



AND THE COLONIAL WILLIAMSBURG FOUNDATION

**REQUEST FOR PROPOSALS 11-001**

**CONTRACT PROVIDER FOR VEHICLE MAINTENANCE  
SERVICES**

September 27, 2010

Authorized Contact:

Richard Drumwright, Director of Planning and Development

Williamsburg Area Transit Authority

Email: richardd@james-city.va.us

FAX: (757) 220-6268

7239 Pocahontas Trail

Williamsburg, VA 23185

**Proposals due October 27, 2010**

Solicitation Number – WATA 11-001

**WILLIAMSBURG AREA TRANSIT AUTHORITY  
THE COLONIAL WILLIAMSBURG FOUNDATION  
REQUEST FOR SEALED PROPOSALS**

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**Title:** Contract Provider for Vehicle Maintenance Services #11-001

**Issue Date:** September 27, 2010

**Due Date:** October 27, 2010, prior to 2:00 PM, local time at the WATA Office  
7239 Pocahontas Trail, Williamsburg, Virginia 23185

**Submit:** One (1) original and six (6) copies for a total of seven (7) copies

**Contact:** The contact for this RFP will be **Mr. Richard Drumwright**, Director of Planning and Development, Williamsburg Area Transit Authority. Any questions you may have should be asked either at the Pre-Proposal Conference or during the site visit. Any questions regarding the RFP should be submitted via e-mail to Mr. Richard Drumwright at [richardd@james-city.va.us](mailto:richardd@james-city.va.us). The last day for receipt of questions is **October 18, 2010, prior to 4:00 pm** local prevailing time. Answers and responses from WATA shall only be considered binding if in writing and provided by WATA. All questions of a material nature, which affect the nature of the scope of services shall be provided and answered by WATA and distributed to all prospective Proposers of record.

**Non-Mandatory Pre-Proposal Conference and Site Tour: October 11, 2010, 10:00 AM, Drivers' Lounge Adjacent to the Maintenance Facility, 7239 Pocahontas Trail, Williamsburg, VA 23185**

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**This public body does not discriminate against faith-based organizations.**

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In compliance with this Sealed Request for Proposals and subject to all the conditions thereof, the undersigned offers to furnish the goods/services requested and certifies he/she has read, understands, and agrees to all terms, conditions and requirements of this proposal and is authorized to contract on behalf of the firm named below. By my signature on this solicitation, I certify that this firm/individual is properly licensed for providing the goods/services specified.

The Undersigned certifies that he/she (they) are the only person (persons) interested in said project and that it is made without connection with other persons submitting a proposal on the same scope of services; that the proposal is made without collusion, fraud, or reservation; that no official or employee of the Owner is directly or indirectly interested in said proposal, or any portion thereof.

PROPRIETARY INFORMATION YES ( ) NO ( )

Trade secrets or proprietary information is hereby submitted and identified. Reasons for protection and exclusion from the Virginia Freedom of Information Act (2.1-340 et seq.) are set forth below. (Additional sheet may be added if necessary.)

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WILLIAMSBURG AREA TRANSIT AUTHORITY  
THE COLONIAL WILLIAMSBURG FOUNDATION  
REQUEST FOR PROPOSALS 11-001  
CONTRACT PROVIDER FOR VEHICLE MAINTENANCE SERVICES

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

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_

Email Address: \_\_\_\_\_

Federal Tax ID: \_\_\_\_\_

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

This form must be signed. All signatures must be original.

Initial to verify receipt:

Addendum #1 Dated \_\_\_\_\_ Initial \_\_\_\_\_

Addendum #2 Dated \_\_\_\_\_ Initial \_\_\_\_\_

Addendum #3 Dated \_\_\_\_\_ Initial \_\_\_\_\_

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**ATTACHMENTS:**

- A. WATA – Public Fleet Inventory
- B. CWF – Private Vehicle Fleet Inventory

- C. WATA General Terms and Conditions**
- D. WATA Sample Contract**
- E. Sample CWF Lease Agreement**
- F. Contractor Data Sheet**
- G. Anti-Collusion Statement**

## 1. PURPOSE

The purpose of this competitive sealed Request for Proposals (RFP) is for Williamsburg Area Transit Authority (WATA) and the Colonial Williamsburg Foundation (CWF) to obtain proposals for comprehensive vehicle maintenance services for their respective fleets. Ultimately, WATA and CWF desire to enter into two multi-year contracts with a single qualified vehicle maintenance Contractor to maintain WATA's state- and federally-funded public transit fleet and CWF's ancillary private fleet. One proposal for both fleets is expected under this RFP. The objective is to reduce fleet downtime and cost, while increasing reliability and protecting WATA's and CWF's overall investments in their fleets.

Maintenance services for both Public and Private Fleets described above will be provided at an existing vehicle maintenance facility located at 7239 Pocahontas Trail, Williamsburg, Virginia 23185. The facility is owned by CWF and will be made available to the Successful Offeror through a lease agreement (see **Attachment E**). The agreement will include comprehensive vehicle maintenance support as provided in this RFP, as well as incidental tour bus support (i.e. retail fueling, minor repair, temporary parking, and driver layover) as permitted through this property's Museum Support Zoning.

WATA and CWF have or will have inventories of parts and equipment paid for through federal funds. These inventories are maintained separate and apart from any inventory owned by the Contractor. It will be the responsibility of the Contractor to serve as the custodian of existing inventories owned by WATA and CWF.

Through fleet maintenance contracts, WATA and CWF seek quality gains in ridership and customer satisfaction. WATA and CWF look forward to an "owner-contractor" partnership that others will want to emulate. The resulting contract will be for five (5) years, with five (5) one-year renewable options.

## 2. BACKGROUND

In 2006, the Virginia General Assembly approved legislation pursuant to Chapter 68, Title 15.2 of the *Code of Virginia, 1950*, as amended allowing Williamsburg Area Transport to create a Regional Authority with the local jurisdictions it serves. On August 28, 2008, an Authority was approved that includes the Counties of James City and York, the City of Williamsburg and the Colonial Williamsburg Foundation.

WATA currently provides public transportation for the Virginia Counties of James City, York, and Surry, the City of Williamsburg, the College of William and Mary, and the Historic Triangle Campus of Thomas Nelson Community College.

CWF is a non-profit corporation that provides transportation services to the world's largest living history museum that includes 131 acres and hundreds of restored historical furnished buildings.

In early 2002, discussions began in earnest between WATA and CWF concerning a partnership interest in a regional facility. These conversations culminated in the construction of a 2000 square foot second floor to house public transit administrative and operations personnel and maintenance functions in one area.

Vehicle maintenance is performed on-site in a six-bay garage with automatic bus wash and access to diesel/gas and Compressed Natural Gas (CNG) fueling stations. The gas/diesel fueling station supports WATA's Public Fleet and CWF's Private Fleet. The CNG fueling station supports CNG buses operated by CWF that owns the facility. As the federal recipient for transit funds for the Williamsburg region, WATA procured these buses on behalf of CWF and then leased them to CWF for direct transit operations. Vehicle maintenance for both Public and Private Fleets is performed by an outside contractor whose contract *expires December 31, 2010*.

### **3. PROCUREMENT TIMELINE**

The following timeline has been established for this procurement, though dates may change. If changes occur, all Offerors of record will be notified.

<b>September 27, 2010</b>	<b>RFP Issued by WATA</b>
<b>October 11, 2010</b>	<b>Non-Mandatory Pre-Proposal Conference</b>
<b>October 18, 2010</b>	<b>Final Date for Questions</b>
<b>October 20, 2010</b>	<b>WATA &amp; CWF Response to Questions</b>
<b>October 27, 2010</b>	<b>PROPOSALS DUE</b>
<b>November 8-10, 2010</b>	<b>Evaluation Interviews</b>
<b>November 11-12, 2010</b>	<b>Negotiations</b>
<b>November 18, 2010</b>	<b>WATA Recommends Contract Award to its Board of Directors</b>
<b>December 10, 2010</b>	<b>Execute Approved Contract</b>
<b>January 1, 2011</b>	<b>Begin Service under New Contract</b>

#### 4. PRE-PROPOSAL CONFERENCE

A Non-Mandatory Pre-Proposal Conference will be held on **October 11, 2010, at 10:00 a.m.** local prevailing time, in the drivers' lounge adjacent to the maintenance facility, 7239 Pocahontas Trail, Williamsburg, Virginia 23185. At this time, prospective Offerors may discuss the project with representatives of WATA and CWF. During the conference, the meaning and intent of the RFP will be discussed and a tour of the site where the maintenance facility is located will be conducted. All questions that may alter the intent of the RFP will be answered by an Addendum and emailed or faxed to all parties recorded as having received the RFP documents from WATA. Prospective Offerors are encouraged to attend the Pre-Proposal Conference.

#### 5. DEFINITIONS & ABBREVIATIONS

<b>ADA</b>	Americans with Disabilities Act
<b>CWF</b>	Colonial Williamsburg Foundation
<b>Contract or Agreement</b>	The contractual agreement between WATA, CWF and the Successful Offeror to perform work as described in this solicitation and the Successful Offeror's proposal. The contractual instruments for this project will be WATA's standard contract for the Public Fleet and CWF's standard contract for the Private Fleet, modified as required to conform to this project. WATA and CWF will not use a contract prepared by Successful Offeror.
<b>Contract Administrator</b>	WATA's Designee(s) for Public Fleet Contract and CWF Designee(s) for Private Fleet Contract. Responsible for executing Contract(s), issuing Contract Modifications and Change Orders, and executing Contract Renewals.
<b>Contractor</b>	Party to whom an award is made to perform work under the Contract.
<b>Drug &amp; Alcohol Program Mgr.</b>	WATA's Designee responsible for reporting drug and alcohol testing information as required by FTA.
<b>FTA</b>	Federal Transit Administration
<b>Fiscal Year</b>	WATA Public Fleet: July 1 through June 30

<b>Maintenance Facility</b>	Facility located at 7239 Pocahontas Trail, Williamsburg, Virginia 23185 provided to Successful Offeror by lease agreement with CWF.
<b>Maintenance Manager</b>	Individual designated by Contractor as onsite supervisor, who is responsible for day-to-day operations, communication with WATA and CWF Project Managers and overseeing maintenance staff's work performance. (Offeror's position title may differ.)
<b>NTD</b>	National Transit Database: monthly and annual reports required by the Federal Transit Administration for equipment supported by Federal funds. Maintenance costs and operating data (i.e. annual miles) are included in the report.
<b>Offeror, Proposer</b>	Interested party responding to this solicitation.
<b>OEM</b>	Original Equipment Manufacturer
<b>Private Fleet</b>	Currently, one hundred eighty-one (181) vehicles acquired through private funds to support visitor and maintenance services required by CWF.
<b>Project Manager(s)</b>	Designated WATA and CWF staff responsible for overseeing day-to-day operations, determining quality of work and authorizing payment of invoices submitted by Contractor. Responsible for communication with Contractor's Maintenance Manager.
<b>Public Fleet</b>	Currently, fifty (50) vehicles acquired by Federal, state, and local funds for public transportation services provided by WATA.
<b>Revenue Vehicle</b>	Vehicle used to support public transit services.
<b>Successful Offeror</b>	Party to whom an award is made to perform work under the Contract.
<b>WATA</b>	Williamsburg Area Transit Authority

## 6. INTERPRETATIONS AND ADDENDA

No oral explanation in regard to the meaning of the RFP documents will be made, and no oral instructions will be given before the award of the work. Discrepancies, omissions or doubts as to the meaning of the RFP Documents shall be communicated in writing to WATA for interpretation. Offerors should act promptly and allow sufficient time for a reply to reach them before the submission of their Offers. Any interpretation made will be in the form of an Addendum to the RFP, which will be forwarded to all holders of record and its receipts shall be acknowledged in the Offeror's proposal on the RFP Cover Sheet in the space provided. All questions shall be received **NO LATER THAN 4:00 p.m. local time on October 18, 2010.**

## 7. FAMILIARITY WITH PROPOSED WORK

It is the responsibility of the Offeror, by careful personal examination of the RFP Documents and the Scope of Work, to visit the area of the work to be performed, if that is required; and to satisfy the full scope of services required for the total project. The Offeror should study and carefully correlate the Offeror's knowledge and observations of the RFP Documents and such other related data and to promptly notify WATA of all conflicts, errors, ambiguities, or discrepancies which the Offeror has discovered in or between the RFP Documents and such other related documents or conditions. Failure to do so shall not relieve the Successful Offeror of its obligation to perform as per the provisions of the resulting contract. The Successful Offeror shall not at any time after the execution of the contract, make any claims whatsoever alleging insufficient data or incorrectly assumed conditions, nor shall it claim any misunderstanding with regard to the nature, conditions or character of the work or services to be provided under the contract.

