

RFP Addendum
DOTRFP-18 Rev. 9/15

Mary Matuszak
Fiscal Admin. Supv.
(860)594-2342
Telephone Number

STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION
DIVISION OF PURCHASING & MATERIALS MANAGEMENT
Room #2418
2800 Berlin Turnpike
Newington, CT 06131-7546

RFP NO.
16DOT7001

RFP Due Date:
9 September 2016

Date Addendum Issued:
15 July 2016

RFP Addendum #3

PLEASE NOTE:

This document must be signed where indicated below by a person authorized to sign Proposals and Addenda on behalf of your company, and returned with your Request for Proposal (RFP) submission. Failure to do so may result in rejection of your Proposal.

Description: OVERHAUL OF P40 LOCOMOTIVES FOR THE CONNECTICUT DEPARTMENT OF TRANSPORTATION

1. The remainder of Round 1 questions received and their corresponding answers are attached. Please be aware that the first two responses have been modified from those that were provided in Addendum #2 which was issued on Friday, July 15, 2016.
2. The RFP Cover Sheet (DOTRFP-11) has been revised. Please replace the original with the attached Cover Sheet.

All other Terms and Conditions remain the same.

Signature

Date

REQUEST FOR PROPOSAL DOTRFP-11 Rev. 9/15 Mary Matuszak <i>Fiscal Admin. Supervisor</i> (860) 594-2342 <i>Telephone Number</i> mary.matuszak@ct.gov <i>E-Mail Address</i>	STATE OF CONNECTICUT DEPARTMENT OF TRANSPORTATION PURCHASING AND MATERIALS MANAGEMENT 2800 Berlin Turnpike Newington, CT 06111	RFP Number: 16DOT7001
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NOTICE TO VENDORS:

Logon to the DAS State Contracting Portal, Click on **Subscribe** (in the right-hand column) and complete the form to automatically receive notification of new Bids & RFP's and Addenda *via e-mail*.

<http://www.das.state.ct.us/cr1.aspx?page=12>

Request for Proposal (RFP)
SPECIFICATIONS & PROPOSAL DOCUMENTS ATTACHED

DESCRIPTION: Overhaul of P40 Locomotives for the Connecticut Department of Transportation (CTDOT)

DELIVERY OF PROPOSALS

If the proposal is sent via **A COMMERCIAL EXPRESS CARRIER**, please address proposal as follows:
 The Department of Transportation
 Attn: Mary Matuszak
 2800 Berlin Turnpike
 Newington, CT 06111

If the proposal is sent via **U. S. MAIL**, please address proposal as follows:
 The Department of Transportation
 Attn: Mary Matuszak
 P.O. Box 317546
 Newington, CT 06131-7546

If the proposal is being **HAND CARRIED**, please deliver to:
 The Department of Transportation
 2800 Berlin Turnpike
 Newington, CT
 Security Desk – Ask for Mary Matuszak at extension 2342
 (Receipt of hand delivered Proposals, prior to RFP Due Date, can be made between 8:00 a.m. and 3:00 p.m., Monday through Friday excluding State Holidays. In the event that the Proposal is delivered on the RFP Due Date, it must be received prior to 2:00 p.m., Eastern Time

Allow sufficient time if responding by mail. Mailing your response to DOT, Purchasing and Materials Management is preferred.
 If hand-delivering your response, see above instructions. Vendors cannot enter buildings without a valid photo ID.

NOTE: Responses cannot be accepted after specified RFP Due Date & Time

USE LABEL BELOW ON ALL PACKAGES WHEN RETURNING YOUR RESPONSE

SEALED RFP NO. 16DOT7001
RFP DUE DATE/TIME: September 9, 2016 at 2:00 pm, Eastern Time

Department of Transportation
 Procurement Services – 2416 SW2
 Attn: Mary Matuszak

MAILROOM: DO NOT OPEN - RFP

Form DOT-6
{Rev. - 9/ 15}

CONNECTICUT DEPARTMENT OF TRANSPORTATION
RFP REQUEST FOR APPROVAL, EXCEPTION, OR CLARIFICATION

RFP No.: 16DOT7001

Project Description:
Overhaul of P40 Locomotives for the Connecticut Department of Transportation (CTDOT)

SPECIFICATION SECTION: 4.1.2.2.A

SPECIFICATION PAGE NUMBER: 4-1

PROPOSER'S REQUEST: Can CTDOT supply the NJT drawings of the modification to the pins?

CTDOT's RESPONSE:

A. APPROVED:

B. APPROVED AS MODIFIED: Attached

C. DENIED:

D. ADDITIONAL INFORMATION REQUIRED:

CTDOT's COMMENTS (if applicable):

SIGNATURE: _____

Marci Petterson

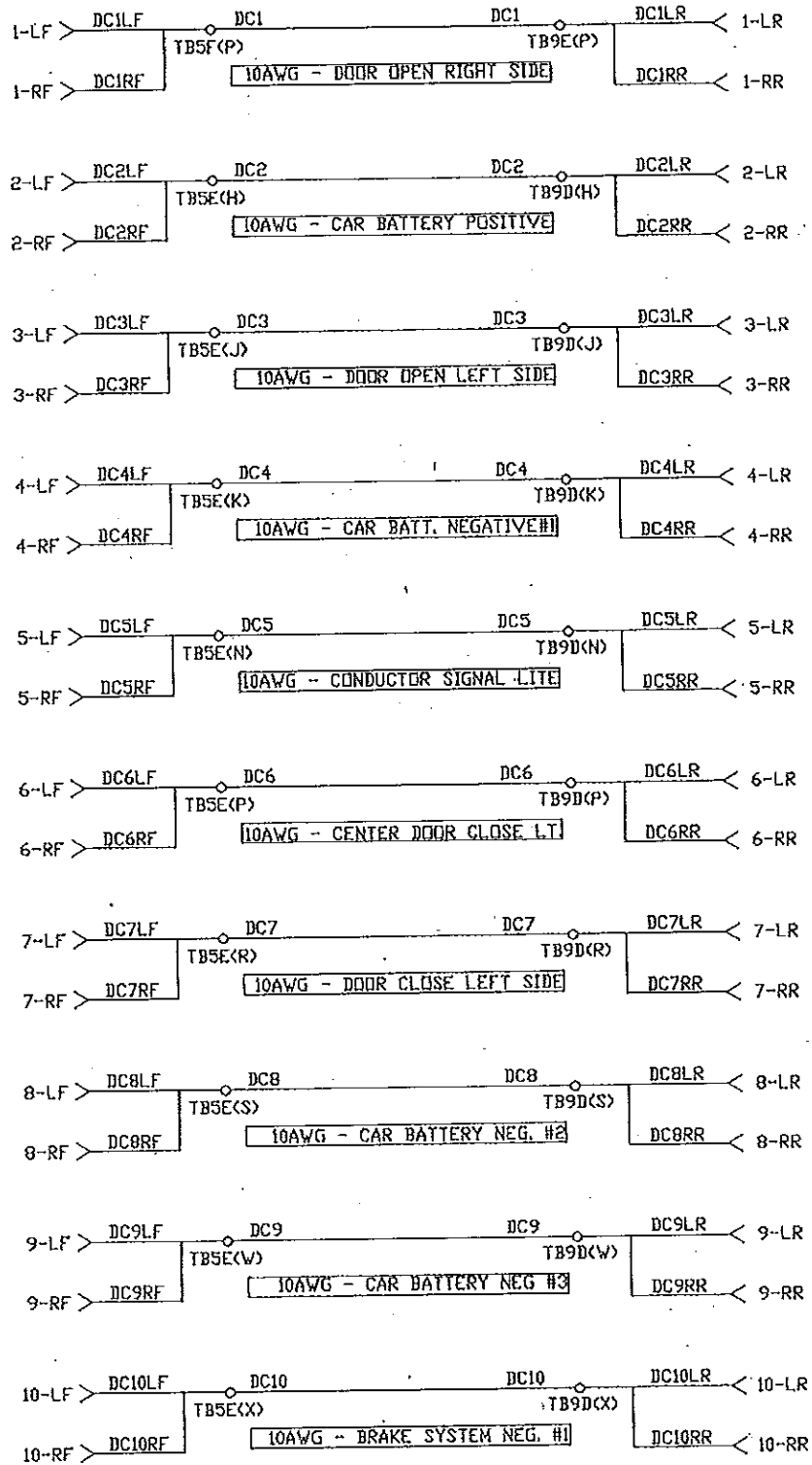
DATE: _____

Digitally signed by Marci Petterson
DN: C=US,
E=marci.petterso@ct.gov,
OU=Office of Rail, O=ConnDOT,
CN=Marci Petterson
Date: 2016.07.19 16:29:16-04'00'

