derivative of the negligence or intentional acts or omissions of Contractor, such as, and including but not limited to, the failure to supervise, the failure to warn, the failure to prevent such act or omission by Contractor and other such source of liability. In addition, Contractor will comply with all local, state and federal laws, rules and regulations applicable to this

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Contract and to the work to be done and things to be supplied hereunder.

B. Insurance. During the term of this Contract, Consultant shall provide General Liability and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit, and shall be with a company approved by the DTA; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, Errors and Omissions, and Contractual Liability. Consultant shall also provide Professional Liability Insurance in an amount not less than \$1,500,000 Single Limit, provided further that in the event the professional malpractice insurance is in the form of claims made insurance, thirty days notice prior to any cancellation or modification shall be required, and in such event, Consultant agrees to provide the DTA with either evidence of new insurance coverage conforming to the provisions of this paragraph which will provide unbroken protection to the DTA, ATE Management of Duluth, and First Transit, Inc., or in the alternative, to purchase at its cost, extended coverage under the old policy for the period of the statute of repose runs; the protection to be provided by said claims made insurance shall remain in place until the running of the statute of repose for claims related to this Contract.

C. The Duluth Transit Authority, ATE Management of Duluth, and First Transit, Inc. shall be named as an Additional Insured under the General Liability, Excess Umbrella Liability (An Umbrella policy with a following form+ provision is acceptable if written verification is provided that the underlying policy names the DTA, ATE Management of Duluth, and First Transit, Inc. as an additional insured) and Automobile Liability, or as an alternate, Consultant may provide Owners-Contractors Protective policy, naming itself, the Duluth Transit Authority, ATE Management of Duluth, and First Transit, Inc., as additional insured. Consultant shall also provide evidence of Statutory Minnesota Workers Compensation Insurance if so required. Consultant to provide certificate of insurance evidencing such coverage with 30-days notice of cancellation, non-renewal or material change provisions included. The DTA does not represent or guarantee that these types or limits of coverage are adequate to protect the Consultant's interests and liabilities.

D. If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer must notify the DTA without fail not less than thirty (30) days prior to any cancellation, non-renewal or modification of the policy or coverage evidenced by said certificate and shall further provide that failure to give such notice to the DTA will render any such change or changes in said policy or coverage ineffective as against the DTA, ATE Management of Duluth, and First Transit, Inc.

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E. The DTA shall be entitled to copies of all insurance policies or certificates of insurance required by the Agreement evidencing that the DTA, ATE Management of Duluth, and First Transit, Inc. are so protected.

Article XI. Civil Rights Assurances

Consultant, for itself and its officers, agents, servants and employees as part of this consideration of this Contract, does hereby covenant and agree that:

- A. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation and/or disability shall be excluded from any participation in, denied any benefits of or otherwise subjected to discrimination with regard to the work to be done pursuant to this Contract.
- B. That all activities to be conducted pursuant to this Contract shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code and any regulations and executive orders which may be affected with regard thereto.

Article XII. Rules and Regulations

Consultant agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota, the City of Duluth, and the DTA and their respective agencies which are applicable to its activities under this Contract.

Article XIII. Notices

Telephone calls may be used to expedite communications, but shall not be official communication unless confirmed in writing. Notice to the DTA or Consultant provided for herein shall be sufficient if sent by the regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

Duluth Transit Authority
General Manager
2402 West Michigan Street
Duluth, MN 55806

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Consultant: _____

Article XIV. Waiver

Any waiver by either party of any provision of this Contract shall not imply a subsequent waiver of that or any other provision.

Article XV. Applicable Law

This Contract, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota.

Article XVI. Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this Contract.

Article XVII. No Third Party Rights

Nothing in this Contract confers or purports to confer on any third party any benefit or any right to enforce any term of this Contract.

Article XVIII. Entire Agreement

It is understood and agreed that the entire agreement of the parties is contained herein and that this Contract supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Contract shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

Article XIX. COUNTERPARTS

This Contract may be executed in two or more counterparts, each of which shall be deemed an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signature to this Contract transmitted by

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facsimile, but electronic mail in portable document format (.pdf) or by any other electronic means which preserves the original graphic and pictorial appearance of the Contract, shall have the same effect as physical delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

Duluth Transit Authority

By _____

Title: General Manager

Date _____

Attest _____

Title: _____

Date _____

Consultant

By _____

Its _____

Date _____

And By _____

Its _____

Date _____

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Appendix A

Fuel Tank Installation Observation Services Questionnaire

Respondents shall complete the following information and submit it along with the required information herein. A separate questionnaire should be submitted for each proposed major subcontractor anticipated to supply services of more than \$10,000.

1. General Information

Name of Firm: _____

Address _____

Phone Number: _____

Email Address: _____

Legal Form of Company (partnership, corporation, etc.): _____

Where incorporated: _____

How many years has the firm been engaged in the business under the present firm name? _____

For yes answers, please provide an explanation on a separate attachment.

Have you ever failed to complete any work awarded to you? _____

Have you ever defaulted on a contract? _____

Have you ever been sued for services you provided? _____

Does your organization possess all valid licenses, registrations and certifications required by federal, state, county, or city law necessary for work it seeks to perform? _____

Has your organization had any type of business, contracting or trade license, certification

or registration revoked or suspended in the last three years? _____

Has your firm or organization been a debtor in a bankruptcy proceeding in the last ten years? _____

Please provide any conditions (e.g. pending litigation, planned office closures, impending

mergers, etc.) that may impede the proposed firm or organization's ability to complete the work requested herein.

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1. Describe how you will administer this Contract.
2. Indicate your capabilities in responding to request for services, discuss turn around times, ability to respond to last minute requests.