**Exceptions to RFP Stipulations** – Exceptions to RFP stipulations must be listed separately. Exceptions will be included in the first part of the Offeror's proposal. Exceptions noted must include page (#) reference.

## 8. PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS

**8.1 Preparation – One original and six (6) copies (seven total)** of each competitive sealed proposal must be submitted to Williamsburg Area Transit Authority, 7239 Pocahontas Trail, Williamsburg, Virginia, 23185 **prior to 2:00 p.m., local prevailing time on October 27, 2010.** Sealed proposals received after the date and time prescribed shall not be considered for contract award and shall be returned, unopened, to the Offeror. Proposals should be clearly marked as **Response to Request for Proposals 11-001 Contract Provider for Vehicle Maintenance Services.**

It is the Offeror's responsibility to clearly identify and to describe the products and services being offered in response to the RFP. Proposals shall be signed by an authorized representative of the Offeror. Failure to submit all of the information requested may result in WATA and CWF requiring prompt submission of missing information and/or giving a lower evaluation of the proposal. Proposals that are substantially incomplete or lack key information may be rejected.

Offerors are cautioned that organization of their response, as well as the thoroughness, is critical to the evaluation process. Proposals should be prepared on 8 ½ by 11 inch paper and bound in a 3 ring binder. Proposals should be prepared simply and economically, providing a straightforward, organized and concise description of the Offeror's ability to meet the requirements of this RFP. The number of pages should be kept to a minimum. Fancy binding, colored displays, excess promotional materials, etc are not desired. Emphasis should be on completeness and clarity of content. Oral proposals, those transmitted by facsimile or those received after the submission date shall not be accepted.

Proposals should be organized in the same sequence order of the RFP and should refer to the RFP section by section. All pages of the proposal should be numbered. Each paragraph of the proposal should reference the paragraph number of the corresponding section of the RFP.

Proposals shall contain a Table of Contents which cross references the RFP requirements. Proposals not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed in the proposal. Proposals shall be prepared and presented in the order listed below, and presented in a way so that each item below is tabbed or contains a section heading indicating the following:

**8.1.1 Experience of the Firm and Assigned Personnel** – Offeror should provide a brief description of the firm's experience with particular emphasis on similar projects as those outlined in this RFP. Experience claimed should be current and relevant. Offeror should not include claims of firm experience accomplished by person(s) no longer associated with the firm. Offeror should list names, telephone numbers and email addresses for contact persons for a minimum of four (4) projects.

**8.1.2 Qualifications of Personnel to be Assigned to the Project** – This section should clearly identify all disciplines (including sub-consultants/contractors) and personnel to be assigned to the project. The proposal should contain names and brief resumes outlining technical qualifications and recent completion of current relevant

training, and what each person will do on the project and the specific experience for that role. Provide the name and resume of the Maintenance Manager (Offeror's position title may differ).

Sub-consultants/contractors proposed as part of the project team shall be active participants in all phases of work related to their discipline from beginning to end. The Principal firm shall be responsible to WATA and CWF for the work of all associates, and sub-consultants/contractors, whether or not they are employees of the Consultant.

- 8.1.3** Include details on the implementation of a computerized **Fleet Management System** as requested in this RFP. The system shall include hardware, software and all required interfaces.
- 8.1.4** Include a general description of the Offeror's **Maintenance Plan** as requested in this RFP. It should include measures to be put in place for quality control, inventory management, timeliness of repairs and prioritizing work.
- 8.1.5** Include a general description of the Offeror's proposed **Parts and Warehousing Plan (Inventory)** to be implemented January 1, 2011.
- 8.1.6** Include a general description of the Offeror's proposed **Safety Program** to be implemented January 1, 2011.
- 8.1.7** Include a general description of the Offeror's proposed **Substance Abuse Testing Program** to be implemented January 1, 2011.
- 8.1.8** Provide a legible copy of all current applicable licenses and certifications.
- 8.1.9** Provide at least three (3) current references (last three years) for contracts of similar type and complexity, and a brief summary of the work performed along with the project costs for those references including firm name, point of contract, address, telephone/fax numbers, and email address.
- 8.1.10** Provide a listing indicating any failure to meet the stated requirements of this proposal. If no exceptions are noted or taken, the stated descriptions and requirements contained in this RFP will be considered a binding part of any part of any contract.

**8.1.11** Provide proposed pricing structure. Include an hourly rate and any fixed fees.

**8.1.12** Provide a copy of your firm's latest audited financial statement along with a copy of your firm's latest Dunn and Bradstreet report.

**8.2 Qualification** – To demonstrate qualification for the project, each Offeror must be prepared to submit further written satisfactory evidence of experience, resources (material, personnel, etc), financial capability or other evidence to demonstrate competence and qualifications to do the work proposed.

WATA and/or CWF may make such investigations as it deems necessary to determine the suitability of the Offeror to perform the work. WATA's and/or CWF's decision or judgment in these matters shall be final, conclusive and binding on Offerors.

## **9. POLICY REGARDING CONTACT AFTER PROPOSAL SUBMITTAL**

After the date and time established for receipt of proposals by WATA, any contact, in regard to the proposal initiated by any Offeror with any WATA or CWF official, other than the assigned WATA Contract Officer is expressly prohibited. Any unauthorized contact may be deemed grounds for disqualification of any Offeror from further review.

Contractual questions or questions of a technical nature regarding this RFP may be directed in writing to Richard Drumwright, Director of Planning and Development, Williamsburg Area Transit Authority, via facsimile at 757-220-6268 or email at [richardd@james-city.va.us](mailto:richardd@james-city.va.us) All questions that are pertinent to the project will be answered in the form of an Addendum mailed, faxed, or provided by email to all recorded holders of the RFP.

## **10. ORAL PRESENTATION**

Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal. This will provide an opportunity for the Offeror to clarify or elaborate on the proposal. This is a fact-finding and explanation session only and does not include negotiation. WATA and CWF will schedule the time and location of these presentations. Oral presentations are an option of WATA and CWF and may not be considered.

## **11. REFERENCES**

References may be contacted at the discretion of WATA and CWF. WATA and CWF reserve the right to contact entities other than those listed or in addition to those

furnished in the proposal. The Offeror shall furnish all such information and data as may be requested for this purpose.

## **12. EVALUATION CRITERIA AND SELECTION PROCESS**

A WATA/CWF Evaluation Committee (the "Committee") shall review the proposals and assign a rating based on the criteria listed below. Once each member of the Committee has rated each proposal and completed a proposal evaluation matrix form, a composite rating is developed which indicates the group's collective ranking of the highest rated proposals in a descending order. Selection shall be made of two or more Offerors deemed to be fully qualified and best suited among those submitting proposals on the evaluation factors included in the RFP, including price, if so stated in the RFP. The Committee may conduct interviews with the top ranked firms. Offerors so selected will be given an opportunity to orally present their qualifications and project technical approaches, and to respond to questions posed by the Committee members.

The following criteria will be used to evaluate proposals:

- i. Qualifications and experience of staff to be assigned to project. (25 points)
- ii. Sufficient resources to perform the work capably. (25 points)
- iii. Proposed pricing structure. (15 points)
- iv. Contractor's approach to project. (30 points)
- v. Inclusion of work performed by Disadvantaged Business Enterprise (DBE) as defined by the Federal Transit Administration. (5 points)

Negotiations shall be conducted with the selected Offerors. Price shall be considered, but need not be the sole determining factor. WATA and CWF reserve the right to award to other than the lowest Offeror. After negotiations have been conducted with each Offeror so selected, WATA and CWF shall select the Offeror which, in their opinion, has made the best proposal, and shall award the contract to that Offeror.

WATA and CWF may cancel this RFP or reject proposals at any time prior to an award, and are not required to furnish a statement of the reason(s) why a particular proposal was not deemed to be the most advantageous. Should WATA and CWF determine in writing and in their sole discretion that only one (1) Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the Contractor's proposal as negotiated.

## **13. CONTRACTUAL AGREEMENT**

A Contract shall be issued to the Successful Offeror. The term of the agreement shall be up to 10 years in duration, commencing **January 1, 2011**. The initial term shall be five

(5) years. WATA, in consultation with CWF, may elect to exercise five (5) successive one-year options, one year at a time.

The negotiated fee schedule based on the Scope of Services, and the specifications, terms and conditions herein and other terms and conditions mutually agreeable to the parties, together with the Request for Proposals and all modifications thereto, shall be incorporated into the Standard Contract, **Attachment D**, along with the RFP and all modifications thereto by reference. Any concerns regarding the Standard Contract shall be addressed within the proposal response.

Termination of the Contract shall be as described in the **General Terms and Conditions, Attachment C**. At its sole discretion, WATA, in consultation with CWF, may cancel the Contract for cause (chronic unacceptable performance) as provided for in the contractual agreement.

The Offeror shall inform itself in full of the conditions relating to the performance of the Contract. Any questions regarding the contract template, terms and conditions shall be included in the Offeror's proposal. Failure to do so shall not relieve the Successful Offeror of its obligation to furnish the scope of work outlined in the RFP and the resulting contract.

#### **14. CHANGES TO THE CONTRACT**

Changes can be made to the contract in any one of the following ways:

- 14.1** WATA and CWF may order changes within the general scope of the contract at any time by written notice (via Contract Change Order) to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, etc. The Contractor shall comply with the Change Order upon request. The Contractor shall be compensated for any additional costs incurred as a result of such order and shall give WATA and CWF a credit for any savings. Said compensation shall be determined by mutual agreement between the parties in writing.
- 14.2** The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as part of their written agreement to modify the scope of the contract.

#### **15. SERVICE PROVISION AND SCOPE OF WORK**

##### **15.1 Purpose**

The purpose of this procurement is to retain the services of a qualified Contractor to conduct safe, reliable, efficient, and effective maintenance services herein described, with the goal of providing uninterrupted bus services to passengers. The goals of this RFP are to: reduce fleet maintenance costs; improve vehicle and equipment availability; and reduce, where possible, WATA's and CWF's capital expenditures for fleet assets.

## **15.2 Startup**

**15.2.1** The selected Contractor will be required to furnish all management services, supervision, labor, parts, tools, materials, supplies, and sub-contract work needed to manage and maintain both fleets in a state of repair consistent with the performance standards and service specifications identified in this RFP. The Contractor awarded this contract as a result of this RFP shall prepare for and commence performance of these services beginning 12:01 a.m. on January 1, 2011. All preparations necessary to begin vehicle maintenance services shall be complete prior to commencement of the contract. All personnel shall be hired and trained; safety and other documented procedures shall be established so the following activities can commence:

- a. Provide vehicle maintenance.
- b. Provide planning assistance.
- c. Execute data collection and gathering services, such as National Transit Database (NTD) and others as requested by WATA and CWF.
- d. Implement federally-compliant programs including Drug and Alcohol, Americans with Disabilities Act (ADA), Title VI, and any other programs that are mandated for Federal assistance.
- e. Provide required insurance.
- f. All duties, materials, and supplies specified in this RFP shall be provided by the Contractor as part of the overall cost, rather than being extras, unless specifically itemized in the agreement.

**15.2.2 Equipment Inventory** – As part of the contract startup and transition, the Contractor shall conduct a physical inventory of all equipment, tools and materials. Upon execution of the Contract, the Contractor

shall be responsible for the security and management of said inventory.

### **15.3 Description of Services**

During the performance of the contract, WATA and CWF will provide service requirements to the Contractor. The Contractor shall be responsible for developing staff assignments from the schedule provided by WATA and CWF.

The Contractor shall perform all scheduled service in accordance with the provisions of the Contract. Services rendered shall be provided as requested or according to any adjusted schedule established by WATA or CWF. Services shall be non-exclusive, thus providing WATA and CWF the opportunity to use an outside vendor (i.e. specialized vendor for vehicle type). WATA and CWF reserve the right to approve or reject a sub-contract relationship for the maintenance of its equipment on a case by case basis. Before exercising such a right, WATA or CWF will provide an explanation to the Contractor.