27 PIN NEW JERSEY TRANSIT PAGE(1)

FRONT

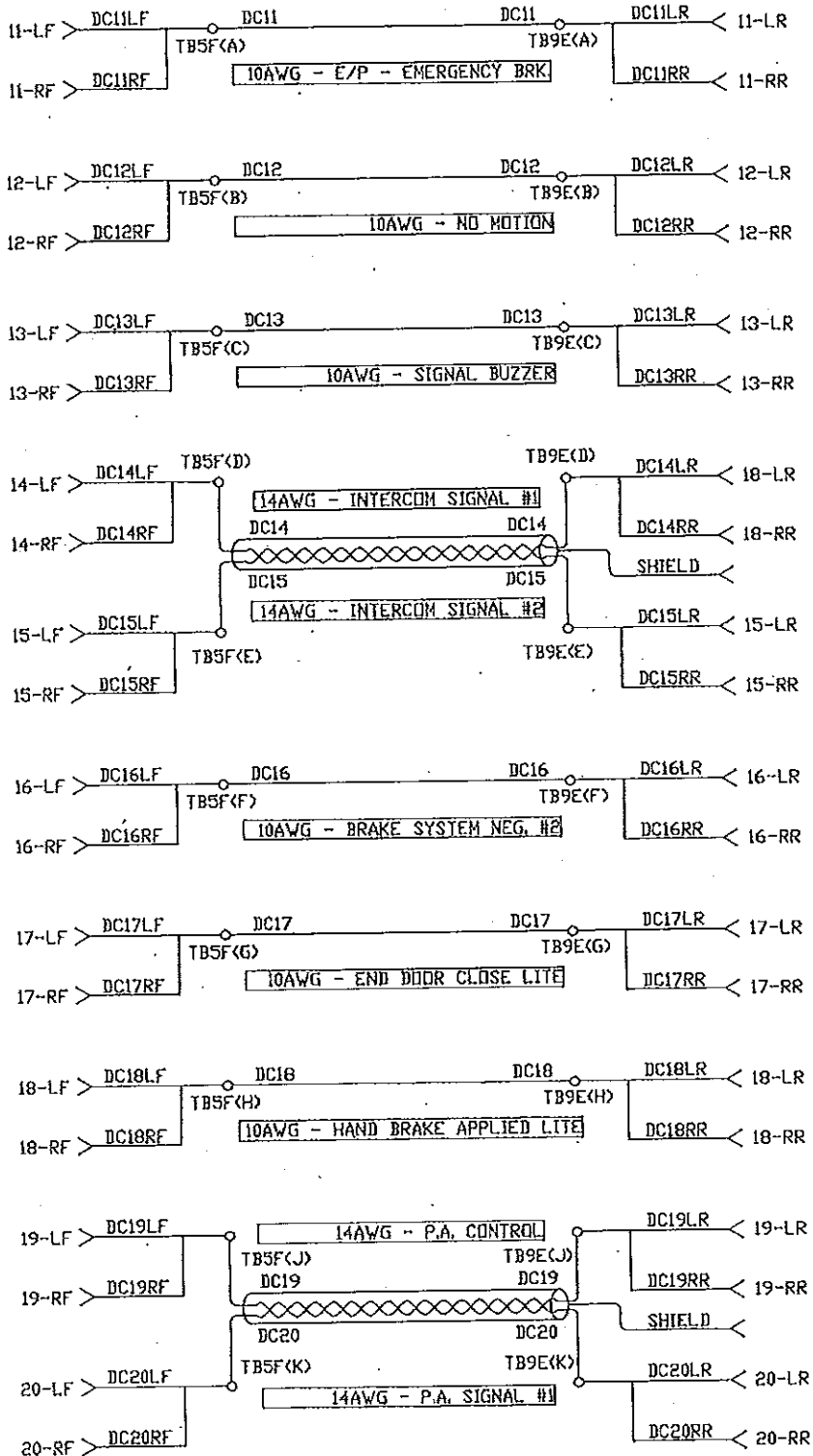
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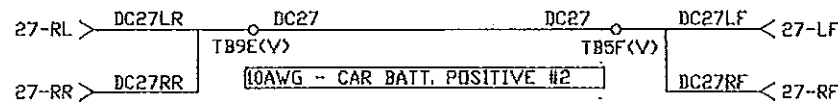
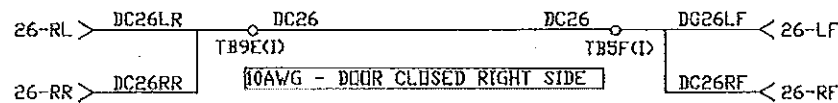
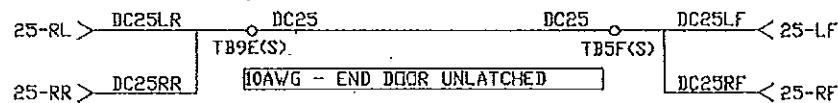
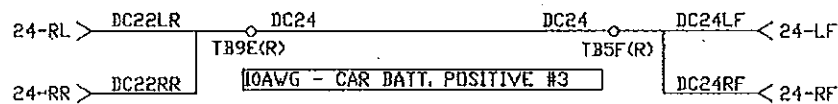
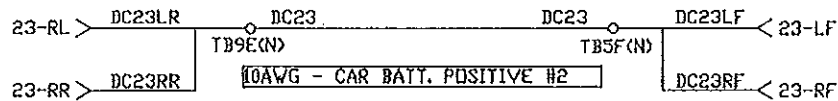
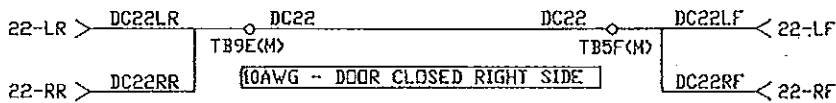
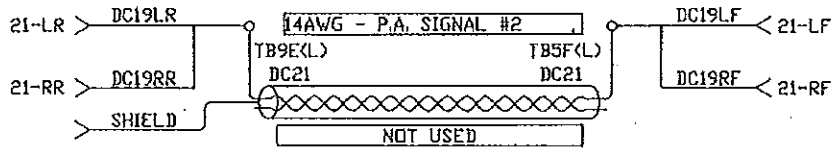
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FRONT

REAR



27 PIN NEW JERSEY TRANSIT PAGE(3)



NOTE: 1) #10 EXAN WIRE 600 VOLT INSULATION.
 2) ALL SHIELDS WILL BE CONNECTED TO EACH OTHER, BUT NOT TO THE CARBODY.

REAR

FRONT

Form DOT-6
{Rev. - 9/ 15}

CONNECTICUT DEPARTMENT OF TRANSPORTATION
RFP REQUEST FOR APPROVAL, EXCEPTION, OR CLARIFICATION

RFP No.: 16DOT7001

Project Description:
Overhaul of P40 Locomotives for the Connecticut Department of Transportation (CTDOT).

SPECIFICATION SECTION: 5.2.3.F

SPECIFICATION PAGE NUMBER: 5-5

PROPOSER'S REQUEST: Can CTDOT supply a copy of the GE FMI?

CTDOT's RESPONSE:

A. APPROVED:

B. APPROVED AS MODIFIED:

C. DENIED:

D. ADDITIONAL INFORMATION REQUIRED:

CTDOT's COMMENTS (if applicable): After further investigation, a GE FMI for this modification does not exist. Therefore Section 5.2.3 F is deleted.

SIGNATURE: _____

DATE: _____

Marci Petterson

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CONNECTICUT DEPARTMENT OF TRANSPORTATION
RFP REQUEST FOR APPROVAL, EXCEPTION, OR CLARIFICATION

RFP No.: 16DOT7001

Project Description:
Overhaul of P40 Locomotives for the Connecticut Department of Transportation (CTDOT)

SPECIFICATION SECTION: RFP Instructions to Proposers, Sections 1 & 4

SPECIFICATION PAGE NUMBER: Page 22 & 23 of 72

PROPOSER'S REQUEST: Section 1, Proposal Schedule, references 2 rounds of Q&A. Section 4, Questions, states only 1 round of Q&A will take place. Please clarify which section is correct.

CTDOT's RESPONSE:

A. APPROVED:

B. APPROVED AS MODIFIED:

C. DENIED:

D. ADDITIONAL INFORMATION REQUIRED:

CTDOT's COMMENTS (if applicable):

The proposal schedule is correct. There are two rounds of questions and answers scheduled for this RFP.

SIGNATURE: _____

Marci Petterson

DATE: _____

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Petterson
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CONNECTICUT DEPARTMENT OF TRANSPORTATION RFP REQUEST FOR APPROVAL, EXCEPTION, OR CLARIFICATION

RFP No.: 16DOT7001

Project Description:

Overhaul of GP40 Locomotives for the Connecticut Department of Transportation (CTDOT)

SPECIFICATION SECTION: Definitions
SPECIFICATION PAGE NUMBER: 10/72 (PDF Page 58)

This section includes the following definition of Contractor: "The successful Proposer who is awarded a Contract for the overhaul of Locomotives as described in the agreed upon Technical Specifications. The Contractor will also be referred to as the Prime Contractor. Such Contractor shall be responsible for meeting the requirement that a minimum of fifty (50%) percent of the total labor be performed by the Contractor's employees. The Contractor/Prime Contractor is the Company or Corporation listed on the Contract Award." We have an affiliated company (i.e., same parent company,

PROPOSER'S REQUEST: similar name, but a different legal entity), located in Mexico, that has significant familiarity in overhauling GE locomotives and systems. We feel that it will offer the best work product for this affiliated company to perform more than 50% of the work for CTDOT, due to its familiarity with the products. This affiliate has performed work for U.S. customers in the past and we are comfortable working with them, but their location makes them a different legal entity than us, which would separate them from "Contractor" under the definition provided in the RFP. Would CTDOT be willing to include affiliated companies within the definition of "Contractor" by adjusting this definition as follows? "CONTRACTOR. The successful Proposer who is awarded a Contract for the overhaul of Locomotives as described in the agreed upon Technical Specifications. The Contractor will also be referred to as the Prime Contractor. Such Contractor shall be responsible for meeting the requirement that a minimum of fifty (50%) percent of the total labor be performed by the employees of Contractor or any of its affiliates. The Contractor/Prime Contractor is the Company or Corporation listed on the Contract Award." We, of course, are open to other suggestions to enable our affiliate to perform a significant portion of the labor. Contractor, as already specified in the RFP and in the contract, will be fully responsible for the work of all employees, including employees of its affiliates."

ConnDOT's RESPONSE:

A. APPROVED: X

B. APPROVED AS MODIFIED:

C. DENIED: _____

D. ADDITIONAL INFORMATION REQUIRED:

ConnDOT's COMMENTS (if applicable):

SIGNATURE: _____

Marci Petterson

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DN: C=US,
E=marci.petterson@ct.gov,
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(Rev. - 9/15)

CONNECTICUT DEPARTMENT OF TRANSPORTATION
RFP REQUEST FOR APPROVAL, EXCEPTION, OR CLARIFICATIONS

RFP No.: 16DOT7001

Project Description:

Overhaul of P40 Locomotives for the Connecticut Department of Transportation (CTDOT)

SPECIFICATION SECTION: A20(E)-Contract Term & Liquidated Damages

SPECIFICATION PAGE NUMBER: 47 of 72

PROPOSER'S REQUEST: Would CDOT consider reducing the cap on liquidated damages from ten percent (10%) to five percent (5%)?

CTDOT's RESPONSE:

A. APPROVED: _____

B. APPROVED AS MODIFIED:

C. DENIED: X

D. ADDITIONAL INFORMATION REQUIRED:

CTDOT's COMMENTS (if applicable):

SIGNATURE: _____

DATE: _____

Marci Petterson

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CONNECTICUT DEPARTMENT OF TRANSPORTATION
RFP REQUEST FOR APPROVAL, EXCEPTION, OR CLARIFICATIONS

RFP No.: 16DOT7001

Project Description:

Overhaul of P40 Locomotives for the Connecticut Department of Transportation (CTDOT)

SPECIFICATION SECTION: A23. Abandonment or Default by Contractor

SPECIFICATION PAGE NUMBER: 49 of 72

PROPOSER'S REQUEST: In subsection A.3, will CTDOT consider changing ten (10) days to sixty (60) days?

