

ENDLESS MOUNTAIN TRANSIT AUTHORITY

(a.k.a. BeST Transit ("BeST"))

Request for Proposals for Management Services

Advertise RFP Release	March 15, 2021
RFP	March 17, 2021
Deadline for Questions	April 16, 2021
Response to Questions	April 20, 2021

**RFP Due at April 30, 2021 by 3:00 PM Prevailing time**

Interviews (if necessary)	May 1-15, 2021
Award and Notice to Proceed	May 19, 2021

## **Section I. Legal Ad**

### REQUEST FOR PROPOSALS

#### Endless Mountain Transit Authority ("BeST") Requests Proposals for Transit Management Services

Proposals shall be received by Summers Nagy Law Offices not later than 3:00 PM prevailing time on April 30, 2021 at 200 Spring Ridge Drive, Suite 202, Wyomissing, PA 19610 or [rquerci@summersnagy.com](mailto:rquerci@summersnagy.com). Proposals shall be addressed to the EMTA Board of Directors and shall be clearly marked "Response to Proposal for BeST Management Services".

The RFP is available online at <https://www.gobesttransit.com/> or Ryan Querci, Summers Nagy Law Offices [rquerci@summersnagy.com](mailto:rquerci@summersnagy.com). Instructions for the submission of the Response to the RFP and qualifications for interested parties are contained in the Request for Proposals.

BeST reserves the right to reject any and all proposals, waive technicalities, and make award(s) deemed to be in the best interest of BeST.

## **Section II. Specifications**

### A. General

Endless Mountain Transit Authority ("BeST") is seeking to procure contract management services from a qualified contractor to assume management and operation of BeST's fixed-route public transportation bus services, paratransit/ shared ride services and human services contracted services (including, but not limited to MATP Services). This includes management of maintenance operations and facilities' management for BeST's properties within its service area. BeST does not provide school bus or chartered service.

The management firm that is selected must be qualified to do business in the Commonwealth of Pennsylvania, will be under contract with BeST's Board of Directors ("Board") and will report to the Board. The Management team selected will report to the board, but the Board intends for the winning proposer to operate without micromanagement from Board. BeST requires that special attention be paid to the unique demands of operating a transit system within a multi-county rural area with a large service area.

The contract between BeST and the selected management firm will be governed by, construed and enforced by the laws of the Commonwealth of Pennsylvania, and all applicable Federal laws, rules and regulations. Any dispute involving the contract will be heard in a court of competent jurisdiction of Bradford County. The contract will

also provide for a fee for services which shall include a component of reasonable reimbursable expenses (on-site and off-site salaries, fringes and benefits, and costs for management team) and management fee.

It is BeST's expectation that any management firm selected will prioritize cost control measures for both operations and maintenance expenses as well as management fees where practical. BeST will provide fuel, maintenance, insurance, operator salaries (and salaries for direct BeST employees such as mechanics, dispatchers, and existing administrative staff) and other capital necessary for operations costs. An organizational chart of BeST positions are attached for reference. When possible, cost saving recommendations for such commodities as fuel, tires and equipment will be required from the selected management firm.

For purposes of this proposal "shared ride" service and "paratransit" service are used interchangeably regardless of funding source for any programs for demand response service as currently provided by BeST.

The selected firm will be responsible for all corporate taxes, fees and administrative expenses of the firm that are not directly related to this RFP.

#### B. Service Area

BeST is a municipal authority having governmental immunity and falls subject to all limitations of the Municipalities Authorities Act ("MAA"). The MAA sets forth the duties allowed by BeST as well as its Board structure. BeST operates pursuant to Board Bylaws and Articles of Incorporation. BeST also operates pursuant to applicable Pennsylvania Department of Transportation ("PennDOT") requirements (including funding, operational and reporting requirements), Federal Transit Administration guidelines and all applicable U.S. Department of Transportation requirements.

BeST was incorporated in 1980 when Sullivan County, Bradford County and Tioga County organized BeST to provide mass transit Fixed-Route and Paratransit shared-ride services, which today conveniently and safely transport about 200,000 riders a year in the 2,700 square mile multi-county region.

### **Section III. Introduction**

In accordance with Federal and State guidelines, BeST is seeking proposals from qualified individuals and/ or firms to provide transportation services for the term commencing July 1, 2021 and ending June 30, 2023, to be reviewed annually and if warranted, based upon performance and cost, extending up to an additional four (4) one year terms. Any questions regarding this proposal must be received in writing.(including by electronic mail) by 10:00 AM prevailing time on April 16, 2021 at [rquerci@summersnagy.com](mailto:rquerci@summersnagy.com). Questions should include the header "BEST RFP QUESTION".

BeST's transit services are an integral part of the Pennsylvania Northern Tier

Region's transportation network. Also, BeST's services facilitate economic sustainability in the transportation of employees to and from employment in addition to providing life sustaining services for the region. The growing use of BeST's services helps increase mobility, protect the environment, provide new economic opportunities and reduce noise, pollution and energy use.

It is BeST's goal, through its management company, to provide quality, reliable and safe transportation to the traveling public in its transportation area. BeST would like the maximum amount of transportation for the least amount of money in accordance with its limited revenues received through agreements with the FTA, PennDOT and local funding contributors, in addition to any social service agency funders.

#### A. Existing Transit Services

Currently, BeST operates 33 fixed routes and provides services on 79 fixed route buses and 52 special service vehicles.

BeST operates out of a facility at 27824 Route 220 in Athens, Pennsylvania which houses BeST's offices, garage and maintenance facility and bus storage facility. BeST also owns and/ or maintains other properties within its service including a facility at 2978 S. Main Street, Route 15, Mansfield, Pennsylvania. It is expected that the management firm and/ or individual report to a BeST facility at least two (2) times per week with on- call hours associated with operating the Authority. BeST is actively looking for an additional site location and/or expansion of the Athens property.

BeST provides both fixed route and paratransit service Monday through Friday from 0515 AM until 1830 PM. The Mountie fixed route service, designed to service students at Mansfield University, operates on weekend evenings when the university is in session. In providing that service, BeST employs approximately 16 fixed route operators, 34 paratransit operators, 8 maintenance staff and approximately 13 administrative/operations personnel.

The operators and mechanics are part of a collective bargaining unit that is affiliated with the Teamsters Local 229. The existing union contract is slated for renewal in June 2021.

BeST's fleet of 58 buses consists of a number of < 30 foot vehicles, and vans. Within the fleet there is a mixture of diesel vehicles, and gasoline vehicles. BeST's maintenance facilities are designed to service all types of vehicles in the fleet.

BeST's operating staff are part of a collective bargaining unit subject to a collective bargaining agreement that must be renegotiated in the first half of calendar year 2021. The BeST Board expects the management company to lead such contract negotiations and manage its union work force in accordance with the Pennsylvania Public Employee Relations Act.

## B. Training

BeST expects all of its drivers to go through a rigorous introductory training program with year round training on all aspects of operations. BeST seeks to ensure that its training programs are continued and updated to reflect current industry standards. BeST's management team should develop an objective training program that includes training for new hires, refresher training and retraining, as necessary for all drivers and staff.

## Section IV. Scope of Management

The selected firm will provide the daily management services required by BeST necessary for the efficient operation of the entire transit system in accordance with policies, standards and procedures established by BeST. BeST also seeks improvement on standards and procedures during the term of the contract for Board consideration to improve service. Qualified firms must be capable of professional management services, including but not limited to, the following expertise:

A. General management of all transit services, daily operations, daily vehicle inspections, vehicle cleanliness and preventative maintenance. Participation in BeST programs, service development activities and route planning assistance. This will include on-site presence by a management representative at least two times per week at one of the BeST facilities.

B. Updates of a coordinated transportation system including monitoring routes and services, route design and service monitoring and preparation of related grant applications and documentation.

C. Supervising and dispatching of all transit services, including dispatching shared ride services, including human service contracts and other programs, as required by ADA regulations, assigning work to operators, filing open shifts. Applicants should submit alternate plans for housing a call center at BeST or at a location no further than within a county that borders on BeST's service area and efficiencies of each plan.

D. General administrative duties including payroll preparation and submittal, tracking of performance measurements, including but not limited to vehicle and operator hours, human service contract ridership and hours, accident data, on time trips, missed trips and customer complaints.

E. General preparation of BeST's annual budget, and preparation for audits,

and reviews by the Commonwealth of Pennsylvania for any other type of compliance - including but not limited to audit compliance, drug and alcohol compliance, DBE requirements and ADA compliance.