The Contractor shall perform maintenance work for WATA, CWF and tour bus operators. No outside contracts or other maintenance work shall be undertaken by the Contractor unless such work is approved in advance, in writing, by WATA and CWF. It is the responsibility of the Contractor to notify WATA and CWF of any binding contracts that will be in place when the Contract term commences.

### **15.4 Hours of Operation**

The Contractor must have support personnel available every day of the calendar year except the following recognized holidays: Thanksgiving Day, Christmas Day and New Year's Day. The service day includes coordination for morning vehicle pull-offs from the facility to begin service, as well as, safe arrival of entire Public Fleet back at the maintenance facility after public service completed (i.e. if service day is 6:00 a.m. – 1:00 a.m., maintenance support personnel must be available 5:00 a.m. – 2:00 a.m.). WATA and CWF will specify the length of the service day prior to the commencement of each calendar month.

WATA and CWF reserve the right to amend their schedules during the course of the Contract. Service miles are subject to change prior to or during the Contract period.

## **15.5 Service Levels at Start of Contract**

**15.5.1** WATA operated the following hours and miles of service\* in FY10 with its state- and federally-supported public transit fleet of vehicles (see **Attachment A** for current vehicle list):

- a. Annual Revenue Bus Miles: 1,247,166
- b. Annual Revenue Bus Hours: 84,218
- c. Annual Revenue Body on Chassis Vehicle Hours: 4,393
- d. Annual Revenue Body on Chassis Vehicle Miles: 53,486

\* Based on FY 2010 NTD Submission to FTA

**15.5.2** CWF Private Fleet information is provided in **Attachment B**.

## **15.6 Maintenance Service/Support Vehicles/Equipment**

**15.6.1** The selected Contractor must provide all other rolling stock used for maintenance support service such as road supervision, service vehicles, tow vehicles and other miscellaneous equipment. Contractor vehicles shall display their own company paint scheme and other identification. The Contractor will furnish and maintain in good working order all necessary maintenance support vehicles and equipment to meet the conditions of the contract.

**15.6.2** The Contractor must provide all project equipment necessary to perform work as described in this solicitation and the resultant contract. Project equipment is defined as personal property not supplied under the facility lease. Project equipment includes, but is not limited to, most tools, portable lifts, computer diagnostic devices, repair order system(s), point-of-sale system(s), telecommunications and office equipment, and furniture.

**15.6.3** The Contractor shall be responsible for ensuring that any required safety inspections and/or certifications are completed on equipment used by contractor personnel. The Contractor shall also be responsible for the safe operation of WATA- and CWF-owned equipment and for training contractor personnel on the correct operation of the equipment.

## **15.7 Fleet Management System**

The Offeror shall include as part of its proposal, details on the implementation of a computerized fleet management system. The system shall include hardware, software and all required interfaces. At a minimum, the system proposed shall be capable of:

- Scheduling repair and preventative maintenance work
- Producing maintenance activity reports that support the performance standards
- Producing key performance indicator reports
- Inventory management
- Collecting and storing repair and asset data
- Monitoring warranty costs and activities
- Tracking repair and maintenance costs by unit
- Supporting data requirements for fleet asset management
- Providing specialized reports as needed
- Providing easy access to records of all repairs and maintenance of all vehicles
- Providing information about any vehicle or equipment upon request from WATA and/or CWF
- Providing detailed monthly cost billings on all activities related to the total vehicle maintenance program. Monthly reports shall include a breakdown of labor costs, parts and materials costs, subcontract costs, related costs and vehicle mileage
- Providing warranty tracking
- Providing equipment life cycle cost information

The Contractor shall provide sufficient staff and resources to input cost, labor, parts and work data into the system to fully track and manage the repair and maintenance work.

## **15.8 Personnel Organization**

**15.8.1 Wages & Policies** – The Contractor shall be obligated to pay wages and provide benefits to its employees, and shall cause the withholdings to be made as required in the performance of the Contract. The Contractor shall comply with the requirements of employee liability, worker’s compensation, unemployment insurance, social security and any other current and future legal requirements. The Contractor must comply with all applicable statutory/regulatory provisions, e.g., the Federal Transit Administration’s Drug and Alcohol Testing Regulations. The Contractor shall hold WATA and CWF harmless from any liability, damages, claims, costs, and expenses of any nature arising from alleged violations of personnel practices.

**15.8.2 Contract Employee Expectations** – The Contractor shall conduct pre-employment Department of Motor Vehicle (DMV) checks of all its personnel, as well as, independent contractor and subcontractor employees hired for service. Every twelve (12) months or less, the Contractor shall check DMV records for accidents, tickets/summons for vehicle code violations, and review for valid operators’ licenses of its employees whose jobs require them to operate vehicles for this project. Each contractor employee must meet the following requirements:

- a. Not more than one moving violation for each year of the last five (5) years.
- b. Not more than two (2) moving violations within the last 12 months.
- c. If operator’s license has ever been suspended, the vehicle maintenance employee must have two (2) full years with no violations.
- d. Not be subject to outstanding warrants for arrest.

**15.8.3 Management** - The Contractor shall employ and train such persons as may be necessary in order to enable the Contractor to perform the services provided in this RFP and resulting Contract. The Contractor shall cause such persons, whether employed directly by the Contractor or made available through subcontracts, to perform all necessary supervision, management, and coordination of all aspects of such services. Offeror may choose to perform training and certain administrative activities required by this RFP and resulting Contract using off-site regional or national contractor personnel so long as plans for these centralized functions are spelled out as a clear part of the Offeror’s proposal.

Contractor management positions shall be dedicated 100% to the management of WATA and CWF maintenance services and shall not be responsible for the management of, or used as a resource for, any other projects, without prior approval from WATA and CWF. The Contractor’s resident Maintenance Manager will oversee both public and private vehicle fleets, and incidental tour bus support (i.e. fueling, minor repair, vehicle parking and driver layover) as permitted by this property’s Museum Support Zoning. By providing this support, the Contractor’s Maintenance Manager or designee will serve as the

single point of contact and be responsible for maintenance operations. The specific individual(s) occupying this position(s) must be identified, and resume(s) included in the Offeror's response to this RFP. In addition, he or she must be available for interview by the WATA/CWF Evaluation Committee.

WATA and CWF recognize that management turnover is a fact of life, and at the same time recognize the importance of continuity as a means of achieving high quality results and consistency.

**15.8.4 Maintenance Personnel** – WATA and CWF take great pride in their vehicle fleets and place great emphasis on ensuring vehicles are maintained to the highest standard to provide a long life of quality service. The Contractor shall employ mechanics, service attendants and other personnel to perform maintenance on WATA and CWF vehicles. WATA and CWF will take into consideration the ASE certification of maintenance personnel in the review of proposals submitted for this RFP.

- a. If the Offeror wishes to provide maintenance services via subcontract, WATA and CWF will require evidence of the maintenance subcontractors' capability and experience with transit rolling stock, including alternative fueled vehicles such as CNG and Electric/Diesel Hybrids, light fleet and other miscellaneous vehicles listed in both Public and Private Fleets.
- b. All repair work must be performed by maintenance personnel who have demonstrated experience and skills in the work to be performed. The Contractor's maintenance personnel shall be fully knowledgeable of alternatively fueled engines, transmissions, wheelchair lifts, kneeling or ramp mechanisms (low floor bus), air conditioning, heating, diagnostic procedures, electrical systems, electronic equipment (farebox, illuminated signage, communications, etc.), and related mechanical parts, methods and procedures in servicing mechanical equipment for transit buses, automobiles and other miscellaneous equipment listed in vehicle inventories (**Attachments A and B**).

**15.8.5 Maintenance Personnel Training** – The Contractor will be required to ensure all repairs involving vehicles, subsystems, parts, and other items under warranty are performed at all times by personnel who are properly certified to perform such work such that qualifications cannot be questioned when submitting warranty claims. All mechanics must have at least one ASE certification and five (5) years'

experience on heavy duty trucks, buses, automobiles and other miscellaneous equipment listed in attached vehicle inventories. Alternatively, mechanics may be graduates of a certified two-year technical-vocational institute and have two (2) years' experience with heavy duty trucks, buses and automobiles. At least 50 percent of the maintenance staff, excluding the maintenance manager, shall be ASE master certified for medium and heavy duty trucks, buses and automobiles. In addition, all mechanics shall receive a minimum of 16 hours of mechanical/refresher training annually.

**15.8.6 Key Personnel** - During the period of performance, the Contractor shall make no substitutions of key personnel without written notice to WATA and CWF. Key personnel are defined as the Maintenance Manager or assistant maintenance manager(s) (i.e. Offeror's position titles may differ) that have the responsibility and authority for managing all work and responsibilities described within this Request for Proposals.

Performance requirements of the management team include:

- a. Either the Maintenance Manager or assistant maintenance manager or designee must be on site during all hours when work is scheduled to be performed on vehicles (see 15.4. Hours of Operation). Please note: the manager's designee is expected to have the same responsibility and authority to meet all conditions described in this RFP.
- b. For a minimum of four (4) weeks prior to and two (2) weeks following a major service change, all individuals occupying key positions must be on site, except for emergencies. A major service change is defined as any new, introductory service such as a new route or routes, expanded hours or new service type for public transit services.

**15.8.7 Safety** – The Contractor shall establish a safety committee and meet on a quarterly basis to discuss issues to include, but not limited to, accidents, unsafe practices, security, training refreshers and program improvements. WATA and CWF will appoint a representative to be a member of this committee. The Contractor shall be responsible for the safety of their personnel. A general description of this program shall be submitted with the proposal. Minimum requirements of the program include:

- New hire orientation procedures
- Regular safety meetings

- Training procedures in hazard communication, blood-borne pathogens and first aid
- Responsibilities for reporting safety hazards and unsafe actions
- Reporting and procedures in full compliance with applicable OSHA regulations

**15.8.8 WATA and CWF Orientation** – The Contractor shall make all employees available for an initial orientation session, which will be provided by WATA and CWF. All subsequent hires, either collectively or individually, shall be made available for a WATA and CWF orientation.

**15.8.9 Agreement** – WATA, as a public transportation provider, will not become a signatory party to any Section 13C Agreement between service providers and organized labor units, pursuant to the Section 13C Provision of the Urban Mass Transportation Act of 1964.

**15.8.10 Uniforms** – All Contractor personnel shall wear uniforms to clearly identify them as vehicle maintenance support and Contractor staff.

## **15.9 Reporting Requirements**

**15.9.1** The Contractor shall be required to submit reports as prescribed by this RFP and maintain all project records as requested by WATA and CWF. WATA and CWF expect the Contractor to use data to proactively manage the Contract for both Public and Private Fleets. Toward that end, the Contractor shall make extensive use of both exception and trend analysis reporting, particularly in regard to performance standards established for the Public and Private Fleets in the Contract. The Contractor shall submit all required report formats for WATA and CWF on a schedule to be established.

**15.9.2** The Contractor shall permit WATA and CWF or their authorized representatives to examine, audit, and analyze all data and records related to the vehicle maintenance contract. All project records prepared by the Contractor shall be owned by WATA and/or CWF and retained in accordance with record retention procedures. Unless otherwise specified, all records shall be kept for a minimum of five (5) years. In addition to hard copies, records will be made available in an electronic format.

## **15.10 Computer Equipment**

The Contractor is required to supply and maintain sufficient computer equipment, including diagnostic equipment required for buses, automobiles and other miscellaneous equipment listed in attached public (**Attachment A**) and private (**Attachment B**) fleet inventories. Diagnostic equipment may include, but is not limited to, that to support specific vehicle types and brands, audio, visual and automated fare collection support systems. Existing diagnostic equipment purchased by WATA or CWF will be made available to the Successful Offeror for maintenance and upkeep of vehicle systems. Costs for the replacement of diagnostic equipment due to technology, upgrades, age, vehicle type or brand shall be the responsibility of the Successful Offeror. On a case-by-case basis, grant revenues to support Public Fleet computer equipment will be considered based on fund availability and WATA priority.

#### **15.11 Invoices**

The Contractor shall submit monthly invoices for maintenance services appropriate for WATA and CWF within ten (10) calendar days of the following month for services rendered during the reporting period. Supporting back-up must include scheduled billable hours and materials in decimal format, itemized by service type, including but not limited to, the following categories for public transit vehicles: directly-operated bus, leased bus, body-on-chassis supporting American with Disability Service, and administrative support vehicles. Supporting back-up for the Private Fleet must include vehicle itemization by departmental association. The Contractor must also provide monthly mileage (per odometer readings) and fuel usage statistics by vehicle, type and service. Monthly invoices shall be supported by back-up documentation as may be required by WATA and CWF to establish that the charges are allowable. Payment from WATA for Public Fleet and CWF for Private Fleet shall be received thirty (30) days following receipt of invoice.