CTDOT's RESPONSE:

A. APPROVED:

B. APPROVED AS MODIFIED: The cure period will be 45 days.

C. DENIED:

D. ADDITIONAL INFORMATION REQUIRED:

CTDOT's COMMENTS (if applicable):

SIGNATURE: _____

DATE _____

Marci Petterson

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CONNECTICUT DEPARTMENT OF TRANSPORTATION
RFP REQUEST FOR APPROVAL, EXCEPTION, OR CLARIFICATIONS

RFP No.: 16DOT7001

Project Description:
Overhaul of P40 Locomotives for the Connecticut Department of Transportation (CTDOT)

SPECIFICATION SECTION: Sample Contract Section 1. Definitions

SPECIFICATION PAGE NUMBER: 4 of 32

PROPOSER'S REQUEST: Will CTDOT agree to revise Section (k) Force Majeure as follows:

Section (k) "Force Majeure means events that materially affect the cost of the Goods or Services or the time schedule within which to Perform and are outside the reasonable control of the party asserting that such event has occurred, including, but not limited to: labor disputes or strikes, transportation shortages or delays, material shortages or delays, failure of or inadequate permanent power, fire, extraordinary weather conditions, disasters, riots, epidemics, acts of God, terrorism, insurrection, or war (declared or undeclared)."

CTDOT's RESPONSE:

A. APPROVED:

B. APPROVED AS MODIFIED:

C. DENIED:

D. ADDITIONAL INFORMATION REQUIRED:

CTDOT's COMMENTS (if applicable):

CTDOT is not inclined to change this section, but is open to further discussion during negotiations with the successful proposer.

SIGNATURE: _____

DATE _____

Marci Petterson

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Form DOT-6

Form DOT-6

(Rev. -9/15)

CONNECTICUT DEPARTMENT OF TRANSPORTATION
RFP REQUEST FOR APPROVAL, EXCEPTION, OR CLARIFICATIONS

RFP No.: 16DOT7001

Project Description:

Overhaul of P40 Locomotives for the Connecticut Department of Transportation (CTDOT)

SPECIFICATION SECTION: Sample Contract Section 3. Term; Effective Date and Section A20 Contract Time and Liquidated Damages

SPECIFICATION PAGE NUMBER: 5 of 32 and 46 of 72

PROPOSER'S REQUEST: Proposer requests clarification of an apparent conflict between Sample Contract Section 2. Term; Effective Date which states:

"2. Term of Contract; Effective Date. The Contract will be in effect for five (5) years from the date of execution of this contract."; and

Section A20 Contract Time and Liquidated Damages which states:

"A20. Contract Time and Liquidated Damages
One Thousand One Hundred (1100) calendar days from the NTP will be allowed for completion of work on this project."

CTDOT'S RESPONSE:

A. APPROVED:

B. APPROVED AS MODIFIED:

C. DENIED:

D. ADDITIONAL INFORMATION REQUIRED:

CTDOT'S COMMENTS (if applicable):

During the 5 year contract term; CTDOT may, at its option, add additional, similar type locomotives for overhaul. Work scope, schedule and cost negotiations would be handled as part of a change order process in such a case.

SIGNATURE: _____

DATE _____

Marci Petterson

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CN=Marci Petterson
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(Rev. -9/15)

CONNECTICUT DEPARTMENT OF TRANSPORTATION
RFP REQUEST FOR APPROVAL, EXCEPTION, OR CLARIFICATIONS

RFP No.: 16DOT7001

Project Description:
Overhaul of P40 Locomotives for the Connecticut Department of Transportation (CTDOT)

SPECIFICATION SECTION: Sample Contract Section 4, Price Schedule, Payment Terms and Billing

SPECIFICATION PAGE NUMBER: 5 of 32

PROPOSER'S REQUEST:

Will CTDOT agree to replace the second sentence of Subsection 4(a) with the following sentence?

"Payment for all Goods or Services shall be due within sixty (60) days of the date that Agency receives the invoice for such Goods or Services."

Will CDOT agree to replace the last sentence of Subsection 4(a) with the following sentence?

"In the event that the Agency fails to pay any amounts when due under this Contract, the Agency will incur a late payment fee equal to 1.5% of the outstanding balance for each month (or portion thereof) that such balance remains outstanding."

CTDOT'S RESPONSE:

A. APPROVED:

B. APPROVED AS MODIFIED:

C. DENIED: X

D. ADDITIONAL INFORMATION REQUIRED:

CTDOT'S COMMENTS (if applicable): Late payment charges are per CT State Statutes

SIGNATURE: _____

DATE _____

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(Rev. -9/15)

CONNECTICUT DEPARTMENT OF TRANSPORTATION
RFP REQUEST FOR APPROVAL, EXCEPTION, OR CLARIFICATIONS

RFP No.: 16DOT7001

Project Description:
Overhaul of P40 Locomotives for the Connecticut Department of Transportation (CTDOT)

SPECIFICATION SECTION: Sample Contract Section 8, Termination

SPECIFICATION PAGE NUMBER: 7 of 32

PROPOSER'S REQUEST: Would CDOT consider providing at least sixty (60) days' notice to Contractor of a termination under subsection (a)? Denied

Please clarify under what circumstances the Contractor would have the right of termination. Would CDOT consider adding the following provision to Section 8 to provide the Contractor with a right of termination for convenience? "Contractor may terminate this Agreement for Contractor's convenience at any time by giving the State a minimum of [TBD-to be consistent with the time frame for CDOT to give notice to the Contractor of a termination for convenience] days' written notice of Contractor's election to terminate." Denied

Would CDOT consider adding the following provision to Section 8 to provide Contractor with a right of termination under limited circumstances? "Contractor may terminate this Agreement upon written notice to the State if the State fails to timely make two or more payments under this Agreement, or if the State fails to cure or commence cure of any other breach of this Agreement within sixty days' notice of such breach."

(g) Proposer requests deletion of the second sentence of (g).

Denied

CTDOT is open to discuss specifics in negotiations with the successful proposer. This section would need to include a clause covering payments being withheld due to Contractor's failure to perform under the Contract.

CTDOT's RESPONSE:

A. APPROVED:

B. APPROVED AS MODIFIED:

C. DENIED:

D. ADDITIONAL INFORMATION REQUIRED:

Marci Petterson

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(Rev. - 9/ 15)

CONNECTICUT DEPARTMENT OF TRANSPORTATION
RFP REQUEST FOR APPROVAL, EXCEPTION, OR CLARIFICATIONS

RFP No.: 16DOT7001

Project Description:
Overhaul of P40 Locomotives for the Connecticut Department of Transportation (CTDOT)

SPECIFICATION SECTION: Sample Contract Section 10. Breach

SPECIFICATION PAGE NUMBER: 8 of 32

PROPOSER'S REQUEST: We request a longer cure period and propose the cure period be at least 60 days.

CTDOT's RESPONSE:

A. APPROVED:

B. APPROVED AS MODIFIED:

C. DENIED:

D. ADDITIONAL INFORMATION REQUIRED:

CTDOT's COMMENTS (if applicable):

SIGNATURE: _____

DATE _____

Marci Petterson

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CONNECTICUT DEPARTMENT OF TRANSPORTATION
RFP REQUEST FOR APPROVAL, EXCEPTION, OR CLARIFICATIONS

RFP No.: 16DOT7001

Project Description:
Overhaul of P40 Locomotives for the Connecticut Department of Transportation (CTDOT)

SPECIFICATION SECTION: Sample Contract Section 11. Waiver

SPECIFICATION PAGE NUMBER: 9 of 32

PROPOSER'S REQUEST: We request that Section 11(b) be replaced with the following:

"No waiver by either party shall be effective unless in writing and signed by the waiving party, and no failure on the part of either party to exercise, and no delay in exercising, any right, power or remedy under this Contract shall operate as a waiver thereof."

CTDOT's RESPONSE:

A. APPROVED:

B. APPROVED AS MODIFIED:

C. DENIED: X

D. ADDITIONAL INFORMATION REQUIRED:

CTDOT's COMMENTS (if applicable):

SIGNATURE: _____

DATE: _____

Marci Petterson

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(Rev. -9/ 15)

CONNECTICUT DEPARTMENT OF TRANSPORTATION
RFP REQUEST FOR APPROVAL, EXCEPTION, OR CLARIFICATIONS

RFP No.: 16DOT7001

Project Description:
Overhaul of P40 Locomotives for the Connecticut Department of Transportation (CTDOT)

SPECIFICATION SECTION: Sample Contract Section 13. Indemnification

SPECIFICATION PAGE NUMBER: 9 of 32

PROPOSER'S REQUEST: We request the following clarifications and revisions to the Indemnification provision.

(a) We request that this provision be replaced with the following:

“(a) The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all liabilities, damages, losses, costs and expenses, including but not limited to, attorneys’ and other professional fees, to the extent caused by the negligence or willful misconduct of the Contractor and its employees and subcontractors or by the Contractor’s breach of any terms or conditions of the Contract. Notwithstanding the foregoing, the Contractor shall not have any obligations or liability under this Section 13 or any other provision of this Contract for any intellectual property or other infringement or similar claim to the extent that:

1. the infringing item of Goods (or part thereof) was designed in accordance with the State’s technical specifications; or
2. the claim arises from the State’s use of any Goods (or part thereof) or Services furnished under this Contract in combination with any other non-Contractor materials or processes, where the use of the Contractor-furnished Goods (or part thereof) or Services alone, without such combination, would not have caused the infringement; or
3. the claim arises from a modification to any Goods (or part thereof) or Services furnished under this Contract, where such modification was made by the State (or any person or entity acting on the State’s behalf or at the State’s direction); or
4. the State failed to implement any update or modification provided by the Contractor that would have precluded the claim.”

(b) We request that this provision be revised as follows:

"Notwithstanding the terms of this Section 13 or any other provision of this Contract to the contrary, the Contractor shall not be responsible for indemnifying or holding the State harmless from any liability to the extent that such liability is caused by the negligence or willful misconduct of the State or any other person or entity acting under the direct control or supervision of the State."

(c) We request that this provision be revised as follows:

"The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the negligence or willful misconduct of the Contractor or its employees or subcontractors."

(e) We request deletion of the last sentence which currently reads:

"The Department shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Department or the State is contributorily negligent."

(g) We request prompt notice for all claims for indemnification and reasonable assistance. We propose adding the following new subsection (i):

"The State shall provide the Contractor with prompt written notice of any claim for indemnification, together with copies of all related court documents and other documents related to such claim. The Contractor shall have sole discretion to settle or otherwise resolve any such claim; provided, however, that any settlement requiring the State to incur a non-monetary obligation shall require the State's prior written consent, which shall not be unreasonably withheld. The Contractor shall pay the monetary amount of any settlement."

