

**Attachment M – Sample Contract
RFP 2022P005**

**CONTRACT FOR PROFESSIONAL SERVICES OF THE
AnchorRIDES PARATRANSIT SYSTEM**

In consideration of the mutual promises herein, the Anchorage Public Transportation Department and _____ agree as follows. This contract consists of:

- A. Part I, Special Provisions;
- B. Part II, General Provisions;
- C. Appendix A, Scope of Services, consisting of ___ pages; and
- D. Appendix B, Schedule of Professional Fees, consisting of ___ pages.

**Part 1
Special Provision**

Section 1: Definitions

- A. "PTD" means the Anchorage Public Transportation Department.
- B. "Administrator" means the PTD Contract Manager or designee.
- C. "MOA" means the Municipality of Anchorage.
- D. "Contractor" means the selected proposer.
- E. "ADA" means the Americans with Disabilities Act.

Section 2: Scope of Services

- A. The Contractor shall perform professional services in accordance with **Appendix A**, which is attached hereto and incorporated in this section by reference.
- B. The PTD may at any time request change within the general scope of this Contract. If any such change would cause an anticipated increase in the cost of, or the time required for, the performance or any part of the work under this Contract, or would result in an anticipated decrease of ten percent (10%) or more to Contractor's estimated annual paratransit trips or service hours for demand responsive service, the parties shall meet to negotiate an equitable adjustment to the Contractor's rate. Any change to the contract requires a contract amendment, approved by both parties.
- C. In the event of any change in Federal, State, or Local law, statute, rule or ordinance which has the effect of increasing Contractor's operating costs, to include, but not limited to laws, rules, regulations, or ordinances pertaining to environmental protection or climate change, such as carbon credits, or new taxes imposed based on

energy consumption; changes in the ADA; or government required increase to employee wages and/or benefits, to include health care benefits, the PTD and Contractor shall meet to discuss the impact of these unanticipated additional costs and negotiate an equitable adjustment to the Contractor's rates. Any change to the contract requires a contract amendment, approved by both parties.

- D. In the event the PTD and Contractor are unable to agree on the amount of an equitable rate adjustment, PTD or Contractor may terminate this contract for convenience with ninety (90) days written notice.
- E. Anchorage shall not allow any claim for services other than those described in this section. However, the Contractor may provide, at its own expense, any other services that are consistent with this contract.

Section 3: Time for Performance

- A. This contract becomes effective when signed on behalf of Anchorage.
- B. The term of this agreement shall commence performance of the work described in Part I Section 2 on July 1, 2022, and terminate June 30, 2025, unless terminated sooner or extended in accordance with the terms of this agreement.
- C. This contract may be extended for two (2), two-year option periods upon mutual consent of the parties. If all options are exercised, the contract will terminate June 30, 2029.
- D. Throughout all extension terms, all terms and provisions of this agreement shall be applicable, except as may be specifically modified by written agreement executed by the Contractor, and PTD.
- E. The Contractor may commence start-up activities upon receipt of the notification to proceed from the Anchorage Purchasing Department.

Section 4: Compensation; Method of Payment

- A. It is anticipated that the funds to be paid the Contractor under this contract shall not exceed the sum of _____ for the three-year period, less any fare and/or donation revenues received and retained by Contractor, for an estimated net amount of _____ in accordance with this section.
- B. PTD shall pay the Contractor in accordance with the schedule of professional fees attached in **Appendix B** and incorporated herein by reference for services performed under this contract.
- C. The Contractor shall present invoiced bills to the Administrator describing the work for which it seeks payment and documenting expenses and fees to the satisfaction of

the Administrator. If any payment is withheld because the Contractor's performance is unsatisfactory, the Administrator must, within five (5) days of the payment denial, notify the Contractor of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why.

- D. The proportionate amount of fuel expended for non- MOA contract trips is to be reimbursed to Anchorage by the Contractor monthly. The reimbursement is to be reflected as a reduction in the monthly invoice to PTD.
- E. The Contractor is not entitled to any compensation under this contract, other than is expressly provided for in this section.
- F. As a condition of payment, the Contractor shall have paid all municipal taxes currently due and owing by the Contractor.
- G. The Contractor retains the revenue received for administration and trips provided and authorized for Home and Community Based (HCB) Medicaid Waiver transportation.

Section 5: Termination of the Contractor's Services

5.1 The Contractor's services under Section 2 may be terminated:

- A. By mutual consent of the parties.
- B. For the convenience of PTD, provided that PTD notifies the Contractor in writing of its intent to terminate under this paragraph at least ninety (90) days prior to the effective date of the termination.
- C. For cause, by either party where the other party fails in any material way to perform its obligations under this contract. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to cure the default within thirty (30) days after receiving the notice.