#### **15.12 Vehicle Records**

The Contractor shall maintain a complete history of every vehicle provided within this program. The fleet maintenance system shall be automated and be part of the Contractor's electronic report which is available to WATA and CWF. The Contractor shall maintain an individual file for each vehicle including, but not limited to, the following:

- Vehicle identification: manufacturer, VIN number, year, make, model, vehicle number (issued by WATA or CWF);
- Purchase information: date purchased, standard equipment (dealer specifications), options/add-ons, warranty (coverage, expiration);
- Maintenance history: mileage, date of action of all preventive and repair maintenance functions including warranty work, recall work,

inspections, parts usage, unscheduled maintenance, fuel and oil usage, labor expended on each vehicle, and any other pertinent maintenance data;

- Modification history: modification type, date modified, who made modification;
- Accident history: accident type, date of accident, description of damage and repairs.

These files shall be organized by vehicle number. The Contractor is responsible for keeping the vehicle file current throughout the term of the Contract. All vehicle files shall be retained for the lifetime of the vehicle. At the time vehicles are sold, transferred or otherwise taken out of service, all files pertaining to those vehicles shall be given to WATA or CWF by the Contractor.

**15.12.1 Vehicle Inspection Reports** - The Contractor shall maintain records regarding any vehicle defect that occurs. The Contractor will be provided with a Bus Driver Daily Trip Inspection Form (Public Fleet), or a Daily Trip Inspection Form (Private Fleet) which details any defects found in the operator's inspection of the vehicle before, during and after scheduled service or assignment.

### **15.13 National Transit Database (NTD) Assistance**

The Contractor shall assist WATA as requested with the collection of FTA Section 5335(a) data required for all public transit support vehicles. WATA expects the Contractor to provide the following data: 1) major mechanical system failures; 2) other mechanical system failures; and 3) odometer readings.

**15.13.1 Monthly Reports** - Within two days of the previous month's end, the Contractor shall complete and electronically submit to WATA's Grants and Budget Administrator the following National Transit Database information for **public revenue vehicles**:

- a. Major Mechanical System Failure (Supports NTD Form R 20)** – A major mechanical system failure is defined as the failure of a mechanical element of a vehicle which prevents the vehicle from completing a scheduled trip or starting the next scheduled trip because actual movement creates a safety concern. Examples of major bus failures include breakdowns of brakes, doors, engine cooling systems, steering, front axles, and suspension torque converters.
- b. Other Mechanical System Failure** – Other mechanical system failure is defined as the failure of some other mechanical element

of the vehicle that prevents it from completing a scheduled revenue trip or starting the next scheduled revenue trip. This type of failure occurs even though the vehicle is mechanically able to continue in service. Examples of these failures include breakdowns of fareboxes, wheelchair lifts, heating, ventilation and air conditioning (HVAC) systems, and other issues not included as a major mechanical system failure.

- c. **Odometer Readings** – The Contractor shall report odometer readings as of the last day of the month for each Public Fleet vehicle after its final trip of the day is completed.

**15.13.2** In the event that FTA changes National Transit Database requirements, the Contractor is required to update data collection methods and modify reports to be consistent with the new requirements. The Contractor shall provide all supporting documentation, and prepare and submit monthly and annual National Transit Database reports to WATA as requested.

**15.13.3** Retention of these reports shall be a minimum of five (5) years unless otherwise specified by WATA.

#### **15.14 Other Required Reports and Plans**

**15.14.1 Audits** - The Contractor must fully cooperate in developing and keeping current all required materials as requested. The Contractor will compile and supply supporting documents as needed to ensure WATA and CWF are in compliance with all Federal and state requirements, as evaluated during Triennial reviews and other Federal, state or private audits. The Contractor shall maintain all vehicle records and supporting documents for the lifetime of the vehicle.

**15.14.2 Annual Reports** - The Contractor shall assist WATA staff in compilation and timely submission of an annual report which is due to FTA in October following the end of WATA's fiscal year (June 30). Backup documentation justifying the data shown in the annual report regarding Transit Agency Service shall be supplied upon request. Retention of these reports shall be a minimum of five (5) years unless otherwise specified by WATA.

#### **15.15 Maintenance Support for Emergencies**

At any time, an emergency situation can arise in the localities served by WATA. Potential emergencies range from radiological leakage (services are within a ten-mile radius of a nuclear power station), chemical spills, fires, explosions, natural disasters, and criminal incidents. History has shown that WATA is more likely to respond to a weather-related natural disaster (i.e. hurricane, ice storm) of uncertain duration. During such times, local, state or federal declarations of emergencies may be called. For these events, WATA has been called upon to evacuate vulnerable populations, such as those disabled or aging, to safe locations for shelter. The Contractor is expected to coordinate with WATA to meet these expectations as outlined in various local and regional emergency plans. This may require the Contractor to supply adequate support personnel and equipment prior to, during, and after the emergency, depending on public need. At a minimum, emergency response plans shall be reviewed, modified, or updated annually. Unless the emergency is the result of a willful or negligent act on the Contractor's part, WATA will pay for reasonable costs associated with implementing activities requested by WATA in response to emergencies. A draft emergency response plan shall be submitted to WATA for approval no later than February 1, 2011. The Offeror shall include a labor rate and per diem rate or methodology for calculating such a rate.

#### **15.16 Substance Abuse Reporting and Testing**

**15.16.1 Reporting** - The Contractor shall maintain a variety of records to document compliance with FTA drug and alcohol testing requirements. Procedures shall be in place detailing which records need to be kept, their duration and when individual employee records may be released. The Contractor must make use of the most recently approved U.S. DOT Drug Testing Custody and Control and the U.S. DOT Breath Alcohol Testing forms.

**15.16.2 Drug/Alcohol Report Submission** – The Contractor shall prepare and submit to WATA a report containing properly-completed drug and/or alcohol test results as required by FTA. Reports for the previous quarter's testing activities shall be due to WATA within 15 calendar days following the end of the quarter. Drug and alcohol reporting is based on a calendar year (January-December). In addition, the Contractor shall submit an annual report of drug and alcohol testing activities to WATA. The report shall be submitted by February 1st for the previous calendar year's testing activities.

**15.16.3 Substance Abuse Testing** - The Contractor must implement a written drug and alcohol testing program that is in compliance with Federal Regulations: 49 CFR Parts 655 and 40 regarding Federal Transit Administration's requirements. A general description of this program

shall be submitted with the Offeror's proposal; a more detailed program shall be submitted to WATA for approval at least 30 days before the first day of the vehicle maintenance contract. This includes written policies describing the employees who are subject to testing, the types of testing that will occur, the types of behavior that are prohibited and the consequences of violating the policy. In addition, WATA requires that the Contractor's policies and procedures provide for the following, in addition to the current FTA requirements:

- No second chance policy
- Notification and releases regarding medications<sup>1</sup>

The Contractor's drug and alcohol testing program must be project-specific to the WATA Public Fleet. Corporate-wide policies that have been found to comply with FTA regulations may be used if they are modified to be specific to the WATA project. This includes identifying specific contact people, testing centers, resources, and other items deemed necessary by WATA.

- Proper Licensing** – The Contractor must secure the services of a Department of Health and Human Services (DHHS) certified testing laboratory that uses a breath testing device approved by the National Highway Traffic Safety Administration (NHTSA). The Contractor's Medical Review Officer (MRO), Blood-Alcohol Technician (BAT), and Substance Abuse Professional (SAP) must all be properly certified and licensed according to Federal Regulation 49 CFR Part 40. Prior to execution of the Contract, the Successful Offeror shall submit to WATA copies of all required licenses and certifications for the aforementioned individuals, labs, and devices. At any time should any of the individuals or firms listed above be changed, the Contractor shall immediately notify WATA.
- Confidentiality** – To the extent permitted by law, the Contractor's Drug and Alcohol Policy shall be made available to WATA's Drug and Alcohol Program Manager. All confirmed positive drug and alcohol tests will be reported to the WATA Drug and Alcohol Program Manager.

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<sup>1</sup> The use of any substance (legally prescribed drugs and non-prescription medications) which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to a supervisor as soon as possible. In addition, the employee must obtain a written release from a physician releasing the person to perform their job duties any time they obtain a performance-enhancing prescription. This prescription or other written approval for the use of a drug in the course of medical treatment should include the patient's name, the name of the substance, quantity or amount to be taken, and the period of authorization.

- c. **Monitoring of Contractor's Compliance** – In accordance with Federal Regulation 49 CFR Part 655, WATA has obligatory oversight of the Contractor's drug and alcohol policies and procedures. Quarterly review by WATA's Drug and Alcohol Program Manager will be conducted to determine the Contractor's compliance with Federal Regulations 49 CFR Part 655 and 49 CFR Part 40.

## **15.17 Advertising, Promotions**

- 15.17.1 Advertising on Vehicles** – WATA and CWF may elect to attach advertising media to any or all vehicles. The Contractor may be requested to assist in the application or removal of such materials under normal cost calculations. WATA and CWF have sole discretion in the use of advertising or promotional material in or on vehicles. The Contractor shall not affix any logos, advertisements, or other signage, displays, or markings to the vehicles without the prior written consent of WATA and/or CWF.
- 15.17.2 Contractor Advertising** – The Contractor shall not distribute to the public by mail, internet, newspaper, radio or television, or any other physical means in or on the vehicles, at any venue owned and/or operated by the Contractor, or at any other venue, event or setting where the Contractor is represented, any advertising material in connection with or in reference to the project without the prior written consent of WATA and CWF.
- 15.17.3 Bus Promotions** – From time-to-time, WATA or CWF may request that the Contractor enhance the appearance or running order of selected vehicles beyond normal standards for use at events or in special services or appearances. Such work will be undertaken under normal cost calculations. The Contractor may also be asked to enhance the appearance of the maintenance facility for similar reasons with cost governed by the terms of the lease agreement. WATA or CWF will give the Contractor at least a five calendar day notice for such a request.

## **15.18 Housekeeping**

The Contractor shall be responsible for maintaining the cleanliness of the facilities including the shop floors, parts rooms, office areas, break area and restrooms. The Contractor shall supply all housekeeping materials and supplies needed to maintain these areas.

### **15.19 Investigations and Audits**

The Contractor shall support WATA and CWF and provide resources as needed to assist in investigations or audits. These may include accident and/or fire investigations and audits of records and/or procedures.

## **16. VEHICLE MAINTENANCE**

### **16.1 General Requirements**

The Contractor shall maintain WATA and CWF vehicles in the highest state of repair and shall conform to the specific requirements below. The Contractor will be expected to minimize on-road failures and maximize availability by means of an aggressive and thorough preventive maintenance plan. Original Equipment Manufacturer (OEM) specifications and maintenance recommendations shall be used in determining the standard of care applied to the work. The Contractor shall perform all work with a standard of care that eliminates the need for rework. WATA and CWF reserve the right to refuse to pay for rework when it appears the Contractor was at fault in any flaws that may exist with the original work.

**16.1.1 Vehicle Condition** – All vehicles and vehicle equipment supported by this RFP shall be maintained by the Contractor in excellent repair and condition satisfactory to WATA and CWF. The Contractor shall maintain all equipment in conformance with manufacturers' specifications and performance indicators throughout the life of the Contract. The Contractor shall be responsible for minor interior and exterior repairs (i.e. cosmetic in nature) as requested by WATA and/or CWF.

**16.1.2 Warranty Work** – The Contractor must ensure that all work of any type required by the Original Equipment Manufacturer (OEM) for vehicles and supporting equipment during the period when they are covered by warranty is performed in sufficient quantity, at appropriate times, and of necessary character as needed in order to avoid any voiding of the warranty for failure to perform proper maintenance. The Contractor will be required to attempt to obtain authorization from various vehicle manufacturers to perform in-house warranty work.

- a. The Contractor shall maintain complete records on all warranty work done, regardless of whether WATA or CWF was ultimately asked to pay for all or part of such work. This shall be understood to mean that work done by OEM dealers at no cost to the

Contractor, WATA, or CWF will be included in the complete vehicle records. Such records will include, at minimum, the nature of work performed, date of work performed, and details of any costs involved.