CTDOT's RESPONSE:

A. APPROVED:

B. APPROVED AS MODIFIED:

C. DENIED:

D. ADDITIONAL INFORMATION REQUIRED:

Attached is a modified draft Contract with this verbiage modified to the extent CTDOT will approve. However, Proposers are hereby informed that this Contract and any changes thereto are subject to the approval of the CT Attorney General's Office.

Marci Petterson

Digitally signed by Marci Petterson
DN: C=US, E=marci.petterson@ct.gov,
OU=Office of Rail, O=ConnDOT,
CN=Marci Petterson
Date: 2016.07.19 16:49:11-04'00'

(ATTACHMENT 1)
AGREEMENT

Between

THE STATE OF CONNECTICUT

Acting by its

DEPARTMENT OF TRANSPORTATION

AND

OVERHAUL OF GP40 LOCOMOTIVES
FOR
THE CONNECTICUT DEPARTMENT OF TRANSPORTATION (CTDOT)

Agreement Award Date _____, 2016

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- EXHIBIT A - Description of Goods & Services and Additional Terms and Conditions**
EXHIBIT A.1 - Technical Specifications
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This agreement (the "Agreement") is made as of the Effective Date by and between _____ (the "Contractor"), with a principal place of business at _____, acting by _____, its _____, and the State of Connecticut, Department of Transportation (the "Department"), with a principal place of business at 2800 Berlin Turnpike, Newington, Connecticut, acting by Richard Andreski, its Bureau Chief, Bureau of Public Transportation, in accordance with § 13b-34 of the Connecticut General Statutes.

WHEREAS, the Department is the owner of six (6) locomotives;

WHEREAS, such locomotives need to be overhauled; and

WHEREAS, the Contractor desires to perform the overhaul services and the Department wishes to engage the Contractor to overhaul such locomotives.

Now therefore, in consideration of these presents, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the Contractor and the Department agree as follows:

1. Definitions. Unless otherwise indicated, the following terms shall have the following corresponding definitions:

(a) **Acts** is defined in section 15(a) of this Agreement.

(b) **Agents** is defined in section 5(a)(5) of this Agreement.

(c) **Agreement** is defined in the opening paragraph.

(d) **Day(s)** means calendar days, unless otherwise designated.

(e) **Claims** means all actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.

(f) **Contractor** is defined in the first paragraph.

(h) **Contractor Parties:** A Contractor's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity of oral or written contract and the Contractor intends for such other person or entity to Perform under the Contract in any capacity. Contractor Parties does not include vendors and suppliers of goods, materials or supplies.

(i) **Contractor Property** is defined in section 5 of this Agreement.

(j) **Effective Date** means the date that this Agreement has been executed by the parties and approved by the Connecticut Office of the Attorney General.

(k) **Force Majeure** means events that materially affect the performance of any of the terms, covenants or conditions of this Agreement, or the Goods or Services, due to causes beyond the control of the party asserting that such an event has occurred, including, without limitation, strikes; boycotts; labor troubles or disputes; embargoes; shortage of materials; extraordinary weather conditions; riots; rebellion; sabotages; acts of God, acts of the public enemy; floods,

insurrection or war; or any other circumstances for which such party is not responsible or which is not in its power to control.

(l) **Items** is defined in section 5(a).

(m) **Perform and Performance** mean to perform as set forth in Exhibit A.

(n) **Price Schedule** means the schedule set forth in Exhibit B.

(o) **Records** means all working papers and such other information and materials as may have been accumulated by the Contractor in performing the Agreement, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries and correspondence, kept or stored in any form.

(p) **Rejected Items** is defined in section 5 of this Agreement.

(q) **Services** means the performance of labor or work, as specified in in this Agreement.

(s) **Solicitation** means the Request for Proposal (RFP) issued by the Department pursuant to § 13b-34 of the Connecticut General Statutes for the overhaul of locomotives.

(r) **State** means the State of Connecticut, including the Department and any office, department, board, council, commission, institution or other agency of the State.

(s) **Termination** means an end to the Agreement prior to the end of its term (or extension term) whether effected pursuant to a right which the Agreement creates or for a breach.

(t) **Title** is defined in section 5(a)(1) of this Agreement.

2. Term of Contract. The Agreement will be in effect from the Effective Date through five (5) years from the Effective Date. The Department, in its sole discretion, may extend this Agreement for additional terms beyond the original term, prior to Termination or expiration of this Agreement.

3. Description of Services and Additional Terms and Conditions. The Contractor shall perform as set forth in Exhibit A and Exhibit A.1 to this Agreement.

4. Price Schedule, Payment Terms and Billing.

(a) Payment terms under this Agreement are set forth in Exhibit B. Payment shall be made only after the Department receives and accepts Contractor's Performance as required by this Agreement and after it receives a properly completed invoice. Any late payment charges shall be calculated in accordance with § 4a-17 of the Connecticut General Statutes.

(b) **Price Adjustment:** In the event the Department elects to add additional locomotives to this Agreement, the parties shall develop, subject to final approval by the Department, a new price schedule and delivery schedule for such additional locomotives and will amend this Agreement (including Exhibits A and B) accordingly.

(c) If the Department objects to any invoice or portion thereof, it shall pay the undisputed amount and provide a written statement to the Contractor as to its objection no later than the date upon which payment is due. Within thirty (30) Days thereafter, the Contractor shall provide the Department with additional documentation to demonstrate the accuracy of the invoice or it will correct the invoice. The objection will be considered resolved unless the Department provides.

additional written objection to be Contractor within thirty (30) Days of receipt of the Contractor's additional documentation or revised invoice.

5. Rejected Items; Abandonment.

- (a) The Contractor may deliver, cause to be delivered, or, in any other way, bring or cause to be brought, to any State premises or other destination supplies, materials, equipment, parts, or other tangible personal property (collectively "Items"). The State may, by written notice and in accordance with the terms and conditions of the Agreement, direct the Contractor to remove any or all such Items ("the "Rejected Items") and any or all other supplies, materials, equipment or other tangible personal property (collectively, the "Contractor Property") from and out of State premises and any other location which the Department or State manages, leases or controls. The Contractor shall remove the Rejected Items and the Contractor Property in accordance with the terms and conditions of the written notice. Failure to remove the Rejected Items or the Contractor Property in accordance with the terms and conditions of the written notice shall mean, for itself and all Contractor Parties, that:
- (1) they have voluntarily, intentionally, unconditionally, unequivocally and absolutely abandoned and left unclaimed the Rejected Items and Contractor Property and relinquished all ownership, title, licenses, rights, possession and interest of, in and to (collectively, "Title") the Rejected Items and Contractor Property with the specific and express intent of (A) terminating all of their Title to the Rejected Items and Contractor Property, (B) vesting Title to the Rejected Items and Contractor Property in the State of Connecticut and (C) not ever reclaiming Title or any future rights of any type in and to the Rejected Items and Contractor Property;
 - (2) there is no ignorance, inadvertence or unawareness to mitigate against the intent to abandon the Rejected Items or Contractor Property;
 - (3) they vest authority, without any further act required on their part or the Department's part, in the Department and the State to use or dispose of the Rejected Items and Contractor Property, in the Department's sole discretion, as if the Rejected Items and Contractor Property were the Department's or State's own property and in accordance with law, without incurring any liability or obligation to the Contractor or any other party;
 - (4) if the Department or State incur any costs or expenses in connection with disposing of the Rejected Items and Contractor Property, including, but not limited to, advertising, moving or storing the Rejected Items and Contractor Property, auction and other activities, the Department shall invoice the Contractor for all such cost and expenses and the Contractor shall reimburse the State no later than thirty (30) Days after the date of invoice, and the Contractor shall pay such amount to the Department within sixty (60) Days; and
 - (5) they do remise, release and forever discharge the Department, the State, and all State employees, departments, commissions, boards, bureaus, agencies, instrumentalities or political subdivisions and their respective successors, heirs, executors and assigns (collectively "Agents") of and from all Claims which they and their respective successors or assigns, jointly or severally, ever had, now have or will have against the Department, the State, and the State Agents arising from the use or disposition of the Rejected items and Contractor Property.
- (b) The Contractor shall secure from each Contractor Party, as appropriate, such document or instrument as necessary or appropriate as will vest in the Contractor plenary authority to bind the Contractor Parties to the full extent necessary or appropriate to give full effect to all of the terms and conditions of this section. The Contractor shall provide, no later than fifteen (15) days after receiving a request from the Department, such information as the Department may require to evidence, in the Department's sole determination, compliance with this section.

(c) This section 5 shall survive the expiration or Termination of this Agreement.

6. Contract Amendments. No amendment to or modification or other alteration of the Agreement shall be valid or binding upon the parties unless made in writing, signed by both parties and, if applicable, approved by the Connecticut Attorney General.

7. Assignment. The Contractor shall not assign any of its rights or obligations under the Agreement, voluntarily or otherwise, in any manner without the prior written consent of the Department, which consent shall not be unreasonably withheld. The Department may void any purported assignment in violation of this section and declare the Contractor in breach of the Agreement. Any Termination by the Department for a breach is without prejudice to the Department's or the State's rights or possible Claims.

8. Termination.

- (a) Notwithstanding any provisions in this Agreement, the Department, through a duly authorized employee, may Terminate the Agreement whenever the Department makes a written determination that such Termination is in the best interests of the State. The Department shall notify the Contractor in writing of Termination pursuant to this section, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance under the Agreement prior to such date.
- (b) Notwithstanding any provisions in this Agreement, the Department, through a duly authorized employee, may, after making a written determination that the Contractor has breached the Agreement, Terminate the Agreement in accordance with the provisions in the Breach section of this Agreement.
- (c) The Department shall send the notice of Termination via certified mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to the Department for purposes of correspondence, or by hand delivery. Upon receiving the notice from the Department, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to the Department all Records. The Records are deemed to be the property of the Department and the Contractor shall deliver them to the Department no later than thirty (30) days after the Termination of the Contract or fifteen (15) days after the Contractor receives a written request from the Department for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.
- (d) Upon receipt of a written notice of Termination from the Department, the Contractor shall conclude and cease Performance as the Department directs in the notice, and take all actions that are necessary or appropriate, or that the Department may reasonably direct, for the protection, and preservation of the Items and any other property. Except for any work which the Department directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.
- (e) The Department shall, within forty-five (45) Days of the effective date of Termination, reimburse the Contractor for its Performance rendered and accepted by the Department in accordance with Exhibit A, in addition to all actual and reasonable costs incurred after Termination in completing those portions of the Performance which the notice required the Contractor to complete. However,

the Contractor is not entitled to receive and the Department is not obligated to tender to the Contractor any payments for anticipated or lost profits. Upon request by the Department, the Contractor shall assign to the Department, or any replacement contractor which the Department designates, all subcontracts, purchase orders and other commitments, deliver to the Department all Records and other information pertaining to its Performance, and remove from State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as the Department may request.