Section 6: Duties Upon Termination

- A. If Anchorage terminates the Contractor's services for convenience, Anchorage shall compensate the Contractor for its actual costs reasonably incurred in performing before termination. Payment under this subsection shall never exceed the total compensation allowable under Section 4. All finished and unfinished documents and materials prepared by the Contractor shall become the property of Anchorage.
- B. If the Contractor's services are terminated for cause, Anchorage shall pay the Contractor the reasonable value of the services satisfactorily rendered prior to termination less any damages suffered by Anchorage because of the Contractor's

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failure to perform satisfactorily. The reasonable value of the services rendered shall never exceed the contract rate for such services, and payment under this subsection shall not exceed ninety percent (90%) of the total compensation allowable under Section 4. Any finished or unfinished documents or materials prepared by the Contractor under this contract shall become the property of Anchorage at its option.

- C. If the Contractor receives payments exceeding the amount to which it is entitled under subsections 6.1 or 6.2 of this section, it shall remit the excess to the Administrator within thirty (30) days of receiving notice to do so.
- D. The Contractor shall not be entitled to any compensation under this section until the Contractor has delivered to the Administrator all documents, records, work product, materials and equipment owned by Anchorage and requested by the Administrator.
- E. If the Contractor's services are terminated, for whatever reason, the Contractor shall not claim any compensation under this contract, other than that allowed under this section.
- F. Except as provided in this section, termination of the Contractor's services under Section 5 does not affect any other right or obligation of a party under this contract.
- G. If a final audit has not been performed before the Contractor's services are terminated, Anchorage may recover any payments for costs disallowed resulting from the final audit.

Section 7: Insurance

- A. The Contractor shall maintain in good standing, for the entire period of the contact, the insurance described in subsection B of this section. Before rendering any services under this contract, the Contractor shall furnish the Administrator with a Certificate of Insurance in accordance with subsection B of this section in a form acceptable to the Risk Manager for Anchorage.
- B. The Contractor shall provide the following insurance:
 - 1. \$500,000 Employers Liability and Workers Compensation as required by Alaska Law.
 - 2. Commercial Automobile Liability in the amount of \$1,000,000 combined single limit to include: owned, hired, and non-owned.
 - 3. Commercial General Liability including:
 - \$2,000,000 General Aggregate
 - \$2,000,000 Products/Completed Operations
 - \$1,000,000 Personal & Advertising Injury
 - \$1,000,000 Each Occurrence
 - \$5,000 Medical Payments

4. Professional Liability insurance with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
 5. Cyber/Privacy Liability insurance with limits not less than \$3,000,000. The Cyber coverage shall include, but not be limited to, claims involving invasion of privacy violations (including HIPAA), Information theft, and release of private information. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses.
- C. Policies written on a "claims-made basis" must have a two (2) year tail of coverage, or an unbroken continuation of coverage for two (2) years from the completion of the contract requirements.
 - D. Each policy of insurance required by this section shall provide for advance notice to the MOA/Contract Administrator prior to cancellation in accordance with the policy. If the insurer does not notify the MOA on policy cancellation it shall be the contractor's responsibility to notify the MOA of such cancellation.
 - E. With the exception of Workers Compensation and Professional Liability each policy shall name The Municipality as an "additional insured" and the actual policy endorsement shall accompany each Certificate of Insurance.
 - F. General Liability, Workers Compensation, and Automobile policies shall be endorsed to waive all rights of subrogation against the Municipality of Anchorage by reason of any payment made for claims under the above coverage. This policy endorsement shall accompany each Certificate of Insurance.
 - G. All policies for general liability shall be primary and noncontributing with any insurance that may be carried by the Municipality.
 - H. If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the Municipality requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Municipality.
 - I. Contractor shall require and verify that all subcontractors maintain insurance meeting all requirements stated herein, and Contractor shall ensure that the Municipality is an additional insured on insurance required from subcontractors.

Section 8: Assignment

Unless otherwise allowed by this contract or in writing by the Administrator, any assignment by the Contractor of its interest in any part of this contract or any delegation of duties under this contract shall be void, and an attempt by the Contractor to assign any part of its interest or delegate duties under this contract shall give PTD the right immediately to terminate this contract without any liability for work performed.