- b. Such work will be reimbursed directly to the Contractor by the manufacturer and WATA and CWF will be held harmless from payment for such work. The Contractor shall not bill WATA or CWF for work expected to be covered by warranty and reimbursed by the OEM except in cases in which reimbursement has been explicitly denied by the OEM. This shall be understood to preclude billing of WATA or CWF for warranty work until such time as all other avenues of recovery through the OEM have been exhausted by the Contractor.
- c. The Contractor shall be the sole point of contact with the OEM in regard to warranty claims and WATA and CWF shall have no direct contact with the OEM in this regard. The Contractor will be responsible for determining which work and cost should be covered by OEM warranties. The Contractor will also be responsible for all aspects of filing warranty claims with the OEM including paperwork, documentation and correspondence as may be required by OEM for reimbursement.
- d. The Contractor shall in all cases act to minimize the cost to WATA or CWF of work done on vehicles that are entirely or partially covered by OEM warranties. The Contractor shall in all cases maximize the portion of the cost of work done on vehicles under warranty assumed by the OEM.
- e. To the extent possible, the Contractor shall be responsible for minimizing the time a vehicle is taken out of service for warranty work.

**16.1.3 Recall Work** - The Contractor must ensure that all recall work required by the Original Equipment Manufacturer (OEM) for vehicles and supporting equipment is performed.

- a. The Contractor shall maintain complete records on all recall work done. This shall be understood to mean that work done by OEM dealers at no cost to the Contractor, WATA, or CWF will be included in the complete vehicle records. Such records will

include, at minimum, the nature of work performed and the date of work performed.

- b. The Contractor shall be the sole point of contact with the OEM in regard to recalls and WATA and CWF shall have no direct contact with the OEM in this regard. The Contractor will be responsible for all aspects of recall notifications with the OEM including paperwork, documentation and correspondence as may be required by OEM.
- c. To the extent possible, the Contractor shall be responsible for minimizing the time a vehicle is taken out of service for recall work.

**16.1.4 Parts and Variations** – The Contractor shall use only OEM parts or equivalent in the work. The Contractor may at its own discretion substitute remanufactured or generic parts for OEM parts, but in doing so warrants that the parts chosen are fully compatible and/or interchangeable with OEM parts. The Contractor warrants that any parts other than OEM selected for use by the Contractor are of suitable quality and normal life expectancy and, in the event that such parts fail prematurely before reaching the end of their reasonably-expected life, the Contractor will replace such parts at no additional cost to WATA or CWF. WATA or CWF may request or approve in advance the use of parts other than OEM and in such cases WATA or CWF shall assume the risk of such parts failing prematurely.

The Contractor may not modify, add or delete vehicle systems or components without advance written approval of WATA or CWF. Such systems or components include, but are not limited to, safety systems (seatbelts, airbags, etc.), emission control systems (oxygen sensors, etc.), power systems (engines, radiators, fuel injection systems, etc.), drive systems (drive shafts, axles, transmissions, etc.), electrical systems, computer systems and structural features.

**16.1.5 Vehicle Towing and Hiking** – The Contractor shall be responsible for performing or arranging for the performance by subcontractors of vehicle towing and hiking.

- a. Vehicle towing must, in cases of on-road failure, accident, or any other similar cause whatsoever, be provided by the Contractor or a third party engaged by the Contractor. The Contractor shall be responsible for providing personnel, vehicle(s) and equipment for

this purpose. Towing charges will be billed to WATA and CWF at the Contractor's cost.

- b. Vehicle hiking is the moving of a vehicle from one point to another (one or both points being outside of the facility) by the Contractor's staff. The Contractor may not charge WATA or CWF for vehicle hiking within the Williamsburg area. The Contractor may charge for staff time at normal hourly rates for vehicle hiking that involves distances of more than 30 miles from the maintenance facility. In such cases, the Contractor may use two staff members to carry out vehicle hiking for a period not to exceed four (4) hours per two (2) persons or two (2) hours per person. The Contractor may not, in any case, charge WATA or CWF for driving time necessary to procure parts or for similar activities. It is expected that vehicles experiencing on-road failures will be removed and on way to repairs as soon as possible and no later than one hour.
- c. The Contractor is expected to make arrangements for towing and repair of all vehicles that may experience failure outside the service area (distances of more than 30 miles from maintenance facility). In such cases, WATA or CWF will not be responsible for additional expenses incurred by the Contractor to provide this service.

**16.1.6 Road Calls** – The Contractor is expected to provide roadside assistance (may be without the need for towing or hiking) to determine the extent of mechanical failure. Appropriate repairs shall be made at that time when possible. Contractor personnel shall be enroute for road service within 5 minutes after receipt of the call. The Contractor shall provide the vehicle(s) for this activity.

## **16.2 Applicable Codes and Regulations**

The Contractor shall insure that all vehicles included in the project from the outset of contractual services and those added at subsequent dates are safe for operation on streets, freeways, and off-road venues as are appropriate to the normal use of the specific vehicles. The Contractor shall insure that the vehicles are in compliance at all times with applicable state and federal guidelines and regulations. This section shall be construed to include all systems or components attached to or comprising the vehicles, but shall not be construed to include owner cargo carried in the vehicles.

- 16.2.1 Inspections** – The Contractor shall have in place a means of monitoring state and federal (if any) inspections performed annually on all vehicles requiring such inspections. The Contractor shall take such action as may be necessary to insure that all vehicles are always in compliance with state inspection requirements. The Contractor is required to charge WATA and CWF for such inspections in the manner dictated by state law, and not by means of hourly charges reflective of the actual time spent performing the work.
- 16.2.2 Quality Assurance and Audits** – The Contractor shall make available to WATA and CWF all relevant vehicle records, including supplier invoices and time records, upon reasonable demand during normal working hours.
- 16.2.3** At their discretion, WATA and CWF reserve the right to inspect all vehicles to insure compliance with owner maintenance policies and state and federal guidelines and regulations. The Contractor warrants that it will promptly remedy any defects found during such inspections. Failure by WATA or CWF to note defects during formal inspections or normal daily use shall not relieve the Contractor of responsibility to maintain the vehicles to a high standard for safe and efficient operation and as particularly specified in the provisions of this agreement.

### **16.3 Fleet-Specific Maintenance Plan**

- 16.3.1** The Contractor shall develop and implement a maintenance plan specific to WATA and CWF vehicles. The plan shall account for the following:
- a. Consideration of the type of vehicle, operating environment, and other factors unique to WATA and CWF;
  - b. The maintenance goals and objectives of WATA and CWF, as well as those of the Contractor; and
  - c. Be consistent with manufacturers' maintenance requirements, WATA and CWF requirements, and all federal, state, and local regulatory requirements and codes for preventive maintenance, repair, and documentation.
- 16.3.2** A general description of the Maintenance Plan shall be submitted with the Contractor's proposal. It should include measures to be put in place for quality control, inventory management, timeliness of repairs, and prioritizing work. Within 30 days after the first day of contract service provision, the Contractor shall submit a detailed

maintenance plan for WATA and CWF approval. **At a minimum, the plan shall include:**

- a. **Preventive Maintenance Procedures** – The Contractor shall develop periodic inspection and service checklists that conform to, at a minimum, manufacturers’ most severe service recommendations and generally-accepted best industry practices. The objectives of the preventive maintenance (PM) plan will be the assurance that 1) all vehicles safely operate to the next scheduled service without a failure; and 2) public vehicle service life is maximized in accordance with FTA standards. All minor deferred repairs will also be completed at this time. In addition, all maintenance work shall conform to, but not be solely based on, the requirements of manufacturers’ warranties. A fluid analysis is expected at every preventative maintenance check. Fluid samples shall be tested at a competent laboratory to determine fluid purity. These analyses are critical to ensure vehicles are maintained to the highest standard to provide a long life of quality service.
  
- b. **Preventive Maintenance of Heating and Air Conditioning, Kneeling/Ramp and Wheelchair Lift Systems** – The Contractor shall provide separate PM plans for vehicle heating and air conditioning (HVAC) and kneeling/ramp and wheelchair lift systems. The Contractor shall develop periodic inspection and service checklists that conform to, at a minimum, manufacturers’ most severe service recommendations and generally-accepted best industry practices. The Contractor shall describe by brand name and model number the refrigerant recycling system proposed and whether this system is currently in use by the Contractor or is yet to be purchased as a result of the award of this Contract. The Contractor shall properly maintain operating HVAC systems on all vehicles at all times. No revenue vehicle shall be permitted to enter revenue service without a properly-functioning heating and/or air conditioning system.

During cool/cold service operation, the measured temperature at any location within a bus’s interior will not be less than 65 degrees Fahrenheit (F). During warm/hot service operation, the interior vehicle temperature shall be no greater than 75 degrees F. These standards pertain, minimally, to vehicles at the start of revenue service. Additionally, with the exception of “extreme conditions” (such as frequent boardings or alighting over an extended stretch; extended periods when doors are left open due

to heavy passenger boarding or wheelchair boarding), HVAC systems shall be maintained so that these standards are met throughout the provision of revenue service. Further, systems shall be maintained such that even under extreme conditions, they are capable of rapidly returning the vehicle temperature to one that is compliant with these standards.

- c. **Running Repairs** – The Contractor shall develop procedures to assure that all repairs are completed in a timely manner. Running repairs are minor repairs that can be fixed quickly (usually in less than an hour) without taking a vehicle out of service. Examples of these repairs are replacing wiper blades, fuses, and light bulbs; topping off fluids; and adding air to tires. The Contractor shall cause all components of each vehicle including, but not limited to, its body, frame, furnishings, mechanical, electrical, hydraulic, or other systems to be maintained in proper working condition, free from damage and malfunction. PM service will not be completed as a running repair service.
- d. **Safety-Related Repairs** - Those repairs that are safety-related or could cause further damage to a vehicle will be repaired before the vehicle returns to service. The Contractor must conduct a road test on all vehicles that have had safety-related repairs or adjustments. These vehicles must pass a road test and be deemed safe to operate by the Contractor prior to being returned to service. Safety-related items include, but are not limited to, brakes, steering, lights, and tires.

**16.3.3 Compressed Natural Gas (CNG) Systems** – The Contractor shall be fully conversant with the legal and maintenance requirements of CNG power systems and shall perform such inspections and specific maintenance as may be required by OEM’s and regulatory authorities.

## **16.4 Vehicle Damage**

**16.4.1** The Contractor shall repair all exterior and interior vehicle damage. The Contractor shall institute repairs of any significant damage to vehicles prior to return to service in a reasonable time. All repairs made relative to vehicle damage shall be performed by competent repair facilities capable of restoring damaged vehicles to original configuration, appearance, and structural integrity.

**16.4.2** The Contractor shall process accident repairs to include obtaining estimates and bids, transportation of vehicle to repair facilities, payment of invoices and coordinating with WATA's and/or CWF's risk management designee.

**16.4.3** If vehicles are damaged while in the Contractor's possession or as a result of poor maintenance by the Contractor, WATA or CWF may elect to have all required vehicle repair performed by a company of their choosing and subsequently invoice the Contractor for repair costs. This amount will be deducted from current monies owed to the Contractor.

## **16.5 General Repairs**

The Contractor shall provide as required all general repairs to vehicles provided in the Contract. This includes replacement of items that are or appear to be worn (such as seat covers).

## **16.6 Responsibility**

The Contractor shall be fully responsible for all repair and maintenance of all vehicles of the Public and Private Fleets during the term of the Contract. WATA and CWF reserve the right to remove vehicles from service where it is felt that safe operation of the vehicle is compromised. In such cases, the Contractor will be responsible to repair the vehicle to the satisfaction of WATA or CWF.

## **16.7 Fuel Service Lanes**

**16.7.1** The Contractor shall provide fuel, operating supplies, and personnel as may be needed at the fuel service lanes of the maintenance facility. The Contractor shall insure that on-site staff is responsive to demand for fueling services. During peak hours, the Contractor shall provide dedicated service staff to the fuel service lanes. During off-peak hours, the Contractor shall provide easy access to non-dedicated staff for fueling services. The Contractor may exercise discretion in staffing to stay consistent with the goal of providing service on demand. The Contractor shall not permit self-service fueling without the expressed written consent of WATA and CWF.

**16.7.2 Hours** – The Contractor will provide fueling services at the facility from 5:00 a.m. to midnight daily. Services need not be provided from 12:00 a.m. to 5:00 a.m. daily. Such services will be offered every day of the year except holidays as defined under Hours of Operation. The

Contractor shall post signage at the facility to indicate the hours of operation.