- (f) For breach or violation of any of the provisions in the section concerning Representations and Warranties, the Department may Terminate the Agreement in accordance with its terms and revoke any consents to assignments given as if the assignments had never been requested or consented to, without liability to the Contractor or Contractor Parties or any third party.
- (g) Upon Termination of the Agreement, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which survive Termination. All representations, warranties, agreements and rights of the parties under the Agreement shall survive such Termination to the extent not otherwise limited in the Agreement and without each one of them having to be specifically mentioned in the Agreement.
- (h) Termination of the Agreement pursuant to this section shall not be deemed to be a breach of contract by the Department.

9. Cost Modifications.

- (a) The Department reserves the right to reduce the number of locomotives to be overhauled in accordance with the Agreement. Should the Department make such determination, the Contractor will be entitled to actual costs incurred relative to its Performance.
- (b) The Department reserves the right to increase the number of locomotives to be overhauled in accordance with the Agreement. Should the Department make such determination, the cost modification will be calculated in accordance with section 4(b).

10. Breach.

- (a) If either party breaches the Agreement in any material respect, the non-breaching party shall provide written notice, including a description, of such breach to the breaching party and afford the breaching party an opportunity to cure the breach within forty-five (45) Days from the date that the breaching party receives such notice, or such longer period as may be set forth in such notice. Such right to cure period shall be extended if the non-breaching party is satisfied that the breaching party is making a good faith effort to cure but the nature of the breach is such that it cannot be cured within the right to cure period.
- (b) The notice may include an effective Agreement Termination date if the breach is not cured by the stated date and, unless otherwise modified by the non-breaching party in writing prior to the Termination date, no further action shall be required of any party to effect the Termination as of the stated date. If the notice does not set forth an effective Agreement Termination date, then after the conclusion of the cure period, the non-breaching party may Terminate the Agreement by giving the breaching party no less than twenty four (24) hours' prior written notice.
- (c) The Department may withhold payment in whole or in part pending resolution of the Contractor breach, provided that the Department notifies the Contractor in writing prior to the date that the payment would have been due.

11. Waiver.

- (a) No waiver of any breach of the Agreement shall be interpreted or deemed to be a waiver of any other or subsequent breach. All remedies afforded in the Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided in the Agreement or at law or in equity.
- (b) A party's failure to insist on strict performance of any provision of the Agreement shall only be deemed to be a waiver of rights and remedies concerning that specific instance of Performance and shall not be deemed to be a waiver of any subsequent rights, remedies or breach.

12. Purchase Orders.

- (a) The Agreement, itself, is not an authorization for the Contractor to begin Performance in any way. The Contractor may begin Performance only after it has received a duly issued purchase order against the Agreement for Performance.
- (b) The Department shall issue a purchase order against the Agreement directly to the Contractor.
- (c) All purchase orders shall be in written or electronic form, bear the Agreement number (if any) and comply with all other State and Department requirements, particularly the Department's requirements concerning procurement. Purchase orders issued in compliance with such requirements shall be deemed to be duly issued.
- (d) A Contractor making delivery without a duly issued purchase order in accordance with this section does so at the Contractor's own risk.
- (e) The Department may, in its sole discretion, deliver to the Contractor any or all duly issued purchase orders via electronic means only, such that the Department shall not have any additional obligation to deliver to the Contractor a "hard copy" of the purchase order or a copy bearing any hand-written signature or other "original" marking.

13. Indemnification.

- (a) The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Agreement, including the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including, but not limited to, attorneys' fees and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Agreement. The Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes, but is not limited to, Claims concerning confidentiality of any part of or all of the Contractor's proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.
- (b) Notwithstanding subsection (a) of this section:

~~(1)~~ the Contractor shall not be responsible for indemnifying, defending or holding the State harmless from any liability arising due to the negligence of the State or any other person or entity acting under the direct control or supervision of the State; and

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(2) the Contractor shall not have any obligations or liability under this Section 13 or any other provision of this Contract for any intellectual property or other infringement or similar claim to the extent that:

(i) the infringing item of Goods (or part thereof) was designed in accordance with the State's technical specifications;

(iii) the claim arises from a modification to any Goods (or part thereof) or Services furnished under this Contract, where such modification was made by the State (or any person or entity acting on the State's behalf or at the State's direction, other than the Contractor or Contractor Parties; or

(b) (iv) the State failed to implement any update or modification provided by the Contractor that would have precluded the claim.

(c) The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any Contractor Parties. The State shall give the Contractor reasonable notice of any such damages.

(d) The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Agreement, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.

(e) The Contractor shall carry and maintain at all times during the term of the Agreement, and during the time that any provisions survive the term of the Agreement, sufficient general liability insurance to satisfy its obligations under this Agreement. The Contractor shall cause the State to be named as an additional insured on the policy and shall provide (1) a certificate of insurance, (2) the declaration page and (3) the additional insured endorsement to the policy to the Department prior to the Effective Date of the Agreement evidencing that the State is an additional insured. The Contractor shall not begin Performance until the delivery of these three (3) documents to the Department. The Department shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Department or the State is contributorily negligent.

(f) This section shall survive the Termination of the Agreement and shall not be limited by reason of any insurance coverage.

(g) The Contractor's obligations under this section shall terminate after the Department has finally accepted all locomotives and all warranty issues have been resolved to the satisfaction of the Department.

(h) The Contractor shall not settle or otherwise resolve any Claim that places an obligation on the State without the prior written consent of the Department.

(g) The State shall provide the Contractor with written notice of any claim for indemnification, together with copies of related court documents, if any are in its possession.

14. Forum and Choice of Law. The parties deem the Agreement to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and

construction of the Agreement to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing herein constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

15. Contractor Guaranties. The Contractor shall:

- (a) Perform fully under the Agreement;
- (b) Guarantee each of the overhauled locomotives against defective material or workmanship;
- (c) Furnish adequate protection from damage for all work and to repair damage of any kind, for which its workers are responsible, to the premises, Items, the Contractor's work or that of Contractor Parties;
- (d) With respect to the provision of Services, pay for all applicable permits, licenses and fees and give all required or appropriate notices;
- (e) Adhere to all provisions in this Agreement ensuring the confidentiality of Records that the Contractor has access to and are exempt from disclosure under the State's Freedom of Information Act or other applicable law; and
- (f) Neither disclaim, exclude nor modify the implied warranties of fitness for a particular purpose or of merchantability.

16. Implied Warranties. The Department does not disclaim, exclude or modify the implied warranty of fitness for a particular purpose or the warranty of merchantability.

17. Items, Standards and Appurtenances. Any Items delivered must be standard new Items, latest model, except as otherwise specifically stated in the Agreement. Remanufactured, refurbished or reconditioned equipment may be accepted if agreed to in writing by the Department. Where the Agreement does not specifically list or describe any parts or nominal appurtenances of equipment for the Items, it shall be understood that the Contractor shall deliver such equipment and appurtenances as are usually provided with the manufacturer's stock model.

18. Delivery.

- (a) Delivery of the locomotives shall be made in accordance with Exhibit A.
- (b) While the locomotive is in the care, custody and control of the Contractor, the Contractor is responsible for any property damage to the locomotive. All risk of loss and damage to the overhauled locomotives transfers to the Department upon conditional acceptance unless such loss or damage was caused by a failure of the Contractor.

19. Inspection and Shipping.

- (a) The Contractor understands and agrees that no overhauled locomotive shall be shipped to the Department prior to the Department or its representative inspecting the locomotive and

determining that each such locomotive is ready to be shipped. Such determination by the Department shall not be deemed as acceptance of the locomotive or approval of the quality or sufficiency of the Contractor's Performance. Nor shall such determination make the Department responsible in any way for the quality or sufficiency thereof or constitute a waiver of any warranties or guaranties or release the Contractor from any liability.

- (b) Following a determination by the Department that a locomotive is ready to ship, the Contractor shall notify the Department of the date that each overhauled locomotive will be shipped to the Department. Such notification shall be provided in writing at least five (5) Working Days prior to each such shipping.

20. Force Majeure. The Department and the Contractor shall not be excused from their obligation to Perform in accordance with the Agreement except in the case of Force Majeure events and as otherwise provided for in the Agreement. In the case of any such exception, the nonperforming party shall give immediate written notice to the other, explaining the cause and probable duration of any such nonperformance.

21. Advertising. The Contractor shall not refer to the Contractor's work under this Agreement for advertising or promotional purposes, including, but not limited to, posting any material or data on the Internet, without the Department's prior written approval.

22. Americans With Disabilities Act. This section applies to those contractors who are or will be responsible for compliance with the terms of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*) ("ADA") during the term of the Agreement. The Contractor represents that it is familiar with the terms of the ADA and understands that failure to comply with the ADA as the same applies to performance under this Agreement, either now or during the term of the Agreement, as it may be amended, will render the Agreement voidable at the option of the Department upon notice to the Contractor. The Contractor warrants that it will hold the State harmless and indemnify the State from any liability which may be imposed upon the State as a result of any failure of the Contractor to be in compliance with the ADA, as the same applies to performance under this Agreement.