F. Prepare necessary Capital procurement applications and administer the program in compliance with all state, federal and local requirements.

G. Review and plan for fixed route service efficiencies within the service area as well as related communities based upon existing and future fixed route schedules.

H. Proposer should demonstrate knowledge of the service areas as well as an understanding of the RPO partners within the region.

I. Must be able to attend such meetings concerning transportation programs as required.

J. Maintain specific records for the purpose of the audit and/or general reimbursement and supply of any requested information and documentation which is requested by the BeST Board.

K. Availability of approved management personnel during all operating hours. Further, BeST is an integral part of emergency service operations within its service area and therefore, management must be available for emergency events as well.

L. Human resource management and related services consisting of recruitment, hiring and firing of employees, discipline, retraining, labor relations, compensation, fringe benefits, health programs, drug and alcohol testing, FMLA management, hiring statistics and other reporting as may be required by the Board.

M. Accident response, prevention, tracking, investigation and follow-up as necessary with affected employees, safety committee, insurance provider and legal counsel.

N. Management of customer service personnel, including telephone inquiries, ADA compliance, lost and found, responding to customer complaints, community outreach, changing of displays and distribution of system mapping.

O. Provide input into BeST's capital planning, preparation of technical specifications, bidding specifications, capital project supervision and route planning as required from time to time by BeST.

P. Management providing general reporting to the BeST Board and to the state and federal government.

Q. Shall enforce all existing BeST policies and work with counsel to adopt title VII policies and general policies to manage BeST's operations effectively and manage employees in a manner that promotes safety for the traveling public and quality service for residents and visitors to BeST's service area.

R. Shall work with BeST staff to provide guidance and direction concerning route efficiency, proper route planning, effective system development for on-time performance.

S. Assist with acquisition of capital investments including vehicles, equipment, property, supplies or other necessary materials for the effective operation of BeST.

T. Pursue when possible any grants or alternative funding for project initiatives in addition to standard state and federal allocations.

U. Manage and provide accounting services of the books, records and accounts reflecting the operation of BeST. Develop and administer operational budgets, forecast financial needs, develop plans to increase BeST's reserves and procure operational supplies and services.

V. Provide negotiation personnel and an outline for addressing the upcoming union negotiations between BeST and the union for its drivers and maintenance personnel for the labor contract that expires mid-2021.

W. Provide information on the cost structure for management services and key personnel who will be involved in the day-to-day operations at BeST.

X. Establish protocol for satisfying PennDOT performance standards and risk management initiatives to become eligible for entry into the State Association for Transportation Insurance.

Y. Build reserves of funding for an industry standard period of time for operations to continue in the case of funding loss and identify and reduce elements of BeST's cost structure for consistency with similarly sized transit agencies.

Z. Prepare for regionalization with other transit agencies including working with such agencies for standardized fares and joint initiatives.

\*\*\*\* Breaches of the outlined management services requirements may result in fines or termination of the agreement.

## **Section VI. BeST Responsibilities**

A. BeST shall provide all amenities necessary for the successful management firm to carry out the day to day management of the transit system. This includes, but is not limited to: office space, computers, parking areas for buses and vehicle operators, vehicle washing and fuel system, lounge area for operators, training facilities, office and vehicle supplies, etc.

B. BeST shall provide general liability, automobile liability, errors and omissions, public officials and umbrella insurance, as necessary, for governmental entities. Nothing in this management proposal is in any way intended to waive BeST's governmental immunity.

C. BeST shall be responsible for all vehicle fuel charges relating to vehicles supplied to the successful bidder.

D. Training as may be supplied and/or required by BeST.

E. BeST shall provide uniforms as may be required by any collective bargaining agreement.

## **Section VII. Proposal Content**

In order for any bidder to be considered responsible, they must complete all attached federal certificates and clauses. In the event that the bidder is already a recipient of federal funds and completes yearly certifications and assurances, evidence of those certifications and assurances will be accepted in lieu of the completion of the attached federal certificates and clauses, but such documentation must be include with any Response.

All proposals shall, at a minimum, include the following in addition to the federal clauses or certifications and assurances:

A. Name of firm, address, contact person, telephone number(s), email and website.

B. Resident Management Team. A resume of the proposed Resident General Manager (requirements include a description of public transportation experience in fixed-route and paratransit operations), and all additional management personnel, resident or otherwise. Detailed resumes must be included for all personnel with an organizational chart illustrating the proposed management team. A thorough description of responsibilities in carrying out the daily management activities is to be included with the names of personnel listed on the chart, as well as proposed benefits and annual work



hours and salary. BeST reserves the right to approve or deny any management personnel.

C. Identify any subcontractors, consultants, and/ or support persons to be used in the discharge of the firm's obligations under the contract. For each support person, a description of the scope and type of service provided, together with a summary of their experience, qualifications and capabilities.

D. Provide a complete summary of the firm's transit management knowledge, experience and capabilities. Identify all transit systems presently managed as well as the names and locations of transit systems previously managed with a contact name, address, phone number and email address.

E. If the proposer is not an existing public transit authority in Pennsylvania, the proposer shall provide a complete summary of the firm's transit management knowledge, experience and capabilities. Identify all transit systems presently managed as well as the names and locations of transit systems previously managed with a contact name address, phone number and email address.

F. Describe the transit management philosophy to be used, identifying management tools, procedures, practices as well as planned implementation of commitment to the local community.

G. Describe the management approach you will use at BeST.

H. Describe any management innovations successfully implemented.

I. Provide proof of ability to obtain insurance for Employment Related Practices Liability of not less than \$3,000,000.00 (successful bidder will be required to obtain such insurance).

J. Provide a list of references with names of contacts, addresses, phone numbers and email addresses.

K. Provide details on how the firm will attract and recruit vehicle operators and maintenance personnel; include descriptions of recruitment incentive programs.

L. All appendices must be completed and attached to any proposal.

M. Describe any experience proposer has with Ecolane software and Fritz software.

N. Describe your approach to marketing and marketing initiatives you will initiate in the first six (6) months of the contract.

O. You should provide alternative approaches to call center management and costs associated with the same, either through housing a call center off site, or moving call center activities to BeST transit facilities.

P. A cover letter should be submitted that indicates the Proposer's

understanding of the project.

Please note, BeST is subject to the Pennsylvania Open Records Law. BeST cannot guarantee that any part of your proposal or submission will remain confidential. Any specific information in the RFP that is trademarked or proprietary should be clearly noted.

### **Section VIII. Areas of Significant Consideration**

When describing knowledge and experience as required above, the Contractor should pay particular attention to the following:

- A. Management of transit systems similar to BeST and how to deal with a multi-municipal transit agency.
- B. If proposer is an existing public transit agency, describe your relationship to the region and efficiencies that may be gained by a management relationship.
- C. The willingness to dedicate a manager who has experience in operating a transit system as opposed to limited roles in operations or administration who will be on site during the times required by this proposal.
- D. Familiarity with the Pennsylvania laws that deal with public transportation including Pennsylvania funding requirements, the Municipalities Authorities Act and the Sunshine law.
- E. Driver safety, accident response, investigation, and risk management programs.
- F. Personnel recruitment and management.
- G. Driver scheduling and training.
- H. Creation and monitoring of agency fare structures.

### **Section IX. Evaluation Criteria**

A. Responses to this Request for Proposals will be evaluated by a Board Committee along with potential third persons as may be determined by the Committee. The selection process will consist of an evaluation and rating of written proposals.

B. After proposals are received, BeST reserves the right to request additional information from any firm. All proposals will be ranked, in descending order of acceptability, based upon the evaluation criteria.

C. The following criteria will be used when proposals are evaluated. The proposals should address, with detail, the criteria listed below:

1. Qualifications and experience of management personnel with emphasis on experience in transit, paratransit, safety programs, training and knowledge of state and federal regulations governing BeST. References should be submitted for existing systems managed by the proposer..
2. Efficiencies to be gained by the management relationship for the region and BeST. Efficiencies are a critical component of the service and may include cost control, regional relationships, duplication of service and similar proficiencies,
3. Compatibility of the firm's mass transit philosophy and BeST's objectives.
4. Technical qualifications of the firm, including but not limited to, general qualifications, experience in top management of similar transit systems, quality of service provided as measured by acceptable standards, knowledge of the local community, reputation of the firm based upon references, implementation of safety and recruitment programs.
5. Proposed management fee and overall management team expenses, for the contract period. A cost proposal form is attached and should be separately and sealed. Such proposal shall be a consideration at the conclusion of separate scoring.