## **16.8 Fuel**

**16.8.1 Pricing** – The Contractor shall purchase fuel and invoice WATA or CWF at the Contractor’s cost (including all taxes, additives and fees) plus an amount not to exceed \$.04 per gallon. The Contractor shall maintain such records as may be necessary to document the pricing calculations used. The Contractor may change fuel pricing as often as desired, but may do so only in response to changing prices for fuel and other supplies charged by suppliers. Any price used must comply with the calculation indicated above (cost plus a maximum of \$.04 per gallon). The Contractor shall insure that WATA and CWF are not charged for federal or state taxes in those cases, if any, where WATA or CWF are exempt from taxes.

**16.8.2 Record-keeping and Permits** – The Contractor shall be responsible for all aspects of record-keeping and permitting associated with the fueling of vehicles and the existence of underground tanks at the facility, as is further described in the facility lease agreement.

**16.8.3 Off-Site Fuel** – The Contractor will not be responsible in any way for fuel purchased by WATA or CWF at off-site locations.

**16.8.4 Spillage** – The Contractor shall be responsible for remediation of any fuel spill. The Contractor shall have contingency plans for handling spills and shall train its personnel accordingly.

**16.8.5 Standards** – All dispensed fuel must meet or exceed Federal, state and local standards.

## **16.9 Tour Bus Services**

The Contractor shall provide tour bus fueling, washing, sewage disposal, and light repair services as may be needed to serve the traveling public. Payment for services provided to tour bus companies and operators shall include options to pay in cash and by credit card, as well as, periodic billing by the Contractor. Within the first three (3) months of the Contract, the Contractor will seek to accept payments through tour bus road service billing providers and will take all steps necessary to sign up for such payment systems. The Contractor will notify CWF as to the status of establishing a billing/payment system through tour bus road service billing providers. The Contractor may, at its election, charge different prices to tour companies than those charged to WATA and CWF.

## 16.10 Inventory

- 16.10.1 Physical Inventory** – As part of the contract startup and transition, the Contractor shall conduct a physical inventory of all onsite parts, materials and supplies. WATA and CWF shall validate this inventory. After which, the Contractor shall be responsible for the security and management of said inventory.
- 16.10.2** WATA and CWF have or will have inventories of parts and equipment paid for through federal funds. These inventories are maintained separate and apart from any inventory owned by the Contractor. It will be the responsibility of the Contractor to serve as the custodian of existing inventories owned by WATA and CWF.
- 16.10.3 Ownership** – The Contractor shall be responsible for procuring inventory and storing spare parts, materials and supplies as may be required in order to meet the time of service stipulations contained in the Agreement. The Contractor shall have discretion to maintain inventory in such quantity and at such cost as the Contractor considers necessary to effect repairs and maintenance in a timely manner as outlined in the Agreement. Upon installation in vehicles and equipment (i.e. farebox, electronic signage), parts and supplies become the property of WATA or CWF. The Contractor will retain ownership of any inventory not installed and this shall remain the case in the event the agreement is terminated for any reason.
- 16.10.4 Inventory Plan** – The Contractor shall submit to WATA and CWF a written, detailed parts inventory and storage plan within thirty (30) calendar days of the commencement of the Agreement. WATA and CWF reserve the right to change the plan on a reasonable basis should it prove inadequate. The Contractor shall maintain sufficient inventory to meet performance standards as itemized in Section 21.
- 16.10.5 Pricing** – The Contractor shall invoice WATA and CWF for parts and supplies at cost plus 10%. The Contractor may attach the 10% markup to a cost basis derived from the Inventory or Cost of Goods Sold system the Contractor uses. The Contractor shall maintain records of parts purchases and pricing calculations as may be necessary to allow WATA and/or CWF to audit the pricing, inclusive of markups.
- 16.10.6 Supplies** – The Contractor shall purchase operating supplies for inventory and invoice WATA and/or CWF on an as-used and cost-plus

basis. Operating supplies include, but are not limited to oil, fluids (i.e. window cleaning, transmission, and brake), coolant, paper towels, and window cleaning equipment for all vehicles. The Contractor may attach a 10% markup to a cost basis derived from the inventory or cost of goods sold system used by the Contractor.

**16.10.7 Tires** – The Contractor shall be responsible for maintaining an inventory of tires in such types, quantities and conditions as may be appropriate to the timely performance of the work. The Contractor may, at its discretion, use remanufactured tires but shall assume the risk of premature failure in the event such tires do not reach their life expectancy.

The Contractor may at its election resort to having tire work (puncture repair, etc.) performed by a sub-contractor. However, the Contractor shall be responsible for all aspects of requesting, coordinating, billing, and other elements of such work as may be required and in such manner that WATA and CWF have no direct contact with a tire sub-contractor.

The Contractor will replace tires when they have reached minimum tread depths or have failed, or are otherwise unacceptable due to weathering, irregular wear patterns, ply separations, bead separations or other unacceptable conditions that affect the safety and performance of vehicles and equipment. The Contractor will evaluate all flat tires and will determine if the tire will be repaired or replaced according to tire condition and safety considerations. The Contractor shall also provide wheel balancing and alignment on all new tires that are mounted and on existing tires that are repaired or that require subsequent wheel balancing or alignment. The Contractor may at its election use a sub-contractor for the purpose of tire repairs, wheel balancing and alignment.

In addition to tire work performed at the facility, the Contractor is responsible for all arrangements, including towing and repair, which may arise from on-road flat tires and similar incidents in the field. The Contractor may at its election use a sub-contractor for the purpose of offsite tire repairs.

**16.10.8 Parts** - The Contractor shall maintain a sufficient inventory of parts or have access to readily-available parts to meet performance standards as itemized in Section 21. WATA and CWF expect adequate inventories for the repair of vehicles and equipment within three calendar days of repair order and allow for adequate spares for Public

and Private Fleet daily service schedules. Removing parts from operable vehicles to meet service needs is discouraged and will be looked upon as a result of inadequate inventory. WATA and CWF will consider establishing a performance standard for inventory management after the first contract year allowing the Contractor to establish trends and needs of existing vehicles.

Contractor-supplied parts inventory shall remain the property of the Contractor upon completion of the term of this Contract. The Contractor shall submit a Parts and Warehousing Plan to WATA and CWF for approval, to include, at a minimum, loss prevention, shelf-life, and a critical items list. A general description of this Plan shall be submitted with the Offeror's proposal with the detailed program submitted to WATA and CWF for approval at least 30 days before the first day of contract service.

#### **16.11 Vehicle Painting**

The Contractor may be requested to paint or arrange to have painted vehicles covered by this agreement. The Contractor may at its election use a subcontractor to perform painting services. The Contractor shall affix decals and any other identifying materials (i.e. numbers and letters) to all newly-painted vehicles.

#### **16.12 Servicing**

The Contractor shall promptly provide light running repairs and fuel, coolant, window washer fluid, radiator water, motor oil, and any other supplies required to keep the vehicles operable. PM services will not be completed as a running repair service.

#### **16.13 Spillage**

The Contractor shall be responsible for remediation of any oil or other fluid spill. The Contractor shall have contingency plans for handling spills and shall train its personnel accordingly.

#### **16.14 Vehicle Washing - Exteriors**

The Contractor shall wash WATA and CWF vehicles on request and to the extent requested by WATA or CWF. WATA and CWF may at times request manual washing and not through an entirely automated means. The Contractor shall develop a fixed price schedule for exterior vehicle washing and may charge WATA and CWF similar amounts as those established for tour bus operators.

### **16.15 Modification and Repair of Destination Signs, Audio and Automated Bus Fare Collection Equipment**

The Contractor shall perform any required maintenance to ensure proper operation of all Public Fleet vehicles that have destination signs, audio equipment and automated bus fare collection equipment (currently 25 vehicles). In the event of route changes that affect destination sign readings and/or audio announcements, the Contractor will modify programming cards as soon as possible in accordance to WATA requests. WATA's Project Manager will specify such changes in writing and the Contractor shall revise the destination sign or audio announcement to reflect the changes. The Contractor shall be responsible for equipment necessary to update support equipment listed above. Visual, audio and automated fare collection equipment will be repaired in three calendar days.

### **16.16 Vehicle Status Board**

The Contractor shall maintain a Vehicle Status Board (the "Status Board") in an easily-accessible location within the maintenance facility. The Contractor shall develop the Status Board's format and submit it to WATA and CWF for approval. The Status Board shall be complete and put in service thirty days after contract implementation effective January 1, 2011. The Contractor shall also implement a means of electronically communicating vehicle status between maintenance and WATA and CWF so that physically checking vehicle storage locations is not required.

### **16.17 New Vehicles**

**16.17.1 Vehicle Replacement Program** - WATA anticipates Federal funding in fiscal years 2013, 2014 and 2015 to replace twelve (12) heavy-duty buses with six (6) Clean Diesel Heavy Duty Buses and six (6) Electric Hybrid Heavy Duty Buses. WATA's goal is to replace public transit vehicles in accordance with FTA vehicle life standards.

**16.17.2** The Contractor will provide input in the selection process for new vehicles as requested by WATA or CWF, with WATA or CWF retaining the exclusive right to decide, ultimately, what will be purchased. The Contractor shall ensure that maintenance personnel are thoroughly trained/certified on all new vehicles and equipment prior to delivery so that reliance on outside assistance from manufacturers is minimized.

**16.17.3** All new vehicles will be inspected by the Contractor and accepted for scheduled service when all safety and reliability defects have been corrected, and upon acceptance, the Contractor shall assume complete responsibility for ensuing maintenance and repairs. The Contractor will prepare newly-acquired vehicles for service. Preparation will include inspections; cleaning; installation of decals, vehicle numbers, and fleet names; and installation of accessory equipment and other special equipment.

**16.17.4** The Contractor is responsible for installing new equipment or transferring existing equipment from old vehicles to new ones, including, but not limited to, radios and fareboxes. WATA and/or CWF will be responsible for the costs of equipment acquisitions, licensing, permitting, and other such expenses required for fleet expansion.

#### **16.18 Miscellaneous Work**

Upon WATA and/or CWF request, the Contractor shall provide labor for miscellaneous maintenance-related activities such as installing brochure holders, relocating fareboxes, changing seat spacing, and other such activities.

In addition, WATA and/or CWF may request service on equipment that is not under contract (i.e. backhoe). The Contractor shall invoice WATA and/or CWF for labor based on a standard labor rate specified in the Contract.

#### **16.19 Ready Vehicles for Sale or Transfer**

Upon WATA and/or CWF request, the Contractor shall thoroughly clean vehicles, replace broken parts, and perform other such work on vehicles slated for sale or transfer. The Contractor shall ensure these vehicles are in prime condition for sale or transfer. Tires shall be provided that meet US DOT requirements. Painting of items such as wheels and removal of or painting/taping over of WATA- or CWF-specific information (names, logos, phone numbers, etc.) shall also be included, as shall labor to relocate vehicles to accommodate these activities. Additionally, the Contractor shall remove license plates and any equipment WATA and CWF do not intend to convey with the vehicle.

After a vehicle is sold or transferred, the Contractor will immediately remove it from fleet support expenses. WATA and/or CWF will be responsible for removing the vehicle from the premises following the sale or transfer. The Contractor shall furnish the vehicle's complete and up-to-date file to WATA and/or CWF within five (5) days from Contractor's notification of its impending sale or transfer.

**16.20 Labeling of Hazardous Substances** – If the items or products requested by this solicitation are “Hazardous Substances” as defined in Section 1261 of Title 15 of the United States Code (U.S.C.) or “Pesticides” as defined in Section 136 of Title 7 of the U.S.C., then the Offeror, by submitting its proposal, certifies and warrants that the items or products to be delivered under this contract shall be properly labeled as required by the foregoing sections and that by delivering the items or products this Offeror does not violate any of the prohibitions of Title 15 U.S.C. Section 1263 or Title 7 U.S.C. Section 136. The Contractor shall train all personnel in the procedures for working with hazardous materials.

**16.21 Material Safety Data Sheets** – Material Safety Data Sheets and descriptive literature shall be provided by the Contractor for each chemical and/or compound used in the performance of the work. The Contractor shall be responsible for obtaining all applicable licensing and/or permits.