Section 9: Ownership; Publication, Reproduction and Use of Material

- A. Except as otherwise provided herein, all data, documents and materials produced by the Contractor under this contract shall be the property of Anchorage, which shall retain the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents or other materials except that any pre-existing computer applications, as well as any accompanying source or object code, metadata or end-user documentation (collectively, "Proprietary Technology"), developed by or on behalf of Contractor and used in the performance of the work shall at all times remain the sole and exclusive property of Contractor. Contractor agrees to provide a list of such Proprietary Technology and will obtain approval from Anchorage prior to deploying any Proprietary Technology intended for any use in the provision of services outlined in this contract.
- C. Exclusive rights shall not be attributed to portions of such materials presently in the public domain or which are not subject to copyright.
- D. Should Anchorage elect to reuse work products provided under this Contract for other than the original project and/or purpose, Anchorage will not hold Contractor liable for any damages resulting from Anchorage reuse of work products for an unintended purpose.
- E. Equipment purchased by the Contractor with designated contract funds shall be the sole property of Anchorage marked and inventoried as such with a copy of the inventory forwarded to Anchorage.

Section 10. Notices.

Any notice required pertaining to the subject matter of this contract shall be either sent via facsimile (FAX) or mailed by prepaid first class registered or certified mail, return receipt requested to the following addresses:

Anchorage: Municipality of Anchorage
Department of _____
P.O. Box 196650
Anchorage, AK 99519 6650
FAX: (907) _____

Contractor: _____

FAX: (907) _____

Notices are effective upon the earlier of receipt, proof of good transmission (facsimiles only), or five (5) days after proof of proper posting.

Section 11: Notice of Labor Disputes

- A. If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor immediately shall give notice, including all relevant information to Anchorage.
- B. The Contractor shall provide a written plan of action to minimize disruption of service arising from an actual or potential labor dispute which delays or threatens to delay compliance with ADA paratransit service.

Section 12: Financial Management System.

The Contractor shall establish and maintain a financial management system that:

- A. Provides accurate, current, and complete disclosure of all financial transactions relating to the contract.
- B. Maintains separate accounts by source of funds for all revenues and expenditures and identifies the source and application of funds for the Contractor's performance under this contract, including information pertaining to subcontracts, obligations, unobligated balances, assets, liabilities, outlays, and income.
- C. Effectively controls and accounts for all municipal funds and contract property
- D. Compares actual expenditures with budgeted amounts and relates financial information to performance or productivity data including unit cost information where applicable.
- E. Allocates administrative costs to direct service delivery units.
- F. Minimizes the time between receipt of funds from PTD and their disbursement by the Contractor.
- G. Provides accounting records supported by source documentation.
- H. Provides a systematic method assuring the timely and appropriate resolution of audit findings and recommendations.

Section 13: Funding Requirements

- A. If any funding source for this contract should impose additional requirements upon Anchorage for the use of those funds, the Contractor agrees to abide by those additional requirements immediately upon receipt of written notice thereof from Anchorage.
- B. Should compliance with additional requirements result in an increase in Contractor's

operation expenses, Anchorage and Contractor may negotiate a contract amendment to address the additional cost or terminate the contract unilaterally by either party or by mutual consent upon ninety (120) day written notice.

Section 14: Subcontracts

- 3.1 The Contractor may enter subcontracts for the purchase of goods and services necessary for the performance of this contract, provided:
 - A. Every subcontract shall be reduced to writing and contain a precise description of the services or goods to be provided and the nature of the consideration paid, therefore.
 - B. Every subcontract under which the Contractor delegates the provision of services shall be subject to review and approval by the Administrator before it is executed by the Contractor. Within seven (7) business days, a copy of the final executed subcontract will be provided to PTD.
 - C. Every subcontract in an amount exceeding \$1,000.00 shall require reasonable access to business records of the sub-contractor relating to the purchase of goods or services pursuant to the subcontract.
 - D. This contract is funded in part with Federal. In accordance with the requirement at 49 CFR § 26.29, the contractor is required to pay all subcontractors disadvantaged business enterprises (DBE and non-DBE alike) within 30 days after the Contractor receives payment from PTD.
 - 1. Additionally, if retainage is withheld from any subcontractor payments, the contractor shall return the retainage within thirty (30) days after the subcontractor's work has been satisfactorily completed.
 - 2. Failure of the contractor to make payments within the time frame specified above may cause future request for payment by the contractor to be accompanied by signed statements from all subcontractors stating that they have been paid for satisfactory work previously performed prior to processing the payment request.

PART 2

GENERAL CONTRACT PROVISIONS

Section 1: Relationship of Parties

The Contractor shall perform its obligations hereunder as an independent contractor of PTD. PTD may administer the contract and monitor the Contractor's compliance with its obligations hereunder. PTD shall not supervise or direct the Contractor other than as provided in this section.