D. All firms submitting proposals must recognize that the fees, terms and provisions of the final agreement with BeST will be negotiated with the selected firm. The selected firm's proposal will be the basis for these negotiations, although BeST reserves the right to negotiate all aspects. If BeST is unable to reach an agreement with the selected firm, BeST reserves the right to terminate negotiations and enter into negotiations with another proposer or advertise another RFP for services. The BeST Board of Directors must approve any final contract. BeST reserves the right to limit negotiations.

## **Section X. Submitting Proposals**

In the event that proposers are submitting hard copies, then such submission should include, one original and five (5) hard copies and one (1) electronic copy of the proposal should be mailed or delivered to:

Summers Nagy Law Offices  
200 Spring Ridge Drive  
Suite 202  
Wyomissing, PA 19610

In the event that proposers are submitting electronic copies, such proposals shall be emailed to

[rquerci@summersnagy.com](mailto:rquerci@summersnagy.com) prior to the deadline for hard copy receipts. Documents shall not be submitted in drobox format but accessible PDF format even if multiple files are required.

Please note, there are no guarantees of receipt of either hard copies or email copies. It is up to the proposers to seek receipts in either event.

Submissions must be received prior to 3:00 PM Prevailing time on April 30, 2021 at which time proposals will be logged in and the names of proposers transmitted to the Board of Directors.

All proposals must include the legal name of the firm, the address, name of contact person, email and phone number. All proposals must be in sealed envelopes clearly marked "RFP for Management Services - BeST".

Disadvantaged Minority and Women business enterprises are encouraged to submit proposals in response to this request and will not be discriminated against on the grounds of race, color, sex, age, religion, creed, national origin, citizenship status, ancestry, marital or domestic or civil union status. Any contract entered into pursuant to this request will include provisions to ensure compliance with applicable civil rights regulations.

The issuance of this RFP does not commit BeST to award a contract or to pay any costs incurred in preparation of the proposals. BeST reserves the right to reject any and all proposals, in whole or in part, to waive any formalities and to re-advertise or discontinue the process without prejudice.

Applications will be rejected for non-compliance if necessary Federal Certifications are not present and fully executed in their entirety or federal certifications and assurances for the receipt of existing FTA grants are not provided with the proposal.

## **Section XI. Award**

A Notice of Award will be issued to the successful firm subject to the final approval of BeST. All other firms will be notified of the outcome of the selection process. BeST will attempt to have the evaluation process completed and the award issued in the time frames set forth in this RFP. However, BeST reserves the right to delay the award and/ or not select any proposer. In any event, the Proposers should acknowledge that prices set forth in the Proposals shall remain valid for ninety (90) days after the submission deadline.



## EXHIBIT A

### Federal Transit Administration (FTA) and Commonwealth of Pennsylvania Third Party Agreement/Contract Provisions December 2016

#### FLY AMERICA

The contractor understands and agrees that the Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by U.S. flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. §40118 (the “Fly America” Act), and with U.S. GSA regulations, “Use of United States Flag Air Carriers,” 41 C.F.R. Parts §§301-10.131 through 301-10.143.

#### ENERGY EFFICIENCY AND CONSERVATION

Vendors/Contractors shall recognize and comply with mandatory standards and policies relating to energy efficiency contained in State energy conservation plans issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §6321 *et seq.*).

#### CLEAN WATER

The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§1251 *et seq.* The contractor agrees to report each violation to the purchaser and understands and agrees that the purchaser will, in turn, report each violation as required to assure notification to Federal Transit Administration and the appropriate U.S. EPA Regional Office. *Applies to all contracts/agreements exceeding \$150,000.*

#### LOBBYING

Section 1352 of Title 31, U.S. Code provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan or cooperative agreement to pay 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, an employee of a Member of Congress or a member or employee of a State legislature in connection with any of the following covered Federal actions: 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.

The contractor and its subcontractors shall certify that no federal appropriated funds have been expended for the lobbying activities described in Section 1352 of Title 31, U.S. Code. The contractor and its subcontractors shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to the covered Federal actions as described by 31 U.S.C. §1352. For any contract and subcontract exceeding \$100,000, the contractor and subcontractor(s) will submit a Lobbying Certificate. (See Certificate 3). Contractors who engage in lobbying activities are required to file Standard Form—LLL, “Disclosure of Lobbying Activities” in accordance with Section 1352 of Title 31, U.S. Code.

#### ACCESS TO RECORDS AND REPORTS, AUDITS AND INSPECTION

Audit and Inspection. The contractor shall permit the authorized representatives of BeST Transit, U.S. Department of Transportation, the Pennsylvania Department of Transportation, and the Comptroller General of the United States to inspect and audit all data and records of the agreement/contract or relating to its performance and its subcontracts under this agreement/contract from the date of the agreement/contract and for three (3) years after completion or termination of the agreement/contract.

Record Retention. The contractor further agrees to include in all their subcontracts hereunder a provision to the effect that the subcontractor agrees that BeST Transit, the U.S. Department of Transportation, the Pennsylvania Department of Transportation and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of each subcontractor, involving transactions related to the subcontractor. The term “subcontractor” as used in this clause excludes: (1) Purchase Orders not exceeding \$10,000; and (2) subcontracts or Purchase Orders for public utility services at rates established for uniform applicability to the general public.

### **FEDERAL CHANGES**

The contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed herein, as they may be amended or promulgated from time to time during the term of this agreement/contract, unless the Federal Government determines otherwise. The contractor’s failure to so comply shall constitute a material breach of this agreement/contract. 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 contractor shall not perform any act, fail to perform any act or refuse to comply with any BeST Transit requests which would cause BeST Transit to be in violation of the FTA terms and conditions.

### **CLEAN AIR**

The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§7401 *et seq.* . The contractor agrees to report each violation to the purchaser and understands and agrees that the purchaser will, in turn, report each violation as required to assure notification to Federal Transit Administration and the appropriate U.S. EPA Regional Office.  
*Applies to all contracts/agreements exceeding \$150,000.*

### **RESERVED**

### **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

- The Federal Government is not a Party to this agreement/contract and shall not be subject to any obligations or liabilities to the contractor or any other Party (whether or not a Party to that agreement/contract) pertaining to any matter resulting from the underlying agreement/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.

### **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS**

The contractor and its subcontractors acknowledge 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 agreement/contract. The contractor and its subcontractors certify or affirm the truthfulness and accuracy of any statement it has made, it makes, it may make or causes to be made, pertaining to this agreement/contract or the FTA assisted project for which this agreement/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 or its subcontractors to the extent the Federal Government deems appropriate.

### **TERMINATION**

Termination for Convenience: BeST Transit may terminate this agreement/contract in whole or in part, at any time by written notice to the contractor or as detailed in the RFP. The contractor shall be paid its

costs, including agreement/contract close-out costs, and profit on work performed up to the time of termination. "Close-out costs" is defined as, "site deactivation costs, scrap and waste disposal costs only". Close out costs do not include labor, direct material or overhead. Within thirty (30) days of the date of the written Notice of Termination, the contractor shall promptly submit its termination claim to BeST Transit to be paid to the contractor. If the contractor has any property in its possession belonging to BeST Transit, the contractor will, within thirty (30) days of the date of the Notice of Termination, account for the same, and dispose of it in a manner directed by BeST Transit.

Termination for Default: If the contractor does not deliver supplies in accordance with the contract delivery schedule or if the agreement/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 agreement/contract, BeST Transit may terminate this agreement/contract for default. Termination shall be affected by serving a notice of termination on the contractor setting forth the manner in which the contractor is in default. The contractor will only be paid the agreement/contract price for supplies delivered and accepted or services performed in accordance with the manner of performance set forth in the agreement/contract.

If it is later determined by BeST Transit that the contractor had an excusable reason for not performing, such as strike, fire, flood, acts of terrorism or events which are not the fault of or are beyond the control of the contractor, BeST Transit, 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.

BeST Transit in its sole discretion may, in the case of a termination for default, allow the contractor a reasonably short period of time 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.

Termination for Cost Type Agreements/Contracts: BeST Transit may terminate this agreement/contract or any portion of it, by serving a notice of termination on the contractor. The notice shall state whether the termination is for the convenience of BeST Transit 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 agreement/contract. The contractor shall account for any property in its possession paid for from funds received from BeST Transit or property supplied to the contractor by BeST Transit. If the termination is for default, BeST Transit may fix the fee, if the agreement/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 BeST Transit and the parties shall negotiate the termination settlement to be paid the contractor.