23. Representations and Warranties.

(a) The Contractor, represents and warrants to the Department for itself and Contractor Parties, that:

(1) if they are entities, they are duly and validly existing under the laws of their respective states of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by the Agreement. Further, as appropriate, they have taken all necessary action to authorize the execution, delivery and Performance of the Contract and have the power and authority to execute, deliver and Perform their obligations under the Agreement;

(2) they will comply with all applicable State and Federal laws and municipal ordinances in satisfying their obligations to the Department under and pursuant to the Agreement, including, but not limited to (1) Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics and (2) Title 4a concerning State purchasing, including, but not limited to § 22a-194a concerning the use of polystyrene foam;

(3) the execution, delivery and Performance of the Agreement will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or lapse of time) a default under any of the following, as applicable: (1) any provision of law; (2) any order of any court or the State; or (3) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;

- (4) they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity;
- (5) to the best of their knowledge, there are no Claims involving the Contractor or Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Agreement;
- (6) they shall disclose, to the best of their knowledge, to the Department in writing any Claims involving the Contractor or Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Agreement, no later than ten (10) Working Days after becoming aware or after they should have become aware of any such Claims. For purposes of the Contractor's obligation to disclose any Claims to the Department, the ten (10) Working Days in the section of this Agreement concerning Disclosure of Contractor Parties Litigation shall run consecutively with the ten (10) Working Days provided for in this representation and warranty;
- (7) their participation in the response to the Solicitation and the Solicitation process is not a conflict of interest or a breach of ethics under the provisions of Title 1, Chapter 10 of the Connecticut General Statutes concerning the State's Code of Ethics;
- (8) the Contractor's response to the Solicitation was not made in connection or concert with any other person or entity, including any affiliate (as defined in the Tangible Personal Property section of this Agreement) of the Contractor, submitting a bid for the same Items or Services, and is in all respects fair and without collusion or fraud;
- (9) they are able to Perform under the Agreement using their own resources or the resources of a party who is not a Contractor;
- (10) the Contractor shall obtain in a written contract all of the representations and warranties in this section from any Contractor Parties;
- (11) they have paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut;
- (12) they have a record of compliance with Occupational Health and Safety Administration regulations without any unabated, willful or serious violations;
- (13) they owe no past due unemployment compensation contributions;
- (14) they are not delinquent in the payment of any taxes owed, or, that they have filed a sales tax security bond, and they have, if and as applicable, filed for motor carrier road tax stickers and have paid all outstanding road taxes;
- (15) all of their vehicles used in the Performance of the Agreement have current registrations and, unless such vehicles are no longer in service, they shall not allow any such registrations to lapse;
- (16) each Contractor Party has vested in the Contractor plenary authority to bind the Contractor Parties to the full extent necessary or appropriate to ensure full compliance with and Performance in accordance with all of the terms and conditions of the Agreement and that all appropriate parties shall also provide, no later than fifteen (15) Working Days after receiving a

request from the Department, such information as the Department may require to evidence, in the Department's sole determination, compliance with this section;

(17) except to the extent modified or abrogated in the Agreement, all Title to Items installed in the overhauled locomotives shall pass to the Department upon complete installation, testing and acceptance of the locomotives and payment by the Department;

(18) if either party Terminates the Agreement, for any reason, they shall relinquish to the Department all Title to the Items delivered, accepted and paid for (except to the extent any invoiced amount is disputed) by the Department;

(19) with regard to third party products provided with the Items, they shall transfer all licenses which they are permitted to transfer in accordance with the applicable third party license;

(20) they shall not copyright, register, distribute or claim any rights in or to the Items after the Effective Date of the Agreement without the Department's prior written consent;

(21) they either own or have the authority to use all Title of and to the Items, and that such Title is not the subject of any encumbrances, liens or claims of ownership by any third party;

(22) to the best of their knowledge, after conducting due diligence, the Items do not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;

(23) to the best of their knowledge after conducting due diligence, the Department's use of any Items shall not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;

(24) if they procure any Items, to the extent permitted by the licensor, they shall sub-license such Items and the Department shall be afforded the full benefits of any manufacturer or subcontractor licenses for the use of the Items; and

(25) they shall assign or otherwise transfer to the Department, or afford the Department the full benefits of any manufacturer's warranty for the Items, to the extent that such warranties are assignable or otherwise transferable to the Department.

(b) The Contractor represents and warrants to the Department that:

(1) the Contractor's directors and officers, and key personnel who will be Performing under this Agreement, and the entity itself have not, within the three (3) years preceding the Agreement, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them, for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a transaction or contract with any governmental entity. This includes, but is not limited to, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(2) the Contractor's directors and officers, and key personnel who will be Performing under this Agreement, and the entity itself are not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;

(3) it has not within the three (3) years preceding the Agreement Effective Date had one (1) or more contracts with any governmental entity terminated prior to the expiration date of the contract; and

(4) it has not employed or retained any entity or person, other than a bona fide employee working solely for them, to solicit or secure the Agreement and that they have not paid or agreed to pay any entity or person, other than a bona fide employee working solely for them, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of the Agreement or any assignments made in accordance with the terms of the Agreement.

24. Representations and Warranties Concerning Motor Vehicles. If in the course of Performance or in any other way related to the Agreement the Contractor at any time uses or operates in the State "motor vehicles," as that term is defined in § 14-1 of the Connecticut General Statutes the Contractor, represents and warrants for itself and the Contractor Parties, that:

- (a) It is the owner of record or lessee of record of each such motor vehicle used in the Performance of the Agreement, and each such motor vehicle is duly registered with the Connecticut Department of Motor Vehicles ("ConnDMV") in accordance with the provisions of Chapter 246 of the Connecticut General Statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV, for any reason or cause. If such motor vehicle is not registered with ConnDMV, then it shall be duly registered with another state, commonwealth, or federal entity in accordance with such other state's, commonwealth's or federal entity's applicable laws. Each such registration shall be in valid status, and shall not be expired, suspended or revoked for any reason or cause.
- (b) Each such motor vehicle shall be fully insured in accordance with the provisions of §§ 14-12b, 14-112 and 38a-371 of the Connecticut General Statutes, as amended, in the amounts required by the said sections or in such higher amounts as have been specified by ConnDMV as a condition for the award of the Agreement, or in accordance with all substantially similar provisions imposed by the law of the jurisdiction where the motor vehicle is registered.
- (c) Each Contractor Party who uses or operates a motor vehicle at any time in the Performance of the Agreement shall have and maintain a motor vehicle operator's license or commercial driver's license of the appropriate class for the motor vehicle being used or operated. Each such license shall bear the endorsement or endorsements required by the provisions of § 14-36a of the Connecticut General Statutes, as amended, to operate such motor vehicle, or required by substantially similar provisions imposed by the law of another jurisdiction in which the operator is licensed to operate such motor vehicle. The license shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV or such other jurisdiction for any reason or cause.
- (d) Each motor vehicle shall be in full compliance with all of the terms and conditions of all provisions of the Connecticut General Statutes and regulations, or those of the jurisdiction where the motor vehicle is registered, pertaining to the mechanical condition, equipment, marking and operation of motor vehicles of such type, class and weight, including, but not limited to, requirements for motor vehicles having a gross vehicle weight rating of 18,000 pounds or more or motor vehicles otherwise described by the provisions of § 14-163c(a) of the Connecticut General Statutes and all applicable provisions of the Federal Motor Carrier Safety Regulations, as set forth in Title 49, Parts 382 to 399, inclusive, of the Code of Federal Regulations.

25. Disclosure of Contractor Parties Litigation. The Contractor shall require in its contracts with Contractor Parties that all Contractor Parties, as appropriate, disclose to the Contractor, to the best of their knowledge, any Claims involving the Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Agreement, no later than ten (10) Working Days after becoming aware or after they should have become aware of any such Claims. Disclosure shall be in writing.

26. Entirety of Contract. The Agreement is the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, offers, counteroffers and understandings of the parties, whether written or oral. The Agreement has been entered into after full investigation, neither party relying upon any statement or representation by the other unless such statement or representation is specifically embodied in the Agreement.

27. Exhibits. All exhibits referred to in and attached to this Agreement are incorporated in this Agreement by such reference and shall be deemed to be a part of it as if they had been fully set forth in it.

28. Executive Orders. Performance undertaken in Connecticut pursuant to the Agreement is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. The Contract may also be subject to Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services and to Executive Order No. 49 of Governor Dannel P. Malloy, promulgated May 22, 2015, mandating disclosure of certain gifts to public employees and contributions to certain candidates for office. If Executive Order 14 and/or Executive Order 49 are applicable, they are deemed to be incorporated into and are made a part of the Agreement as if they had been fully set forth in it. At the Contractor's request, the Department shall provide a copy of these orders to the Contractor.

29. Non-discrimination.

(a) For purposes of this section, the following terms are defined as follows:

- (1) "Commission" means the Commission on Human Rights and Opportunities;
- (2) "Contract" and "contract" include any extension or modification of the Contract or contract;
- (3) "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;
- (4) "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.
- (5) "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;
- (6) "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;

(7) "marital status" means being single, married as recognized by the State, widowed, separated or divorced;

(8) "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;

(9) "minority business enterprise" means any small contractor or supplier of materials fifty-one percent (51%) or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of § 32-9n Connecticut General Statutes; and

(10) "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in § 1-120 of the Connecticut General Statutes, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in § 1-267 of the Connecticut General Statutes, (4) the federal government, (5) a foreign government, or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

(b) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Contractor agrees to comply with each provision of this section

and §§ 46a-68e and 46a-68f of the Connecticut General Statutes and with each regulation or relevant order issued by said Commission pursuant to §§ 46a-56, 46a-68e and 46a-68f of the Connecticut General Statutes; and (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and § 46a-56 of the Connecticut General Statutes. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

- (c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.
- (d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- (e) The Contractor shall include the provisions of subsection (b) of this section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- (f) The Contractor agrees to comply with the regulations referred to in this section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
- (g) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records

and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this section and § 46a-56 of the Connecticut General Statutes .

- (h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

30. Whistleblowing. This Agreement may be subject to the provisions of § 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars (\$5000.00) for each offense, up to a maximum of twenty per cent (20%) of the value of this Agreement. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

31. Notice. All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Agreement (for the purpose of this section collectively called "Notices") shall be deemed to have been effected at such time as the notice is placed in the U.S. mail, first class and postage pre-paid, return receipt requested or placed with a recognized, overnight express delivery service that provides for a return receipt. All such Notices shall be in writing and shall be addressed as follows:

If to the Department:

State of Connecticut Department of Transportation

ADDRESS: 2800 Berlin Turnpike

Newington, CT 06131-7546

Attention: Richard Andreski, Bureau Chief, Bureau of Public Transportation

If to the Contractor:

NAME _____

ADDRESS _____

Attention: _____

32. Insurance. Before commencing Performance, the Contractor shall obtain and maintain at its own cost and expense for the duration of the Contract, the following insurance as described in (a) through (g) below. Contractor shall assume any and all deductibles in the described insurance policies. The Contractor's insurers shall have no right of recovery or subrogation against the State and the described Contractor's insurance shall be primary coverage. Any failure to comply with the claim reporting provisions of the policy shall not affect coverage provided to the State.