Section 2: Nondiscrimination

- A. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of Federally assisted contracts. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, or marital status, or who is a "qualified individual with a disability", as that phrase is defined in the Americans With Disabilities Act of 1990. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, mental or physical disability, sexual orientation or gender identity. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. The Contractor shall state, in all solicitations or advertisements for employees to work on contract jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, marital status, or mental or physical disability.
- C. The Contractor shall comply with any and all reporting requirements that may apply to it which the Anchorage Office of Equal Employment Opportunity Contract Compliance may establish by regulation. The contract compliance officer may accept the contractor's compliance with federal requirements or the contractor's federal reporting documents in lieu of reporting under this section.
- D. The Contractor shall include the provisions of subsections A through C of this section in every subcontract or purchase order under this contract, so as to be binding upon every such subcontractor or vendor of the Contractor under this contract. The contract compliance officer may accept the contractor's compliance with federal requirements or the contractor's federal reporting documents in lieu of reporting under this section.
- E. The Contractor shall comply with all applicable federal, state and municipal

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laws concerning the prohibition of discrimination including, but not limited to Title 5 and Title 7, Chapter 7.50 of the Anchorage Municipal Code

Section 3: DBE Utilization

In accordance with the requirement at 49 CFR § 26.53, the contractor may not terminate or alter the work committed to a DBE subcontractor without the written consent of the Office of Equal Opportunity. This includes situations in which the contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. The Office of Equal Opportunity will consent only if the contractor has good cause.

Section 4: Permits, Laws, and Taxes

The Contractor shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this contract. All actions taken by the Contractor under this contract shall comply with all applicable statutes, ordinances, rules, and regulations.

The Contractor shall pay all taxes pertaining to its performance under this contract.

Section 5: Nonwaiver

The failure of either party at any time to enforce a provision of this contract shall in no way constitute a waiver of the provision, nor in any way affect the validity of this contract or any part hereof, or the right of such party thereafter to enforce every provision hereof.

Section 6: Amendment

- A. This contract shall only be amended, modified, or changed by writing, executed by authorized representatives of the parties, with the same formality as this contract was executed.
- B. Any attempt to amend, modify, or change this contract by an unauthorized either representative or unauthorized means shall be void.

Section 7: Jurisdiction; Choice of Law

Any civil action arising from this contract shall be brought in the Superior Court for the Third Judicial District of the State of Alaska at Anchorage. The law of the State of Alaska shall govern the rights and obligations of the parties under this contract.

Section 8: Severability

Any provision of this contract deemed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the contract.

Section 9: Integration

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this contract shall supersede all previous communications, representations, or agreements, either oral or written, between the parties hereto.

Section 10: Liability

The Contractor shall indemnify, defend, save and hold PTD(or Municipality) harmless from any and all claims, lawsuits or liability, including attorney fees and costs, allegedly arising out of loss, damage or injury to persons or property or from any wrongful or negligent act, error or omission of Contractor, Contractor's agents, employees, subcontractors or invitees, occurring during the course of, or as a result of the Contractor's, Contractor's agents, employees, contractors, subcontractors or invitees performance pursuant to this contract.

Section 11: Inspection and Retention of Records

- A. The Contractor shall, at any time during normal business hours and as often as PTD may deem necessary, make available to PTD, for examination, all its records with respect to all matters covered by this contract for a period ending three years after the date the Contractor is to complete performance in accordance with Section 3 of the Special Provisions.
- B. Upon request, and within a reasonable time, the Contractor shall submit such other information and reports relating to its activities under this contract, to PTD, in such form and at such times as PTD may reasonably require.
- C. The Contractor shall permit PTD to audit, examine, and make copies of such records, and to make audits of all invoices, materials, payrolls, records of personnel, and other data relating to all matters covered by this contract.
- D. PTD may, at its option, permit the Contractor to submit its records to PTD in lieu of the retention requirements of this section.

Section 11. Availability of Funds.

Payments under this contract require funds from future appropriations and are subject to future appropriations. If sufficient funds are not appropriated for payments required under this contract, this contract shall terminate without penalty to Anchorage and Anchorage shall not be obligated to make payments under this contract beyond those which have previously been appropriated.

IN WITNESS WHEREOF, the parties have executed this contract on the date and at the place shown below.

MUNICIPALITY OF ANCHORAGE

CONTRACTOR

Mayor, Municipal Manager or Approved Designee

Date: _____

Title: _____

Date: _____

IRS Tax Identification No. _____

Tax Status: Taxable [] Non-Taxable []

RECOMMEND FOR APPROVAL:

Name

Title: _____

Date: _____