If the termination is for the convenience of BeST Transit, the contractor shall be paid its agreement/contract close-out costs, and a fee, if the agreement/contract provides for a fee, in proportion to the work performed up to the time of termination. The agreement/contract does not provide for an additional fee.

If, after serving notice of termination of default, BeST Transit determines that the contractor 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 contractor, BeST Transit, after setting up a new work schedule, may allow the contractor to continue work or treat the termination as termination for convenience.

#### **GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)**

The contractor agrees to comply, and assures the compliance of its subcontractors or a Participant at any tier of the Project, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," U.S.C. §6101 note, and U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement)," 2 C.F.R. Part 180. The contractor agrees to and assures that its subcontractors for any lower tier Participant



will, review the “Excluded Parties Listing system at <http://sam.gov/> before entering into any contractual arrangement in connection with this Project. For any contract and subcontract exceeding \$25,000, the Contractor and subcontractor shall submit a debarment and suspension certificate or an explanation as to why the signed certification cannot be provided. (See Certificate 5) The certification is a material representation of fact upon which reliance was placed when the transaction was entered into. If it is later determined that the contractor or subcontractors knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, BeST Transit may pursue available remedies, including suspension and/or debarment. The contractor or subcontractors shall provide immediate written notice to BeST Transit if at any time the contractor or subcontractors learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

### **PRIVACY ACT**

The contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the contractor agrees to obtain the express consent of the Federal Government before the contractor or its employees operate a system of records on behalf of the Federal Government. The contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

The contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

### **CIVIL RIGHTS**

#### **TITLE VI:**

During the performance of this agreement/contract, the contractor and its subcontractors shall comply with all requirements prohibiting discrimination against any employee or applicant for employment on the basis of race, color, creed, sex, age, disability or national origin in accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000 (d); Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§1681-1683, 1685-88, with implementing U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. Part 25; Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102; 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; Section 202 of the American With Disabilities Act of 1990, 42 U.S.C. §12132; Federal transit law at 49 U.S.C. §5332; and U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act”, 49, C.F.R. Part 21, and any implementing requirements FTA may issue.

### **EQUAL EMPLOYMENT OPPORTUNITY**

In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000, and Federal transit laws at 49 U.S.C. §5332, the contractor and its subcontractor agree to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 *et seq.* and any implementing requirements the FTA may issue. The contractor and its subcontractors agree that it shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age or national origin. The contractor and its subcontractors shall take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their race, color, creed, sex, disability, age or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off 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.

### **AMERICANS WITH DISABILITIES ACT COMPLIANCE**

The undersigned agrees to comply with and assure that any third-party contractor under this Agreement complies with all applicable requirements of the American with Disabilities Act of 1990 (ADA), 42 U.S.C. §§12101 *et seq.* and 49 U.S.C. §322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. §1612; and the following regulations and any amendments thereto:

- U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA)”, 49 C.F.R. Part 37;
- U.S. DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from the Federal Financial Assistance”, 49 C.F.R. Part 27;
- U.S. DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles”, 49 C.F.R. Part 38;
- Department of Justice (DOJ) regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services”, “28 C.F.R. Part 35
- DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities”, 28 C.F.R. Part 36;
- General Services Administration regulations, “Construction and Alteration of Public Buildings”, “Accommodations for the Physically Handicapped”, 41 C.F.R. Part 101-19;
- Equal Employment Opportunity Commission (EEOC) “Regulations to Implement the Equal Employment Provisions of the American with Disabilities Act”, 29 C.F.R. Part 1630;
- Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 47 C.F.R. Part 64 (F) and
- FTA regulations “Transportation for Elderly and Handicapped Persons” 49 C.F.R. Part 609.

### **BREACHES AND DISPUTE RESOLUTION**

Disputes – Disputes arising in the performance of this agreement/contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of BeST Transit. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the contractor mails or otherwise furnishes a written appeal to the Board of Directors. 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 Board of Directors shall be binding upon the contractor and the contractor shall abide by the decision.

Performance During Dispute – Unless otherwise directed by BeST Transit, contractor shall continue performance under this agreement/contract while matters in dispute are being resolved.

Claims for Damages – Should either party to the agreement/contract suffer injury or damage to person or property because of any act or omission of the party or any of his employees, agents or others for those 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 agreement/contract provides otherwise, all claims, counterclaims, disputes and other matters in question between BeST Transit and the contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agreed or in Tioga County Court of Common Pleas.

Rights and Remedies – The duties and obligations imposed by the agreement/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 BeST Transit or its representative shall constitute a waiver of any right or duty afforded any of them under the agreement/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.

**DISADVANTAGED BUSINESS ENTERPRISES (DBE)**

DBE Assurance: BeST Transit shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted agreement/contract or in the administration of BeST Transit's DBE Program or the requirements of 49 C.F.R. Part 26. BeST Transit shall take all necessary and reasonable steps under 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts/agreements. BeST Transit's DBE Program, as required by 49 C.F.R. Part 26 and as approved by DOT, is incorporated by reference into this solicitation and any resulting agreement/contract. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to BeST Transit of its failure to carry out its approved program, the Department of Transportation may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, (31 U.S.C. §3801 *et seq*).

DBE Contract Clause: The contractor or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this agreement/contract. The contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in award and administration of DOT assisted contracts/agreements. Failure by the contractor to carry out these requirements is a material breach of this agreement/contract, which may result in the termination of this agreement/contract or such other remedy as BeST Transit deems appropriate.

Prompt Payment Clause: The prime contractor agrees to pay each subcontractor (whether DBE or non-DBE) under this prime agreement/contract for satisfactory performance of its agreement/contract no later than thirty (30) calendar days from its receipt of each payment from BeST Transit. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from these time frames may occur only for good cause following written approval of BeST Transit of the prime contractor's written request for such a delay or postponement. The request for delay or postponement must state the reasons for the request in sufficient detail as to permit BeST Transit to make a determination. The decision to allow a delay or postponement shall rest solely and exclusively with BeST Transit.

Absent written approval from BeST Transit for a delay or postponement, and upon receipt by BeST Transit of written notification from the subcontractor that prompt payment requirements have not been met, BeST Transit may withhold reimbursement from future prime contractor invoices for amounts due to subcontractors for satisfactory work unless and until the prime contractor takes corrective action by paying its subcontractors any past due amounts promptly in accordance with this requirement and also assuring, in writing, that future payments will be so made. A prime contractor who does not take such corrective action when required to do so will not be permitted to bid on future projects involving subcontractors unless and until a written assurance of compliance with prompt payment provisions is provided to BeST Transit. BeST Transit reserves the right to determine that a prime contractor who has not met prompt payment provisions is not a responsible bidder for future contracts/agreements.

The contractor must submit Certificate 4-1 "Disadvantaged Business Enterprise", with its proposal and the Affidavit requested on Certificate 4-2 if the Proposer is a Disadvantaged Business Enterprise.

**RESERVED:**

## **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

The contractor agrees that the definitions and terminology included in FTA Circular 4220.1F (March 2013) and the FTA Master Agreement shall be incorporated into the agreement/contract by reference.

### **BEST TRANSIT BID PROTEST PROCEDURES:**

#### **1.0 PURPOSE**

1.1 The policies and procedures governing the receipt and resolution of protests in connection with an Invitation for Bid (IFB) or Request for Proposal (RFP) are outlined below. This procedure is applicable to all IFBs or RFPs. These procedures are in compliance with FTA Circular 4220.1F (March 2013).

#### **2.0 DEFINITIONS**

2.1 "Interested Party" means any Bidders/Proposers.

2.2 "Days" means business days.

2.3 "Filed" means the date of receipt by the Office of the Executive Director or his/her designee.

2.4 "Federal/State Law or Regulation" means any valid requirement imposed by Federal, State or other statute or regulation.

2.5 "Presumptive Contractor" means the Bidder/Proposer that is in line for award of the agreement/contract in the event that the protest is denied.

2.6 "Protestant" is an Interested Party who is aggrieved in connection with the solicitation or award of a agreement/contract and who files a protest.

#### **3.0 TYPES OF PROTESTS/ TIME LIMITS**

3.1 Pre-Bid/Proposal Protest are based upon alleged restrictive specifications or alleged improprieties in BeST Transit's (BeST's) procurement process. A protestant must file a pre-bid/proposal protest no later than five (5) days prior to bid opening date by 4:00 P.M. BeST, Pennsylvania prevailing time.