**16.22 Waste Management** – The Contractor shall be responsible for the proper disposal of all waste generated as a result of fleet maintenance activities. Examples of waste are used oil, transmission and cleaning fluids, etc. used in the service of WATA and CWF vehicles. All waste materials shall be disposed of in accordance with local, state and federal laws and regulations. Offeror will have access to the dumpster located at the maintenance facility for items that may be discarded in the regular waste stream.

The Contractor shall be responsible for the disposal of worn parts. The proceeds from the sale, if any, of worn parts will be shared on a 50%-50% basis with WATA or CWF depending on the owner of the vehicle from which the parts came.

**16.23 Operator Abuse** – It is the responsibility of the Contractor to notify WATA and/or CWF whenever a vehicle shows signs of abuse. The Contractor shall repair the vehicle as needed and provide WATA and/or CWF with documentation and explanation of the abuse. WATA and/or CWF will conduct an investigation and determine whether an abuse did occur.

## **17. OBLIGATIONS AT END OF CONTRACT**

### **17.1 Transition between Contractors**

The Contractor selected as a result of this procurement shall cooperate with WATA and CWF to effect a smooth transition to the succeeding Contractor at the expiration of the Contract resulting from this RFP. The Contractor shall cooperate with WATA and CWF should the Contractor choose not to remain after the initial Contract expiration, or should WATA or CWF choose not to extend the Contract beyond the initial term of five (5) years.

## 17.2 Transition Requirements

Transition requirements for the termination of this Contract include, but are not limited to, those listed below.

- 17.2.1 Access** - Within the final six months of the Contract term, the Contractor shall provide WATA and CWF access to the maintenance facility. In addition, the Contractor shall provide access to prospective service providers as may be requested by WATA and CWF.
- 17.2.2 Maintenance Records** - The Contractor shall provide WATA and/or CWF with all relevant maintenance records, histories and files for all vehicles and equipment. Such records shall be shared with successor service provider(s).
- 17.2.3 Documents** - The Contractor shall provide WATA and CWF with originals and/or copies of all leases, permits, licenses and other relevant documents.
- 17.2.4 Substance Testing** - The Contractor shall provide WATA with all documents pertaining to FTA Drug and Alcohol regulations and requirements including a completed FTA Drug and Alcohol Summary report on the appropriate FTA form for the Contractor's term of operation.
- 17.2.5 FTA Required Documents** - The Contractor shall provide WATA with all FTA-required maintenance documentation.
- 17.2.6 Record Retention** – The Contractor shall furnish all records associated with WATA and CWF Contracts in accordance with records retention policies established by WATA and/or CWF.

## 18. PERFORMANCE STANDARDS

The goal of WATA and CWF is to develop a true partnership with the Successful Offeror in an effort to provide high quality service to our customers. To ensure this, it is extremely important that the Successful Offeror perform maintenance services at an acceptable level. Below are the minimum performance standards that must be met by the Contractor.

- 18.1 Preventative Maintenance (PM)** – A sound preventative maintenance program will reduce unscheduled repair frequency and extend a vehicle's useful life. If

PM checks do not meet scheduled intervals, vehicle warranties are jeopardized and FTA investment (80% all capital) is placed at risk. Thus, FTA and other agencies routinely review PM practices and documentation.

PM inspections for equipment supported by FTA (Public Fleet) and CWF (Private Fleet) shall be performed within 10% ahead of or behind schedule for standard PM (for example, scheduled 6,000 mile PM performed any time between 5,400 and 6,600 miles is considered to be on time).

State inspections must, notwithstanding the above, be performed within the appropriate month as required by law.

**18.2 Repairs Affecting Full Use and Safe Operation** – Ninety percent (90%) of all repairs affecting full use and safe operation of Public Fleet and Private Fleet vehicles shall be completed within three (3) calendar days, subject to the availability of parts. Full use and safe operations shall include optimal conditions described in OEM service and repair manuals for vehicles major components (i.e. engine, transmission, chassis) and subcomponents (i.e. tires, brakes, windshield wipers).

**18.3 Lifts and Ramps** – The Contractor shall provide a maintenance schedule to ensure all vehicle accessibility features such as wheelchair lifts, ramps and securing equipment be maintained at regular intervals. WATA is committed to provide accessible transportation to our passengers who require special assistance.

Malfunctioning wheelchair lifts or ramps in Public Fleet vehicles shall be repaired within three (3) calendar days, subject to the availability of parts. Under no circumstance will a Public Fleet vehicle with an inoperable wheelchair lift or ramp be allowed in service.

**18.4 Heating and Air Conditioning** – Passenger and operator comfort are paramount, particularly when humidity impacts temperatures in our region. It is expected that no Public Fleet vehicle will be put in service without a properly-functioning heating and/or air conditioning system.

Heating and air conditioning system repairs shall be completed within five (5) calendar days.

**18.5 Passenger Information Equipment** – Keeping audio, visual and automated collection equipment in excellent condition on all in-service vehicles is critical for passenger information. This equipment is required and necessary for our disabled population and large seasonal workforce of international students. The

automated collection equipment provides data for FTA and other required reporting and therefore must be functional at all times.

Audio, visual, and automated collection equipment for the Public Fleet shall be repaired within three (3) calendar days, subject to the availability of parts.

- 18.6 Mean Distance Between Failure** - More information is needed to establish a standard for performance in the area of Mean Distance between Failure (MDBF). MDBF is defined as the average distance between on-road mechanical failures, which does not include tire failure from road hazards (i.e. foreign objects), accident/incident damage or effects.

Therefore, a performance standard for this area will be deferred until January 1, 2012. WATA and CWF shall be responsible for tracking this data for the first twelve months of the contract in order to establish a standard for the remaining term of the contract.

- 18.7** If any Public or Private Fleet vehicle awaiting repair, maintenance or parts delivery is out of service for a period exceeding one (1) calendar month, any fixed monthly fees already paid by WATA and/or CWF for that month will be refunded by the Contractor. In addition, future fixed monthly fees will not be assessed until the vehicle in question has returned to service. This provision is in addition to any late fees or penalties that may be assessed by WATA and/or CWF for failure to meet the agreed upon performance indicators.

## **19. UNACCEPTABLE PERFORMANCE**

- 19.1 Concerns** – WATA and CWF shall cooperate with the Contractor to fully explore any concerns regarding service standards. In its evaluation of corrective actions, WATA and CWF may request the Contractor's to provide the following depending the nature and severity of unacceptable performance:

- a. A verbal explanation to the Project Manager for corrective action by a date determined by WATA or CWF.
- b. A written report with corrective action to the Project Manger by a date determined by WATA or CWF.

Persistent failure to meet service standards and expectations as provided in this proposal may lead to the termination of this contract for cause.

## **20. OMISSIONS**

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

## **21. METHOD OF PAYMENT**

The Contractor's fees and overhead may be subject to audit and certification by agencies of the Commonwealth prior to notice to proceed. Offerors should be prepared to provide detailed cost information, including audited overhead rates, if they are selected for negotiation.

## **22. GENERAL TERMS AND CONDITIONS**

**WATA General Terms and Conditions shall apply. See *Attachment C*.**

## **23. SPECIAL TERMS AND CONDITIONS**

The following Special Terms and Conditions apply to this RFP, and by submitting its proposal, the Offeror agrees to them without exception:

- 23.1** Neither this RFP nor WATA's or CWF's consideration of any proposal shall create any contract, express or implied or any contractual obligation by WATA or CWF to any Offeror, or any other obligation by WATA or CWF to any Offeror. WATA and CWF make no promise, express or implied, regarding whether they will enter into a Comprehensive Agreement with any Offeror or regarding the manner in which they will consider proposals. WATA and CWF will only be bound by the terms of any contract or agreement into which they enter should they choose to enter into any such contract or agreements.
- 23.2** WATA and CWF will not be responsible for any expenses incurred by an Offeror in preparing and submitting a proposal, or in engaging in oral presentations, discussions, or negotiations with WATA and CWF.
- 23.3** Offerors who submit a proposal in response to this RFP may be required to make an oral presentation or oral presentations of their proposal to WATA and/or CWF at their own expense. WATA and CWF may request the presence of the Offerors' representatives from their staff at these presentations. WATA and CWF will schedule the time and location for these presentations. By submitting its proposal, the Offeror agrees to make these representatives reasonably available in James City County, Virginia.
- 23.4** WATA and CWF reserve the right to waive any informality with respect to any proposal submitted in response to this RFP.
- 23.5** Generally, proposal documents submitted to public bodies, such as ones submitted to WATA, by private entities are subject to the Virginia Freedom of Information Act ("FOIA"). In accordance with Va. Code §2.2-3705 A 56, such documents are releasable if requested, except to the extent that they relate to confidential proprietary information submitted to the responsible public entity under a promise of confidentiality or (ii) memoranda, working papers or other

records related to proposals if making public such records would adversely affect the financial interest of the public or private entity or the bargaining position of either party. In order for Offerors to exclude confidential proprietary information from public release, Offerors must (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reasons why protection is necessary. The Offeror must also mark each page of information for which protection is sought with the legend - "Confidential Proprietary Information-Exempt from FOIA Release."

**23.6** WATA and CWF reserve the right to reject any and all proposals without explanation.

**23.7** The provisions of Virginia Code § 2.2-4310 are applicable to this RFP. WATA and CWF will not discriminate against an Offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

**23.8** WATA, a public body, does not discriminate against faith-based organizations in accordance with the Code of Virginia, Section 2.2-4343.1.

**23.9** All firms and personnel providing goods/services as a result of this solicitation shall be properly licensed by the Commonwealth of Virginia.

**23.10 Prime Offeror Responsibilities**

The Offeror awarded the resulting contract is required to assume sole responsibility for the complete delivery of the services required by the RFP and Contract Documents. The said Offeror shall be the sole point of contact with regard to contractual matters.

**23.11 Independent Offeror**

The Offeror shall be an independent, duly licensed and/or certified Offeror and possess the staff, experience, equipment, and abilities to successfully provide all needed services. The Offeror, and all employees and agents of the Offeror, shall fully comply with all Local, State and Federal laws and/or mandates applicable to the Services to be provided under this RFP.

**23.12 Availability of Funds**

It is understood and agreed between the parties herein that WATA and CWF shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

**23.13 Audit**

The Offeror shall retain all books, records, and other documents relative to this contract for five (5) years after final payment. WATA and CWF, their authorized agents and/or state Auditors shall have full access to and the right to examine the books and records for this project.

**23.14 Assignment of Contractor or Contract Funds**

The successful Offeror may not assign, transfer, convey or otherwise dispose of any or all its rights, title or interest in the contract, without the prior written consent of WATA and/or CWF or their authorized representatives.

**23.15 Trade Secrets and Proprietary Information**

Ownership of all data, materials and documentation originated and prepared for WATA and CWF pursuant to the RFP will belong exclusively to WATA and CWF, and be subject to public inspection in accordance with the Virginia Freedom of Information Act (FOIA). Trade secrets or proprietary information submitted by an Offeror shall not be subject to public disclosure under the Virginia FOIA; however, the Offeror must invoke the protections of Section 11-52D of the Code of Virginia, in writing, either before or at the time the data or other material is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. WATA and CWF reserve the right to ask for additional clarification prior to establishing protection. See paragraph VIII. Special Terms and Conditions, subparagraph E. for additional information regarding FOIA. **Please sign the acknowledgment on the RFP Cover page.**

**23.16 Applicable Law and Courts**

Any contract resulting from this solicitation shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without giving effect to Virginia's conflicts of law provisions. Any litigation with respect to this Agreement shall be brought in a court whose jurisdiction includes the City of Williamsburg, Virginia. The Contractor shall comply with applicable federal, state and local laws and regulations.

**23.17 Insurance**

Contractor insurance requirements as follows:

**23.17.1** The Contractor shall maintain at its own cost and shall require any subcontractor it may engage to maintain at all times while performing under the terms of the Agreement at a minimum the insurance coverage set forth below with companies licensed to conduct business in the Commonwealth of Virginia with an AM Best rating of A or higher and satisfactory to WATA and CWF. The Contractor further agrees that all limits will be made available which are excess of the amounts below:

a. **Workers Compensation and Employers Liability**

Coverage A - Statutory

Coverage B - \$1,000,000 (Employer's Liability)

A broad form of all states endorsement should be attached.

b. **Commercial General Liability Including Contractual and Completed Operations**

Limit of Liability \$5,000,000 per Occurrence/\$10,000,000 General Aggregate.

c. **Commercial Auto Liability Including Hired and Non-Owned Car Liability Coverage**

\$5,000,000/Accident Combined single LIMIT, Bodily, Injury, or Property Damage.