- (a) **Commercial General Liability:** The Contractor shall provide Commercial General Liability Insurance for and in the name of the State of Connecticut/CTDOT with a total limit of \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include, Premises and Operations, Independent Contractors, Products and Completed Operations, Contractual Liability and Broad Form Property Damage coverage. If a general aggregate is used, the general aggregate limit shall apply separately to the project or the general aggregate limit shall be twice the occurrence limit.
- (b) **Automobile Liability:** The Contractor shall provide Automobile Liability Insurance for and in the name of the State of Connecticut/CTDOT with a total limit of \$1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the vendor/contractor does not own an automobile, but one is used in the execution of the contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of the contract then automobile coverage is not required.
- (c) **Workers' Compensation and Employers Liability:** Statutory coverage in compliance with the Compensation laws of the State. Coverage shall include Employer's Liability with minimum limits of \$100,000 each accident, \$500,000 Disease - Policy limit, \$100,000 each employee.
- (d) **Railroad Protective Liability:** At least \$2,000,000 for each accident or occurrence resulting in damages from: (1) bodily injury to or death of all persons; and/or (2) injury to or destruction of property, and subject to that limit per accident or occurrence, an aggregate coverage of at least \$6,000,000 for all damages during the policy period, and with all entities falling within any of the following listed categories named as insured parties: (i) the owner of the railroad right-of-way; (ii) the owner of any railcar licensed or permitted to travel within that affected portion of railroad right-of-way; and (iii) the operator of any railcar licensed or permitted to travel within that affected portion of the railroad right-of-way; and (iv) any other party with an insurable interest; and (v) the State, if not falling within any of the above-listed categories.
- (e) **Umbrella Liability:** The Contractor shall provide Umbrella Liability Insurance for and in the name of the State of Connecticut/CTDOT with a total limit of five million dollars (\$5,000,000.00).
- (f) **Claims Made:** Not acceptable with the exception of Professional Liability when specified.
- (g) **Owner's and Contractor's Protective Liability:**
The Contractor shall provide Owner's and Contractor's protective Liability Insurance for and in the name of the State of Connecticut/CTDOT with a total limit of one million dollars (\$1,000,000.00) per occurrence for all damages arising out of injury to or death of all persons and out of injury to or

destruction of property in any one accident or occurrence and, subject to that limit per occurrence, a total (or aggregate) limit of two million dollars (\$2,000,000.00) for all damages arising out of bodily injury to or death of all persons in all accidents or occurrences and out of injury to or destruction of property during the policy period.

33. Headings. The headings given to the sections in the Agreement are inserted only for convenience and are in no way to be construed as part of the Contract or as a limitation of the scope of the particular section to which the heading refers.

34. Number and Gender. Whenever the context so requires, the plural or singular shall include each other and the use of any gender shall include all genders.

35. Contractor Changes. The Contractor shall notify the Department in writing no later than ten (10) Days after the effective date of any change in:

- (a) its certificate of incorporation or other organizational document;
- (b) more than a controlling interest in the ownership of the Contractor; or
- (c) the individual(s) in charge of the Performance.

Any such change shall not relieve the Contractor of any responsibility for the accuracy and completeness of the Performance.

36. Further Assurances. The parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other party which are not inconsistent with the provisions of this Agreement and which do not involve the vesting of rights or assumption of obligations other than those provided for in the Agreement, in order to give full effect to the Agreement and to carry out the intent of the Agreement.

37. Audit and Inspection of Plants, Places of Business and Records.

- (a) The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the performance of this Agreement.
- (b) The Contractor shall maintain, and shall require each of the Contractor Parties to maintain, accurate and complete Records. The Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.
- (c) The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
- (d) All audits and inspections shall be at the State's expense.
- (e) The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (i) final payment under this Agreement, or (ii) the expiration or earlier termination of this Agreement, as the same may be modified for any reason. The State may request an audit or inspection at any time during this

period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.

- (f) The Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.
- (g) The Contractor shall incorporate this entire section verbatim into any contract or other agreement that it enters into with any Contractor Party.

38. Background Checks.

(a) The State may require that the Contractor and Contractor Parties undergo criminal background checks as provided for in the State of Connecticut Department of Emergency Services and Public Protection Administration and Operations Manual or such other State document as governs procedures for background checks. The Contractor and Contractor Parties shall cooperate fully as necessary or reasonably requested with the State and its agents in connection with such background checks.

(b) Upon demonstration by the Contractor, to the State's satisfaction, that applicable collective bargaining agreements are inconsistent with subsection (a) of this section, the Contractor shall be excused from the requirement set forth in subsection (a).

(c) If it becomes known to the Contractor that any employee, subcontractor or subcontractor employee has been convicted of or charged with, or had a civil judgment rendered against him or her for the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a transaction or contract with any governmental entity, including, but not limited to, violation of the federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property, the Contractor will not allow such employee or subcontractor, or subcontractor employee to perform Services under the Agreement.

39. Continued Performance. The Contractor and Contractor Parties shall continue to Perform their obligations under the Contract while any dispute concerning the Contract is being resolved.

40. Working and Labor Synergies at Work Sites. The Contractor shall be responsible for maintaining a tranquil working relationship between the Contractor work force, the Contractor Parties and their work force, State employees, and any other contractors present at the work site. The Contractor shall quickly resolve all labor disputes which result from the Contractor's or Contractor Parties' presence at the work site, or other action under their control. Labor disputes at any work site shall not be deemed to be sufficient cause to allow the Contractor to make any claim for additional compensation for cost, expenses or any other loss or damage, nor shall those disputes be deemed to be sufficient reason to relieve the Contractor from any of its obligations under the Agreement.

41. Contractor Responsibility.

(a) The Contractor shall be responsible for the entire Performance under the Agreement regardless of whether the Contractor itself performs. The Contractor shall be the sole point of contact concerning the management of the Agreement, including Performance and payment issues. The Contractor is solely and completely responsible for requiring the Contractor Parties to adhere to all applicable provisions of the Agreement.

(b) The Contractor shall exercise all reasonable care to avoid damage to the State's property or to property being made ready for the State's use, and to all property adjacent to any work site. The Contractor shall promptly report any damage, regardless of cause, to the State.

42. Severability. If any term or provision of the Contract or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of the Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of the Contract shall be valid and enforced to the fullest extent possible by law.

43. Confidential Information.

(a) The Department will afford due regard to the Contractor's request for the protection of proprietary or confidential information which the Department receives. However, all materials associated with the Solicitation and the Agreement are subject to the terms of the Connecticut Freedom of Information Act ("FOIA") and all corresponding rules, regulations and interpretations. In making such a request, the Contractor may not merely state generally that the materials are proprietary or confidential in nature and not, therefore, subject to release to third parties. Those particular sentences, paragraphs, pages or sections that the Contractor believes are exempt from disclosure under the FOIA must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exemption consistent with FOIA must accompany the request. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of the Contractor that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to FOIA. To the extent that any other provision or part of the Agreement, especially including the Solicitation, the Records and the specifications, conflicts or is in any way inconsistent with this section, this section controls and shall apply and the conflicting provision or part shall not be given effect. If the Contractor indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as "CONFIDENTIAL," the Department will endeavor to keep said information confidential to the extent permitted by law. The Department, however, has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought pursuant to a FOIA request. The Contractor shall have the burden of establishing the availability of any FOIA exemption in any proceeding where it is an issue. In no event shall the Department or the State have any liability for the disclosure of any documents or information in its possession which the Department believes are required to be disclosed pursuant to the FOIA or other requirements of law.

(b) The Department shall notify the Contractor of any such FOIA request and the Contractor shall timely advise the Department as to whether it will seek a protective order or take such other actions as the Contractor may deem advisable to protect from disclosure the information it has designated, per subsection (a) of this section, as confidential or proprietary, and, if the Contractor is to seek a protective order or take such other action, the Contractor shall promptly do so.

(c) The Department shall be under no obligation to notify the Contractor of any FOIA request unless the request covers the particular sentences, paragraphs, pages or sections that the Contractor has designated as confidential or proprietary in accordance with subsection (a) of this section and for which explanation and rationale required pursuant to subsection (a) of this section has been provided.

(d) To the extent that the Contractor is subject to the federal Freedom of Information Act, 5 U.S.C. § 552 and related implementing regulations, 49 CFR Part 701 (collectively, "U.S. FOIA"), nothing herein shall require or be construed to require the Contractor to contravene U.S. FOIA's provisions and the Contractor's obligations pursuant thereto.

44. References to Statutes, Public Acts, Regulations, Codes and Executive Orders. All references in this Agreement to any statute, public act, regulation, code or executive order shall mean such statute, public act, regulation, code or executive order, respectively, as it has been amended, replaced or superseded at any time. Notwithstanding any language in this Agreement that relates to such statute, public act, regulation, code or executive order, and notwithstanding a lack of a formal amendment to this Agreement, the Agreement shall always be read and interpreted as if it contained the most current and

applicable wording and requirements of such statute, public act, regulation, code or executive order as if their most current language had been used in and requirements incorporated into this Agreement at the time of its execution.

45. Disclosure of Records. This Agreement may be subject to the provisions of § 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars (\$2,500,000.00) between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of §§ 1-205 and 1-206 of the Connecticut General Statutes.

46. Summary of State Ethics Laws. Pursuant to the requirements of § 1-101qq of the Connecticut General Statutes, the summary of State ethics laws developed by the State Ethics Commission pursuant to § 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of the Agreement as if the summary had been fully set forth in the Agreement.

47. Sovereign Immunity. The parties acknowledge and agree that nothing in the Solicitation or the Agreement shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Agreement. To the extent that this section conflicts with any other section, this section shall govern.

48. Time of the Essence. Time is of the essence with respect to all provisions of this Agreement that specify a time for performance; provided, however, that this provision shall not be construed to limit or deprive a party of the benefits of any, cure or use period allowed in this Agreement.

49. Certification as Small Contractor or Minority Business Enterprise. The Contractor shall be in breach of this Agreement if the Contractor is certified as a "small contractor" or a "minority business enterprise" under. § 4a-60g of the Connecticut General Statutes and that certification lapses during the term of this Agreement.

50. Campaign Contribution Restriction. For all State contracts as defined in § 9-612(g)(1) of the Connecticut General Statutes having a value in a calendar year of fifty thousand dollars (\$50,000) or more or a combination or series of such agreements or contracts having a value of one-hundred thousand dollars (\$100,000) or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice, as set forth in "Notice to Executive Branch State Contractors and Prospective State Contractors of Campaign Contribution and Solicitation Limitations," attached as Exhibit C.