3.2 Pre-Award Protest is based upon alleged improprieties of a Bid/Proposal. A protestant must file a pre-award protest no later than five (5) days after the protestant knows or should have known of the facts giving rise thereto by 4:00 P.M. BeST, Pennsylvania prevailing time.

3.3 Post-Award Protest is based upon the award of a agreement/contract. A protestant must file a post-award protest no later than five (5) days after the notification to the unsuccessful firms of LT's intent to award or no later than five (5) days after an unsuccessful firm becomes aware of LT's intent to award a agreement/contract, whichever comes first, by 4:00 P.M. BeST, Pennsylvania prevailing time.

#### **4.0 CONTENTS OF PROTEST**

4.1 Protests must be in writing, and filed directly with the Office of the Solicitor at:

Jill E. Nagy  
200 Spring Ridge Drive, Suite 202  
Wyomissing, PA 19610

and must contain the following information:

- a. The name, address and telephone number of the protestant;
- b. Identity of the IFB or RFP (by number and description);
- c. A detailed factual statement of the grounds for protest; and
- d. The desired relief, action or ruling.

#### **5.0 ACTION BY BEST TRANSIT**

##### **5.1 Procurement Process Status**

Upon timely receipt of a protest, BeST Transit will delay the opening of bids until after resolution of the protest for protests filed prior to the bid opening or withhold award until after resolution of the protest for protests filed after bid opening. However, BeST Transit may open bids or award a agreement/contract whenever BeST Transit, at its sole discretion, determines that:

- a. The items or work to be procured are urgently required;
- b. Delivery or performance will be unduly delayed by failure to make the award promptly; or
- c. Failure to make prompt award will otherwise cause undue harm to BeST Transit or a funding source.

If the protest is filed before the award of the agreement/contract, BeST Transit will advise the presumptive contractor of the pending protest.

5.2 If deemed appropriate, BeST Transit may conduct an informal conference on the merits of the protest with all interested parties invited to attend.

#### 5.3 Response to the Protest

BeST Transit's Solicitor, RFP committee, will respond in detail to each substantive issue raised in the protest within a reasonable time after the protest is filed. BeST Transit's response shall address only the issues raised originally by the protestant. When, on its face a protest does not state a valid basis for protest or is untimely, the Solicitor/RFP committee may summarily dismiss the protest without requiring a detailed response.

#### 5.4 Rebuttal to BeST Transit Response

The protestant may submit a written rebuttal to BeST Transit's response, addressed to the Solicitor, but must do so within five (5) days after receipt of the original BeST Transit response. BeST Transit will not address new issues raised in the rebuttal. After receipt of the protestant's rebuttal, the Solicitor/RFP committee will review the protest and notify the protestant of his/her final decision.

#### 5.5 Request for Additional Information

Failure of the protestant to comply with a request for information as specified by BeST Transit may result in determination of the protest without consideration of the additional information if subsequently produced. If any interested party requests information from another interested party, the request shall be made to BeST Transit's Solicitor, and, if BeST Transit so directs, shall be complied with by the other party within five (5) days.

#### 5.6 Request for Reconsideration

If data becomes available that was not previously known or there has been an error of law, a protestant may submit a request for reconsideration of the protest. BeST Transit's Solicitor/RFP committee will again review the protest considering all currently available information. The Solicitor's determination will be made within a reasonable period of time, and his/her decision will be considered final.

#### 5.7 Decision

Upon review and consideration of all relevant information the determination as issued by BeST Transit will be final.

#### 5.8 Confidentiality of Protest

Material submitted by a protestant will not be withheld from any interested party, except to the extent that the withholding of information is permitted or required by law or regulation. If the protestant considers that the protest contains proprietary material which should be withheld, a statement advising of this fact must be affixed to the front page of the protest submission and the allegedly protected information must be so identified whenever it appears.

#### 5.9 Federal Transit Administration (FTA) Involvement

Where procurements are funded by the FTA, BeST Transit will notify the Regional Office of any known or pending protests. BeST Transit will notify FTA again within five (5) business days from receipt of BeST Transit's final decision, the protestant may file a protest with the FTA only where the protest alleges that BeST Transit failed to have or failed to adhere to its protest procedures or there was a

violation of Federal Law or Regulation. Any protest to the FTA must be filed in accordance with FTA Circular 4220.1F.

### **ENVIRONMENTAL PROTECTION**

The contractor and its subcontractors agree to comply with all applicable requirements and implementing regulations of the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. §§4321 through 4335 (as restricted by 42 U.S.C. §5159, if applicable), Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. §4321 note; FTA statutory requirements on environmental matters at 49 U.S.C. §5324(b). U.S. Council on Environmental Quality regulations on compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622; and other applicable Federal environmental protection regulations that may be promulgated at a later date.

### **PROHIBITED INTEREST**

No member, officer, or employee of BeST Transit, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in this agreement/contract or the proceeds therefrom. BeST Transit's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.

### **INTEREST OF MEMBERS OR DELEGATES TO CONGRESS**

No member or delegate to the Congress of the United States shall be admitted to any share or part of this agreement/contract or receive any benefit arising therefrom.

### **INSURANCE**

At a minimum, the contractor shall comply with the insurance requirements imposed by the Commonwealth of Pennsylvania and BeST Transit or as otherwise required or defined in the specifications for the project.

### **SEAT BELT USE**

Pursuant to Executive Order No. 13043, April 16, 1997, 23 U.S.C. §402, the contractor and its subcontractors are encouraged to adopt on-the-job seat belt use policies and programs for its employees when operating company-owned, rented or personally operated vehicles.

### **PROTECTION OF SENSITIVE SECURITY INFORMATION**

The contractor shall protect, and take measures to ensure its subcontractors at each tier protect, "sensitive security information" made available during the administration of a third party contract or subcontract to ensure compliance with 49 U.S.C. §40119(b) and implementing DOT regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 15, and with 49 U.S.C. §114(s) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information", 49 C.F.R. Part 1520. In accordance with 49 U.S.C. §40119(b) (1), "sensitive security information" is information obtained or developed in the conduct of security activities, including research and development. The information, and records containing such information, that constitute "sensitive security information" is further defined in 49 C.F.R. Part 15.5.

### **TRAFFICKING IN PERSON**

The contractor, its subcontractors and the employees of the contractor and its subcontractors that are participating in the Project that is the subject of this Contract and during the period this agreement/contract is in effect may not engage in severe forms of trafficking in persons, procure a commercial sex act or use forced labor in the performance of the agreement/contract. BeST Transit may unilaterally terminate the agreement/contract for the Project, without penalty to BeST Transit, if the contractor, its subcontractors and the employees of the contractor and its subcontractors are determined to have violated this prohibition. This provision implements the requirements of subsection 106(g) of the Trafficking Victims Protection Act of 2000, as amended, 22 U.S.C. §7104(g) and U.S. OMB

guidance, "Trafficking in Persons: Grants and Cooperative Agreements," 2 C.F.R. Part 175.

### **TEXT MESSAGING WHILE DRIVING**

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

Definitions. As used in this Special Provision:

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

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

### **Safety**

The Contractor is encouraged to:

Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving;

Contractor-owned or contractor-rented vehicles or Government-owned, leased or rented vehicles;

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

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

Conduct workplace safety initiatives in a manner commensurate with the contractor's size, such as:

Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

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

Include this Special Provision in its sub-agreements with its subcontractors and also encourage its subcontractors to comply with the terms of this Special Provision, and include this Special Provision in any sub-agreement they entered into for the Project.

### **CONFORMITY TO CURRENT LAW**

All statutes and regulations cited herein include any existing amendments thereto.

### **VETERANS PREFERENCE**

As provided in U.S.C. § 5325 (k), the extent practicable, BeST agrees and assures that each of its sub-recipients:

- Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third-party contact/agreement in connection with a capital project supported with Federal Assistance appropriated or made available for 49 U.S.C. Chapter 53: and

- Will not be required to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability or a former employee.

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Signature

BeST Transit  
2978 S. Main Street Route 15  
Mansfield, PA 16933  
570-659-5330



**CERTIFICATE 1**

**NON-COLLUSION STATEMENT**  
**ENDLESS MOUNTAIN TRANSIT AUTHORITY**  
**a.k.a BeST TRANSIT**

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TO: Endless Mountain Transit Authority a.k.a Best Transit, Pennsylvania

The Undersigned, having examined the Specifications, Standard Requirements and other documents and being familiar with the various conditions under which these services, equipment and/or supplies are to be used, agrees to furnish all labor, materials, tools, equipment and services called for in the proposal for the prices stated.