The Contractor shall purchase and maintain during the life of this Contract such commercial automobile liability insurance including employer's non-ownership liability and hired car liability insurance to protect him and any subcontractors performing work covered by this Contract from claims for damages, whether such operations be by him or any subcontractor, or by anyone directly or indirectly employed by either of them.

d. **Garage Liability**

\$5,000,000 each accident or loss (limit can be included in umbrella/excess coverage). Coverage to include coverage for autos not owned by the Contractor left for service, repair, storage or safekeeping.

e. **Excess Liability**

Contractors have the option of meeting the insurance requirements of a), b), c), and d) above with a single primary policy or by providing evidence of an excess policy that, in addition to the primary policy, provides the coverage and meets the limit requirements of the coverage as specified in a), b), c), and d), and so states in the excess policy.

f. **Self Insured Retentions, Deductibles and Aggregate Limits:**

All self insured retentions, deductibles and aggregate limits on any required insurance must be disclosed and approved by WATA and CWF.

**23.17.2** The Contractor shall instruct its insurance representative to provide WATA and CWF, as herein before required, satisfactory proof of acceptable insurance coverage. Such proof shall, unless otherwise required by WATA and CWF, consist of the following:

- a. Certificates of insurance on the insurance carrier's standard form indicating all policies outlined above. Contractor shall notify WATA and CWF immediately if Contractor receives notification of non-renewal or cancellation.

**23.17.3** WATA and CWF shall be named as an Additional Insured on the Commercial General Liability and Garage-keeper's Liability policies on a primary basis. Address on said endorsements shall be as indicated in the Agreement. WATA and CWF insurance coverage shall not contribute any loss payment insured under the Contractor's Commercial General Liability policy. Contractor shall instruct its insurance representative to provide WATA and CWF with a copy of their respective additional insured endorsement.

**23.17.4 INDEMNIFICATION:**

The Contractor hereby binds himself and his successors to indemnify, defend, and save harmless WATA and CWF, its subsidiaries, and their respective officers, directors, trustees, agents and employees, from all suits and actions of every name and description brought against it or them, and all costs or damages to which it or they may be put, on account of, or by reason of any injury or alleged injury to the person or property of another, resulting from or on account of the negligent acts, errors or omissions, recklessness or intentionally wrongful conduct of the Contractor, its employees, agents and representatives in the performance of the contract; and that the whole or so much of the moneys due to the contractor under and by virtue of this Contract, as such or may be considered necessary by WATA, shall and may be retained until all such suits and claims for damages as aforesaid shall have been settled, and evidence to that effect furnished to the satisfaction of WATA. The said Contractor further agrees to indemnify and save harmless WATA and CWF, its subsidiaries, and their respective officers, directors, trustees, agents and employees against any and all claims, suits or demands that may accrue to, be suffered by, or adjudicated against it by reason of any injury sustained by any of the Contractor's employees in and about the said work, under and pursuant to the provisions of the Workman's Compensation Law or any amendments thereto, and the Contractor shall produce certificates or other satisfactory evidence of ample protection against such liability.

**23.18 CIVIL RIGHTS REQUIREMENTS**

29 U.S.C. § 623, 42 U.S.C. § 2000, 42 U.S.C. § 12132, 42 U.S.C. § 6102, 42 U.S.C. § 12112, 49 U.S.C. § 5332, 29 CFR Part 1630, 41 CFR Parts 60 et seq.

**23.18.1 Nondiscrimination**

In accordance with Title VI of the Civil Rights, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 121132, and Federal Transit law at

49 U.S.C. §5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or suability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

**23.18.2 Equal Employment Opportunity**

The following equal employment opportunity requirements apply to the underlying Contract:

a. **Race, Color, Creed, National Origin, Sex**

In accordance with Title VII of the Civil Rights Act, as amended, 41 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U. S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C. F. R. Parts 60 et seq., (which implement Executive Order No. 11246, equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 200e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to employ with any implementing requirements FTA may issue.

b. **Age**

In accordance with section 4 of the Age Discrimination Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

c. **Disabilities**

In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will employ with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**23.18.3** The Contractor also agrees to include these requirements in each sub-contract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

**23.18.4** In accordance with the Code of Virginia, the Contractor agrees to not discriminate against any employee or applicant because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices, setting forth the provisions of this nondiscrimination clause. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purposes of meeting the requirement of this section.

### **23.19 Nondiscrimination Under Federal Grants**

No otherwise qualified handicapped individual in the United States, as defined in Section 7(6), shall solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

### **Access to Records**

49 U.S.C. § 5325, 18 CFR 18.36(i), 49 CFR 633.17

The following access to records requirements apply to this Contract:

**23.20.1** Where the Purchaser is not a State but a local government and is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees,

pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

**23.20.2** The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

**23.20.3** The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i) (11).

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

### **Changes to Federal Requirements**

49 CFR Part 18

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the Procuring Agency and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### **23.22 No Obligation by the Federal Government to Third Parties**

**23.22.1** The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

**23.22.2** The Contractor agrees to include the above clause in each

subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### **23.23 Termination**

#### **49 U.S.C. Part 18, FTA Circular 4220.1E**

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

**23.23.2 Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, WATA may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by WATA that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, WATA, 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.

**23.23.3 Opportunity to Cure (General Provision)** WATA in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

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

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

**23.23.4 Waiver of Remedies for any Breach** In the event that WATA elects to waive its remedies for any breach by the Contractor of any covenant, term or condition of this Contract, such waiver by WATA shall not limit WATA's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

**23.23.5 Termination for Convenience (Professional or Transit Service Contracts)** WATA by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, WATA shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

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

**23.23.7 Termination for Convenience or Default (Architect and Engineering)** WATA may terminate this contract in whole or in part, for the WATA's convenience or because of the failure of the Contractor to fulfill the contract obligations. WATA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of WATA, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, WATA may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by WATA.

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

If the termination is for the convenience of WATA, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, WATA 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, WATA, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

#### **23.24 Legal Requirements**

The Contractor shall comply with all applicable Federal, state and local regulations. These shall include, but not be limited to Federal ADA as well as state and local accessibility, safety and security requirements. Local regulations are defined as those below the state level.

In the event of any conflict between the requirements of this Specification and any applicable legal requirements, the legal requirements shall prevail. Technical requirements that exceed the legal requirements are not considered to conflict.

#### **23.25 Incorporation of FTA Terms**

FTA Circular 4220.1E

“Special Terms and Conditions”, includes, in part, certain standard terms and

conditions required by US DOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by US DOT, as set forth in FTA Circular 4220.1F, as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms and 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 WATA requests which would cause WATA to be in violation of the FTA terms and conditions.

### **23.26 Contracts Involving Federal Privacy Act Requirements**

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

**23.26.1** 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.

**23.26.2** 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.

### **23.27 Resolution of Disputes, Breaches, or Other Litigation**

49 CFR Part 18, FTA Circular 4220.1E

**23.27.1 Disputes** – Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the Executive Director for WATA. 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 Executive Director. 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 Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.

**23.27.2 Performance During Dispute** – Unless otherwise directed by WATA,

the Contractor shall continue performance under this Contract while matters in dispute are being resolved. Any contractual disputes shall be made in accordance with WATA's General Terms and Conditions (**Attachment C**). Item Number 67. Disputes, page B-9.

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

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

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

## **23.28 Disadvantaged Business Enterprise (DBE)**

49 CFR Part 26

**23.28.1** This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, and Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. WATA's overall Anticipated DBE Level of Participation is 15%. A separate contract goal **has not** been established for this procurement.

**23.28.2** The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as WATA deems appropriate. Each

subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

**23.29 Energy Conservation**

42 U.S.C. § 6321 et seq., 49 CFR Part 18

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

**23.30 Clean Air**

42 U.S.C. § 7401 et seq., 40 CFR 15.61, 49 CFR Part 18

**23.30.1** 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 WATA and CWF and understands and agrees that WATA and CWF will, in turn, report each violation as required to assure notifications to FTA and the appropriate EPA Regional Office.

**23.30.2** The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**23.31 Buy America Requirements**

The Contractor agrees to comply with 49 U.S.C. 5323(J) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

**23.32 Recycled Products**

42 U.S.C. 6962, 40 CFR Part 247, Executive Order 12873

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 USC 6962), including but not limited to the regulatory provision of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

### **23.33 Lobbying**

**Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]** – Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, “New Restrictions on Lobbying.” Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier 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 that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to WATA. Each Offer shall complete and return the attached Lobbying Certification Form.

### **23.34 Contract Work Hours and Safety Standards Act**

**23.34.1 Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**23.34.2 Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph 1 of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and sub-contractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

**23.34.3 Withholding for unpaid wages and liquidated damages** – WATA shall upon its own action or upon written request of an authorized

representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

**23.34.4 Subcontracts** – The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

**23.35 False Statements or Claims, Civil and Criminal Fraud**

31 U.S.C. 3801 et seq., 49 CFR Part 31 18 U.S.C. 1001, 49 U.S.C. 5307

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

**23.35.2** The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal Assurances originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the

penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

**23.35.3** The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**23.36 Government-Wide Debarment and Suspension (Nonprocurement)**

49 CFR Part 29, Executive Order 12549 (over \$25,000)

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

**23.37 Fly America Requirements**

49 U.S.C. § 40118 41 CFR Part 301-10

The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**23.38 Clean Water Requirements**

33 U.S.C. 1251

**23.38.1** 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 FTA and the appropriate EPA Regional Office.

- 23.38.2** The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**23.39 Required Contractual Documents**

The Successful Offeror, as contractor, is responsible for the proper completion and submission of the documents listed below within ten (10) calendar days following receipt of the Notice of Award contract unless extended by WATA.

All forms must have the original ink signature of a person authorized to bind the Contractor. All documents must be attested to or notarized as required by the Contract Documents.

Clean Air Certification

Buy America Certification

Clean Water Requirements

Energy Conservation Requirements

Prime Contractor Debarment Certification

Sub-Contractor Debarment Certification

Certification Regarding Lobbying

Insurance Certificate with coverage as listed in the RFP

The Contractor shall use only the forms provided with the RFP or photocopies thereof and shall make no changes or alterations in the documents. All documents will be submitted with the signed contract documents to the WATA Office.

## **CLEAN AIR REQUIREMENTS**

The Contractor agrees to comply with mandatory standards and policies relating to clean air, which are contained in the Clean Air Act Plan issued in compliance with the EPA Office.

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

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**BUY AMERICA CERTIFICATION, IF OVER \$100,000**

**Certification requirement for procurement of steel, iron, or manufactured products.**

*Certificate of Compliance with 49 U.S.C. 5323(j)(1)*

The Offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)*

The Offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

## CLEAN WATER REQUIREMENTS

The Contractor agrees to comply with mandatory standards and policies relating to clean water, which are contained in the Federal Water Pollution Control Act issued in compliance with the EPA Office.

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

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## ENERGY CONSERVATION REQUIREMENTS

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

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

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**PRIME CONTRACTOR DEBARMENT CERTIFICATION**

The certification in this clause is a material representation of fact relied upon by WATA. If it is later determined that the bidder knowingly rendered an erroneous certification, in addition to remedies available to WATA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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

\_\_\_\_\_ Signature of Contractor’s Authorized Official

\_\_\_\_\_ Name and Title of Contractor’s Authorized Official

\_\_\_\_\_ Date

**SUB CONTRACTOR DEBARMENT CERTIFICATION**

The certification in this clause is a material representation of fact relied upon by WATA. If it is later determined that the bidder knowingly rendered an erroneous certification, in addition to remedies available to WATA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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

\_\_\_\_\_ Signature of Contractor’s Authorized Official

\_\_\_\_\_ Name and Title of Contractor’s Authorized Official

\_\_\_\_\_ Date

**CERTIFICATION OF RESTRICTIONS ON LOBBYING**

I, \_\_\_\_\_, hereby certify on behalf of \_\_\_\_\_  
\_\_\_\_\_, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any 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 Contract, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative Contract.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative Contract, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/1996). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

1. 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 contracts) 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 31, U.S.C. §1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

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

Executed this \_\_\_\_\_ day of \_\_\_\_\_, of 20\_\_\_\_\_.

Signature of Contractor's Authorized Official \_\_\_\_\_

Name and Title of Contractor's Authorized Official \_\_\_\_\_