The Undersigned hereby certifies that this proposal is genuine and not a sham, collusive or fraudulent or made in the interest of or in behalf of any person, firm or corporation not herein named, and that the Undersigned has not, directly induced or solicited any Proposer to submit a sham proposal or any other person, firm or corporation to refrain from submitting a proposal and that the Undersigned has not, in any manner, sought by collusion to secure for themselves an advantage over any other Proposer.

Company Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

TRADING AND DOING BUSINESS AS (CHECK ONE)

Individual     Partnership     Corporation

(Seal)

**Failure to Complete This Form and Submit With Proposal Will Render the Proposal  
Non-Responsive.**

**CERTIFICATE 2**

**COMMONWEALTH NON-DISCRIMINATION/SEXUAL HARASSMENT CLAUSE**

The Proposer Agrees:

- a. In the hiring, recruitment, placement or promotion of any employee(s) for the manufacture of supplies, compensation and benefits performance of work or any other activity required under the contract or subcontract, the Contractor, a subcontractor or any person acting on behalf of the contractor shall not, by reason of gender, race, creed or color, discriminate against any citizen of the Commonwealth of Pennsylvania who is qualified and available to perform the work to which the employment relates.
- b. The Contractor or any subcontractor or any person acting on their behalf shall not in any manner discriminate against or intimidate any of its employees on account of gender, race, creed or color.
- c. The Contractor or any subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- d. The Contractor or any subcontractor shall not discriminate by reason of gender, race, creed or color against any contractor, subcontractor or supplier who is qualified to perform the work to which the contracts/agreements relates.
- e. The Contractor or any subcontractor shall, within the time periods requested by the Commonwealth of Pennsylvania, furnish all necessary employment documents and records and permit access to their books, records, and accounts by the Pennsylvania Department of Transportation and the Bureau of Minority and Women Business Opportunities (BM/WBO), for the purpose of ascertaining compliance with provisions of this Non-discrimination/ Sexual Harassment Clause.
- f. The Contractor or any subcontractor shall include the provisions of this Nondiscrimination/ Sexual Harassment Clause in every contract or subcontract so that those provisions applicable to Contractors or subcontractors will be binding upon each Contractor or subcontractor.
- g. BeST Transit may cancel or terminate the contract/agreement and all money due or to become due under the contract/agreement may be forfeited for a violation of the terms and conditions of this Non-discrimination/Sexual Harassment Clause. In addition, BeST Transit may proceed with debarment or suspension and may place the Contractor or subcontractor in the Contractor Responsibility File.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
FIRM NAME

BY: \_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TITLE

**Failure to Complete This Form and Submit With Proposal Will Render the Proposal Non-Responsive.**

### CERTIFICATE 3

#### CONTRACTOR INTEGRITY

It is essential that those who seek to contract/agreement with BeSTTransit observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the BeST Transit procurement process. In furtherance of this policy, Contractor agrees to the following:

- Contractor shall maintain the highest standards of integrity during the performance of this agreement and shall take no action in violation of state or federal laws or regulations or other requirements applicable to the Contractor or that govern contracting with the Commonwealth of Pennsylvania (“Commonwealth”) and/or BeST Transit.
- Contractor, its affiliates, agents and employees shall not influence or attempt to influence, any BeST Transit or Commonwealth employee to breach the standards of ethical conduct for employees or to breach any other state or federal law or regulation.
- Contractor, its affiliates, agents and employees shall not offer, give or agree or promise to give any gratuity to a BeST Transit or Commonwealth official or employee or to any other person at the direction or request of any BeST Transit or Commonwealth official or employee.
- Contractor, its affiliates, agents and employees shall not offer, give or agree or promise to give any gratuity to a BeST Transit or Commonwealth official or employee, the acceptance of which would violate the applicable code of conduct or any statute, regulation, statement of policy, management directive or any other published standard of BeST Transit or the Commonwealth.
- Contractor, its affiliates, agents and employees shall not, directly or indirectly, offer, confer or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion or violation of a known legal duty by any official or employee of BeST Transit or the Commonwealth.
- Contractor, its affiliates, agents, employees or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the contract, except as provided in the contract/agreement.
- Contractor shall not have financial interest in any other contractor, subcontractor or supplier providing services, labor or material on this project, unless the financial interest is disclosed to BeST Transit in writing at the time of proposal submission and BeST Transit consents to the Contractor’s financial interest prior to BeST Transit execution of the contract/agreement.
- Contractor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data or records provided to or prepared by, Contractor under this contract/agreement or secured by Contractor from a third party in connection with the performance of this contract/agreement, without the prior approval of BeST Transit, except as required by the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104; necessary for purposes of Contractor’s internal assessment and review; or otherwise required by law.
- Contractor certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has not been officially notified of ,charged with or convicted of the commission of embezzlement, theft, forgery, bribery or destruction of public records; commission of fraud or other improper conduct associated with obtaining, attempting to obtain or performing a public contract; violation of any federal or state law regulating campaign contributions; violation of any federal or state environmental law; violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards, discrimination in wage or child labor violations; violation of any federal or state law prohibiting discrimination in employment; debarment by any agency or department of the federal government or by any other state. Contractor acknowledges that BeST Transit may, in its sole discretion, terminate the contract/agreement for

cause upon such notification or when BeST Transit otherwise learns that BeST Transit has been officially notified, charged or convicted.

- Contractor shall comply with requirements of the Lobbying Disclosure Act, 65 PA.C.S. § 13A01 *et seq.*, and the regulations promulgated pursuant to that law.
- When Contractor has reason to believe that any breach of ethical standards as set forth in law or in these provisions has occurred or may occur, Contractor shall immediately notify the BeST Transit contracting officer in writing.
- Contractor, by submission of its proposal and/or execution of this agreement and by the submission of any bills or invoices for payment pursuant to the contract/agreement, certifies and represents that it has not violated any of these contractor integrity provisions with the submission of the bid or proposal, during any contract/agreement negotiations or during the term of the contract/agreement.
- Contractor shall cooperate with the Office of State Inspector General in its investigation of any alleged BeST Transit or Commonwealth employee breach of ethical standards and any alleged Contractor non-compliance with these provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the request of the Controller or the Inspector General, shall provide or make promptly available for inspection and copying, any information of any type or form deemed relevant by the Controller or the Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refers to or concern this contract/agreement.
- For violation of any of the above provisions, BeST Transit (or Commonwealth, if applicable) may terminate this and any other agreement with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred to debar and suspend the Contractor from doing business with BeST Transit or Commonwealth. These rights and remedies are cumulative, and the use or no-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those BeST Transit and the Commonwealth or BeST Transit may have under law, statute or regulations.
- For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this paragraph:
  - a. "Confidential information" means information that is not already in the public domain; is not available to the public open request; is not or does not become generally known to the Contractor from a third party without an obligation to maintain its confidentiality; has not become generally known to the public through an act or omission of the Contractor; or has not been independently developed by Contractor without the use of confidential information of the Commonwealth of Pennsylvania or BeST Transit.
  - b. "Consent" means written permission signed by a duly authorized officer or employee of the Commonwealth or BeST Transit, provided that where the material facts have been disclosed, in writing, by pre-qualification, bid, proposal or contractual terms, BeST Transit shall be deemed to have consented by virtue of execution of this contract/agreement.
  - c. "Contractor" means the individual or entity that has entered into this agreement with BeST Transit, including those directors, officers, partners, managers and owners having more than five percent (5%) interest in the Contractor.
  - d. "Financial Interest" means:
    - (1) Ownership of more than five (5%) percent interest in any business; or
    - (2) Holding a position as an officer, director, trustee, partner, employee or holding any position of management;
  - e. "Gratuity" means tendering, giving or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans., subscriptions, advances, deposits of money, services, employment or contracts/agreements of any kind;
  - f. "Immediate family" means a spouse and any unemancipated child;

- g. "Political contribution" means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

CONTRACTOR: \_\_\_\_\_

BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

**Failure to Complete This Form and Submit With Proposal Will Render the Proposal Non-Responsive.**

**CERTIFICATE 4**

**LOBBYING CERTIFICATE**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- 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.
- 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.
- 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.

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

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF AUTHORIZED OFFICIAL

\_\_\_\_\_  
TITLE OF AUTHORIZED OFFICIAL

(Applies to contracts/subcontracts with a contract sum of \$100,000 and over.)

**Failure to Complete This Form and Submit With Proposal Will Render the Proposal Non-Responsive.**

**CERTIFICATE 5 - 1**

**DISADVANTAGED BUSINESS ENTERPRISE CERTIFICATION**

- (1) Policy - It is the policy of the Department of Transportation that Disadvantaged Business Enterprises (DBE) as defined in 49 C.F.R. Part 26 shall have the opportunity to participate in the performance of contracts/agreements financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirements of 49 C.F.R. Part 26 apply to this agreement.
  
- (2) DBE Obligation- The Proposer agrees to ensure that Disadvantaged Business Enterprises as defined in 49 C.F.R. Part 26 have the opportunity to participate in the performance of contracts/agreements and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard all Proposers shall take necessary and reasonable steps in accordance with 49 C.F.R. Part 26 to ensure that disadvantaged business enterprises have the opportunity to compete for and perform contracts/agreements. Proposer shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement.

Failure by the Proposer to carry out these requirements is a material breach of the Agreement which may result in the termination of this Agreement or such other remedy as BeST Transit deems appropriate.

\_\_\_\_\_ DATE

\_\_\_\_\_ SIGNATURE

\_\_\_\_\_ TITLE

**Failure to Complete This Form and Submit With Proposal Will Render the Proposal Non-Responsive.**

**CERTIFICATE 5 - 2**

**AFFIDAVIT OF DISADVANTAGED BUSINESS ENTERPRISE (AS NEEDED)**

I HEREBY DECLARE AND AFFIRM that I am the \_\_\_\_\_ and the duly authorized representative of (the firm of) \_\_\_\_\_  
\_\_\_\_\_ doing business at \_\_\_\_\_  
\_\_\_\_\_(include address, city, state and zip code).

I HEREBY DECLARE AND AFFIRM that the above business is: (check as appropriate)

- \_\_\_\_\_ A firm that is at least 51% owned by one or more individuals who are disadvantaged as defined in 49 C.F.R. Part 26, (D) or
- \_\_\_\_\_ A corporation in which at least 51% of the stock is owned by one or more disadvantaged individuals as defined in 49 C.F.R. Part 26 (D).

And that such firm or corporation has been organized/incorporated since \_\_\_\_\_, 20\_\_\_\_ and is controlled by one or more individuals defined as disadvantaged in 49 C.F.R. Part 26, (D).

FURTHERMORE, I HEREBY DECLARE AND AFFIRM that I will provide such additional information as requested by BeST Transit to document this fact as provided for in 49 C.F.R. Part 26, (D) and (E).

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE ABOVE FIRM, TO MAKE THIS AFFIDAVIT.

AFFIANT: \_\_\_\_\_

DATE: \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, the undersigned officer, personally appeared \_\_\_\_\_, known to me to be the person described in the foregoing Affidavit and acknowledged that he/she executed the same in the capacity therein stated and for the purposes therein contained.

In witness thereof, I hereunto set my hand and official seal.

\_\_\_\_\_  
(Notary Public)

My Commission Expires \_\_\_\_\_ (SEAL)

STATE OF: \_\_\_\_\_

COUNTY/CITY OF: \_\_\_\_\_



**CERTIFICATE 6**

**CERTIFICATION OF PARTICIPANTS REGARDING  
DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY  
EXCLUSION**

The participant (a potential sub-recipient under an Federal Transit Administration project, a potential third party contractor or a potential subcontractor under a major third party contractor), certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal Department or agency.

If the participant (sub-recipient under a Federal Transit Administration project, a potential third party contractor or a potential subcontractor under a major third party contract) is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this proposal.

THE PARTICIPANT (A POTENTIAL RECIPIENT OR SUB-RECIPIENT UNDER AN FTA PROJECT, A POTENTIAL THIRD PARTY CONTRACTOR OR A POTENTIAL SUBCONTRACTOR UNDER A MAJOR THIRD PARTY CONTRACT) CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C.. §§3801 *et seq.* ARE APPLICABLE THERETO.

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Title of Authorized Official

\_\_\_\_\_  
Date

(Applies to contracts/agreements and sub-contracts over \$25,000)

**Failure to Complete This Form and Submit With Proposal Will Render the Proposal  
Non-Responsive.**

**CERTIFICATE 7**

**PROPOSER INFORMATION SHEET**

**The following information must be provided.**

\_\_\_\_\_  
Name of Individual, Partnership or Corporation

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Business Address (if different from mailing address)

\_\_\_\_\_  
Contact Person

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
Authorized Person and Title

\_\_\_\_\_  
Signature of Authorized Person and Date

**Failure to Complete This Form and Submit With Proposal Will Render the Proposal  
Non-Responsive.**

**CERTIFICATE 8**  
**PROPOSAL FORM**

In conformity with and acceptance of the specifications and the Proposal documents, including all the clauses attached to this document, the undersigned submits this Proposal and guarantees the validity of same for a period of ninety (90) days after the date hereof. It is understood that this Proposal Form and all attached clauses, specifications and documents constitutes a legal and binding contract/agreement when accepted and signed by the Authority to proceed with the purchase of goods and services intended by this Proposal.

It is hereby certified that the undersigned is the only person(s) interested in this Proposal as principal, and that the Proposal is made without collusion with any person, firm or corporation. Proposer agrees that, if awarded the contract/agreement, Proposer will execute the contract/agreement in accordance with the specification to the complete satisfaction and acceptance of the Authority.

It is understood that the Authority reserves the right to reject any or all proposals or part thereof or items therein and to waive technicalities required for the interest of BeSTTransit. It is further understood that competency and responsibility of Proposers will receive consideration before the award of the contract and the judgment of BeSTTransit shall be binding on these considerations. The Proposer agrees that Proposer will not assign the proposal or any Proposer's rights, interest thereunder without the written consent of BeSTTransit.

THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF THE FOLLOWING ATTACHMENTS TO THE REQUEST FOR PROPOSAL (RFP)

\_\_\_\_\_  
Signature of Authorized Person

\_\_\_\_\_  
Title and Date

**Failure to Complete This Form and Submit With Proposal Will Render the Proposal Non-Responsive.**

1. **FLY AMERICA:**

The contractor understands and agrees that the Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by U.S. flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. §40118 (the “Fly America” Act), and with U.S. GSA regulations, “Use of United States Flag Air Carriers,” 41 C.F.R. Parts §§301-10.131 through 301-10.143.

2. **ENERGY EFFICIENCY AND CONSERVATION:**

Vendors/Contractors shall recognize and comply with mandatory standards and policies relating to energy efficiency contained in State energy conservation plans issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §6321 *et seq*).

3. **CLEAN WATER:**

The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§1251 *et seq*. The contractor agrees to report each violation to the purchaser and understands and agrees that the purchaser will, in turn, report each violation as required to assure notification to Federal Transit Administration and the appropriate U.S. EPA Regional Office. *Applies to all contracts/agreements exceeding \$150,000.*

4. **LOBBYING:**

Section 1352 of Title 31, U.S. Code provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan or cooperative agreement to pay 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, an employee of a Member of Congress or a member or employee of a State legislature in connection with any of the following covered Federal actions: 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. The contractor and its subcontractors shall certify that no federal appropriated funds have been expended for the lobbying activities described in Section 1352 of Title 31, U.S. Code. The contractor and its subcontractors shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to the covered Federal actions as described by 31 U.S.C. §1352. For any contract and subcontract exceeding \$100,000, the contractor and subcontractor(s) will submit a Lobbying Certificate. (See Certificate 3). Contractors who engage in lobbying activities are required to file Standard Form—LLL, “Disclosure of Lobbying Activities” in accordance with Section 1352 of Title 31, U.S. Code.

5. **ACCESS TO RECORDS AND REPORTS, AUDITS AND INSPECTION:**

- a. **Audit and Inspection.** The contractor shall permit the authorized representatives of BeSTTransit, U.S. Department of Transportation, the Pennsylvania Department of Transportation and the Comptroller General of the United States to inspect and audit all data and records of the contract/agreement or relating to its performance and its subcontracts under this contract/agreement from the date of the contract /agreement and for three (3) years after completion or termination of the contract/agreement.
- b. **Record Retention.** The contractor further agrees to include in all their subcontracts hereunder a provision to the effect that the subcontractor agrees that BeSTTransit, the U.S. Department of Transportation, the Pennsylvania Department of Transportation and the Comptroller General of the

United States or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of each subcontractor, involving transactions related to the subcontractor. The term “subcontractor” as used in this clause excludes: (1) Purchase Orders not exceeding \$10,000; and (2) subcontracts or Purchase Orders for public utility services at rates established for uniform applicability to the general public.

**6. FEDERAL CHANGES:**

The contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed herein, as they may be amended or promulgated from time to time during the term of this contract/agreement, unless the Federal Government determines otherwise. The contractor’s failure to so comply shall constitute a material breach of this contract/agreement. 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 contractor shall not perform any act, fail to perform any act or refuse to comply with any BeST Transit requests which would cause BeST Transit to be in violation of the FTA terms and conditions.

**7. CLEAN AIR:**

The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§7401 *et seq.* . The contractor agrees to report each violation to the purchaser and understands and agrees that the purchaser will, in turn, report each violation as required to assure notification to Federal Transit Administration and the appropriate U.S. EPA Regional Office. *Applies to all contracts/agreements exceeding \$150,000.*

**8. RESERVED:**

**9. NO GOVERNMENT OBLIGATION TO THIRD PARTIES:**

- A. The Federal Government is not a Party to this contract/agreement and shall not be subject to any obligations or liabilities to the contractor or any other Party (whether or not a Party to that contract/agreement) pertaining to any matter resulting from the underlying contract/agreement.
- B. 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.

**10. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS:**

The contractor and its subcontractors acknowledge that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§3801 *et seq.* and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R., Part 31, apply to its actions pertaining to this contract/agreement. The contractor and its subcontractors certify or affirm the truthfulness and accuracy of any statement it has made, it makes, it may make or causes to be made, pertaining to this contract/agreement or the FTA assisted project for which this contract/agreement 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 or its subcontractors to the extent the Federal Government deems appropriate.

**11. TERMINATION:**

- a. Termination for Convenience: BeST Transit may terminate this contract/agreement in whole or in part, at any time by written notice to the contractor. The contractor shall be paid its costs, including contract/agreement close-out costs, and profit on work performed up to the time of termination. "Close-out costs" is defined as, "site deactivation costs, scrap and waste disposal costs only". Close out costs do not include labor, direct material or overhead. Within thirty (30) days of the date of the written Notice of Termination, the contractor shall promptly submit its termination claim to BeST Transit to be paid to the contractor. If the contractor has any property in its possession belonging to BeST Transit, the contractor will, within thirty (30) days of the date of the Notice of Termination, account for the same, and dispose of it in a manner directed by BeST Transit.

- (1) Termination for Default: If the contractor does not deliver supplies in accordance with the contract delivery schedule or if the contract/agreement 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/agreement, BeST Transit may terminate this contract/agreement 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 only be paid the contract/agreement price for supplies delivered and accepted or services performed in accordance with the manner of performance set forth in the contract/agreement.

If it is later determined by BeST Transit that the contractor had an excusable reason for not performing, such as strike, fire, flood, acts of terrorism or events which are not the fault of or are beyond the control of the contractor, BeST Transit, 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.

BeST Transit in its sole discretion may, in the case of a termination for default, allow the contractor a reasonably short period of time 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.

- (2) Termination for Cost Type Contracts/Agreements: BeST Transit may terminate this contract/agreement or any portion of it, by serving a notice of termination on the contractor. The notice shall state whether the termination is for the convenience of BeST Transit 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/agreement. The contractor shall account for any property in its possession paid for from funds received from BeST Transit or property supplied to the contractor by BeST Transit. If the termination is for default, BeST Transit may fix the fee, if the contract/agreement 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 BeST Transit and the parties shall negotiate the termination settlement to be paid the contractor.

If the termination is for the convenience of BeST Transit, the contractor shall be paid its contract/agreement close-out costs, and a fee, if the contract/agreement provides for a fee, in proportion to the work performed up to the time of termination. The contract/agreement does not provide for an additional fee.

If, after serving notice of termination of default, BeST Transit determines that the contractor 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 contractor, BeST Transit, after setting up a new work schedule,

may allow the contractor to continue work or treat the termination as termination for convenience.

**12. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT):**

The contractor agrees to comply, and assures the compliance of its subcontractors or a Participant at any tier of the Project, with Executive Orders Nos. 12549 and 12689, “Debarment and Suspension,” 31 U.S.C. §6101 note, and U.S. DOT regulations, “Non-procurement Suspension and Debarment,” 2 C.F.R. Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement),” 2 C.F.R. Part 180. The contractor agrees to, and assures that its subcontractors for any lower tier Participant will, review the “Excluded Parties Listing system at <http://sam.gov/> before entering into any contractual arrangement in connection with this Project. For any contract and subcontract exceeding \$25,000, the Contractor and subcontractor shall submit a debarment and suspension certificate or an explanation as to why the signed certification cannot be provided. (See *Certificate 5*) The certification is a material representation of fact upon which reliance was placed when the transaction was entered into. If it is later determined that the contractor or subcontractors knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, BeST Transit may pursue available remedies, including suspension and/or debarment. The contractor or subcontractors shall provide immediate written notice to BeST Transit if at any time the contractor or subcontractors learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

**13. PRIVACY ACT:**

- A. The contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the contractor agrees to obtain the express consent of the Federal Government before the contractor or its employees operate a system of records on behalf of the Federal Government. The contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- B. The contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

**14. CIVIL RIGHTS:**

**TITLE VI:**

During the performance of this contract/agreement, the contractor and its subcontractors shall comply with all requirements prohibiting discrimination against any employee or applicant for employment on the basis of race, color, creed, sex, age, disability or national origin in accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000 (d); Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§1681-1683, 1685-88, with implementing U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. Part 25; Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102; 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; Section 202 of the American With Disabilities Act of 1990, 42 U.S.C. §12132; Federal transit law at 49 U.S.C. §5332; and U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act”, 49, C.F.R. Part 21, and any implementing requirements FTA may issue.

### **EQUAL EMPLOYMENT OPPORTUNITY:**

In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000, and Federal transit laws at 49 U.S.C. §5332, the contractor and its subcontractor agree to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 *et seq.* and any implementing requirements the FTA may issue. The contractor and its subcontractors agree that it shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age or national origin. The contractor and its subcontractors shall take affirmative action to insure that applicants are employed, and the employees are treated during employment, without regard to their race, color, creed, sex, disability, age or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off 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.

### **AMERICANS WITH DISABILITIES ACT COMPLIANCE:**

The undersigned agrees to comply with and assure that any third party contractor under this Agreement complies with all applicable requirements of the American with Disabilities Act of 1990 (ADA), 42 U.S.C. §§12101 *et seq.* and 49 U.S.C. §322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. §1612; and the following regulations and any amendments thereto:

- U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA)”, 49 C.F.R. Part 37;
- U.S. DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from the Federal Financial Assistance”, 49 C.F.R. Part 27;
- U.S. DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles”, 49 C.F.R. Part 38;
- Department of Justice (DOJ) regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services”, “28 C.F.R. Part 35
- DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities”, 28 C.F.R. Part 36;
- General Services Administration regulations, “Construction and Alteration of Public Buildings”, “Accommodations for the Physically Handicapped”, 41 C.F.R. Part 101-19;
- Equal Employment Opportunity Commission (EEOC) “Regulations to Implement the Equal Employment Provisions of the American with Disabilities Act”, 29 C.F.R. Part 1630;
- Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 47 C.F.R. Part 64 (F) and
- FTA regulations “Transportation for Elderly and Handicapped Persons” 49 C.F.R. Part 609.

### **15. BREACHES AND DISPUTE RESOLUTION:**

Disputes – Disputes arising in the performance of this contract/agreement which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of BeST Transit. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the contractor mails or otherwise furnishes a written appeal to the Board of Directors. 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 Board of Directors shall be binding upon the contractor and the contractor shall abide by the decision.



Performance During Dispute – Unless otherwise directed by BeST Transit, contractor shall continue performance under this contract/agreement while matters in dispute are being resolved.

Claims for Damages – Should either party to the contract/agreement suffer injury or damage to person or property because of any act or omission of the party or any of his employees, agents or others for those 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/agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between BeST Transit and the contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agreed or in Tioga County Court of Common Pleas.

Rights and Remedies – The duties and obligations imposed by the contract/agreement 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 BeST Transit or its representative shall constitute a waiver of any right or duty afforded any of them under the contract/agreement, 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.