51. Health Insurance Portability and Accountability Act.

- (a) If the Contractor is a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Contractor must comply with all terms and conditions of this section of the Agreement. If the Contractor is not a Business Associate under HIPAA, this section of the Agreement does not apply to the Contractor for this Agreement.
- (b) The Contractor is required to safeguard the use, publication and disclosure of information on all applicants for, and all clients who receive, services under the Contract in accordance with all

applicable federal and state law regarding confidentiality, which includes but is not limited to HIPAA, more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E; and

- (c) The Department is a "covered entity" as that term is defined in 45 C.F.R. § 160.103; and
 - (d) The Contractor, on behalf of the Department, performs functions that involve the use or disclosure of "individually identifiable health information," as that term is defined in 45 C.F.R. § 160.103; and
 - (e) The Contractor is a "business associate" of the Department, as that term is defined in 45 C.F.R. § 160.103; and
 - (f) The Contractor and the Department agree to the following in order to secure compliance with the HIPAA, the requirements of Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the HITECH Act), (Pub. L. 111-5, sections 13400 to 13423), and more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E.
- (g) Definitions. For the purposes of this section of the Agreement:

- (1) "Breach" shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(1)).
- (2) "Business Associate" shall mean the Contractor or Contractor Parties.
- (3) "Covered Entity" shall mean the Department.
- (4) "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. § 164.501.
- (5) "Electronic Health Record" shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(5)).
- (6) "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative as defined in 45 C.F.R. § 164.502(g).
- (7) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- (8) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to information created or received by the Business Associate from or on behalf of the Covered Entity.
- (9) "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
- (10) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- (11) "More stringent" shall have the same meaning as the term "more stringent" in 45 C.F.R. § 160.202.
- (12) "This Section of the Contract" refers to the HIPAA Provisions stated herein, in their entirety.

(13) "Security Incident" shall have the same meaning as the term "security incident" in 45 C.F.R. § 164.304.

(14) "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subpart A and C.

(15) "Unsecured protected health information" shall have the same meaning as the term as defined in § 13402(h)(1)(A) of HITECH. Act. (42 U.S.C. §17932(h)(1)(A)).

(h) Obligations and Activities of Business Associates.

- (1) Business Associate agrees not to use or disclose PHI other than as permitted or required by this Section of the Contract or as Required by Law.
- (2) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Section of the Contract.
- (3) Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
- (4) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of this Section of the Contract.
- (5) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Section of the Contract or any security incident of which it becomes aware.
- (6) Business Associate agrees to insure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate, on behalf of the Covered Entity, agrees to the same restrictions and conditions that apply through this Section of the Contract to Business Associate with respect to such information.
- (7) Business Associate agrees to provide access, at the request of the Covered Entity, and in the time and manner agreed to by the parties, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524.
- (8) Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of the Covered Entity, and in the time and manner agreed to by the parties.
- (9) Business Associate agrees to make Internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by, Business Associate on behalf of Covered Entity, available to Covered Entity or to the Secretary in a time and manner agreed to by the parties or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (10) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and

section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.

- (11) Business Associate agrees to provide to Covered Entity, in a time and manner agreed to by the parties, information collected in accordance with clause h. (10) of this Section of the Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder. Business Associate agrees that at the Covered Entity's direction to provide an accounting of disclosures of PHI directly to an individual in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (12) Business Associate agrees to comply with any state or federal law that is more stringent than the Privacy Rule.
- (13) Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to the Covered Entity and with the requirements of 45 C.F.R. sections 164.504(e), 164.308, 164.310, 164.312, and 164.316.
- (14) In the event that an individual requests that the Business Associate (a) restrict disclosures of PHI; (b) provide an accounting of disclosures of the individual's PHI; or (c) provide a copy of the individual's PHI in an electronic health record, the Business Associate agrees to notify the covered entity, in writing, within two business days of the request.
- (15) Business Associate agrees that it shall not directly or indirectly receive any remuneration in exchange for PHI of an individual without (1) the written approval of the covered entity, unless receipt of remuneration in exchange for PHI is expressly authorized by this Contract and (2) the valid authorization of the individual, except for the purposes provided under section 13405(d)(2) of the HITECH Act, (42 U.S.C. § 17935(d)(2)) and in any accompanying regulations
- (16) Obligations in the Event of a Breach
- (A) The Business Associate agrees that, following the discovery of a breach of unsecured protected health information, it shall notify the Covered Entity of such breach in accordance with the requirements of section 13402 of HITECH (42 U.S.C. § 17932(b) and the provisions of this Section of the Contract.
- (B) Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than 30 days after the breach is discovered by the Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to section 13402 (g) of HITECH (42 U.S.C. § 17932(g)). A breach is considered discovered as of the first day on which it is, or reasonably should have been, known to the Business Associate. The notification shall include the identification and last known address, phone number and email address of each individual (or the next of kin of the individual if the individual is deceased) whose unsecured protected health information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.
- (C) The Business Associate agrees to include in the notification to the Covered Entity at least the following information:
1. A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.

2. A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
3. The steps the Business Associate recommends that individuals take to protect themselves from potential harm resulting from the breach.
4. A detailed description of what the Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.
5. Whether a law enforcement official has advised either verbally or in writing the Business Associate that he or she has determined that notification or notice to individuals or the posting required under section 13402 of the HITECH Act would impede a criminal investigation or cause damage to national security and contact information for said official.

(D) Business Associate agrees to provide appropriate staffing and have established procedures to ensure that individuals informed by the Covered Entity of a breach by the Business Associate have the opportunity to ask questions and contact the Business Associate for additional information regarding the breach. Such procedures shall include a toll-free telephone number, an e-mail address, a posting on its Web site and a postal address. Business Associate agrees to include in the notification of a breach by the Business Associate to the Covered Entity, a written description of the procedures that have been established to meet these requirements. Costs of such contact procedures will be borne by the Contractor or Contractor Parties.

(E) Business Associate agrees that, in the event of a breach, it has the burden to demonstrate that it has complied with all notifications requirements set forth above, including evidence demonstrating the necessity of a delay in notification to the Covered Entity.

(i) Permitted Uses and Disclosure by Business Associate.

(1) General Use and Disclosure Provisions Except as otherwise limited in this Section of the Contract, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

(2) Specific Use and Disclosure Provisions.

(A) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

(B) Except as otherwise limited in this Section of the Contract, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(C) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

(j) Obligations of Covered Entity.

(1) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 C.F.R. § 164.520, or to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

(2) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

(3) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(k) Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity, except that Business Associate may use and disclose PHI for data aggregation, and management and administrative activities of Business Associate, as permitted under this Section of the Contract.

(l) Term and Termination.

(1) Term. The Term of this Section of the Contract shall be effective as of the date the Contract is effective and shall terminate when the information collected in accordance with clause h. (10) of this Section of the Contract is provided to the Covered Entity and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this section.

(2) Termination for Cause Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

(A) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Contract if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity; or

(B) Immediately terminate the Contract if Business Associate has breached a material term of this Section of the Contract and cure is not possible; or

(C) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(3) Effect of Termination.

(A) Except as provided in (l)(2) above, upon termination of this Contract, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with clause h.

(10) of this Section of the Contract to the Covered Entity within ten business days of the notice of termination. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

(B) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Section of the Contract to such PHI and limit further uses and disclosures of PHI to those purposes that make return or destruction infeasible, for as long as Business Associate maintains such PHI. Infeasibility of the return or destruction of PHI includes, but is not limited to, requirements under state or federal law that the Business Associate maintains or preserves the PHI or copies thereof.

(m) Miscellaneous Provisions.

(1) Regulatory References. A reference in this Section of the Agreement to a section in the Privacy Rule means the section as in effect or as amended.

(2) Amendment. The Parties agree to take such action as is necessary to amend this Section of the Agreement from time to time as is necessary for Covered Entity to comply with requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(3) Survival. The respective rights and obligations of Business Associate shall survive the termination of this Agreement.

(4) Effect on Agreement. Except as specifically required to implement the purposes of this Section of the Agreement, all other terms of the Agreement shall remain in force and effect.

(5) Construction. This Section of the Agreement shall be construed as broadly as necessary to implement and comply with the Privacy Standard. Any ambiguity in this Section of the Agreement shall be resolved in favor of a meaning that complies, and is consistent with, the Privacy Standard.

(6) Disclaimer. Covered Entity makes no warranty or representation that compliance with this Section of the Agreement will be adequate or satisfactory for Business Associate's own purposes. Covered Entity shall not be liable to Business Associate for any claim, civil or criminal penalty, loss or damage related to or arising from the unauthorized use or disclosure of PHI by Business Associate or any of its officers, directors, employees, contractors or agents, or any third party to whom Business Associate has disclosed PHI contrary to the provisions of this Agreement or applicable law. Business Associate is solely responsible for all decisions made, and actions taken, by Business Associate regarding the safeguarding, use and disclosure of PHI within its possession, custody or control.

(7) Indemnification. The Business Associate shall indemnify and hold the Covered Entity harmless from and against any and all claims, liabilities, judgments, fines, assessments, penalties, awards and any statutory damages that may be imposed or assessed pursuant to HIPAA, as amended or the HITECH Act, including, without limitation, attorney's fees, expert witness fees, costs of investigation, litigation or dispute resolution, and costs awarded thereunder, relating to or arising out of any violation by the Business Associate and its agents, including subcontractors, of any obligation of Business Associate and its agents, including

subcontractors; under this Section of the Contract, under HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

52. Audit Requirements for Recipients of State Financial Assistance. For purposes of this section, the word "contractor" shall be deemed to mean "nonstate entity," as that term is defined in § 4-230 of the Connecticut General Statutes. The contractor shall provide for an annual financial audit acceptable to the Department for any expenditure of state-awarded funds made by the contractor. Such audit shall include management letters and audit recommendations. The State Auditors of Public Accounts shall have access to all records and accounts for the fiscal year(s) in which the award was made. The contractor will comply with federal and state single audit standards as applicable.

IN WITNESS WHEREOF, the parties have executed this Contract by their duly authorized representatives with full knowledge of and agreement with its terms and conditions.

[CONTRACTOR NAME]

STATE OF CONNECTICUT
Department Of Transportation

By: _____

By: _____

Print or Type Name

Print or Type Name

Title: _____

Title: _____

Date: _____

Date: _____

(Rev. -9/15)

CONNECTICUT DEPARTMENT OF TRANSPORTATION
RFP REQUEST FOR APPROVAL, EXCEPTION, OR CLARIFICATIONS

RFP No.: 16DOT7001

Project Description:
Overhaul of P40 Locomotives for the Connecticut Department of Transportation (CTDOT)

SPECIFICATION SECTION: Contract Section 14. Forum and Choice of Law

SPECIFICATION PAGENUMBER: 10 of 32

PROPOSER'S REQUEST: We request that jurisdiction and venue be limited to the Federal courts of the State of Connecticut, excluding the State Courts. We propose the following revision:

The parties deem the Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut.

CTDOT's RESPONSE:

A. APPROVED:

B. APPROVED AS MODIFIED:

C. DENIED: X

D. ADDITIONAL INFORMATION REQUIRED:

CTDOT's COMMENTS (if applicable):

Marci Petterson

Digitally signed by Marci Petterson
DN: C=US, E=marci.petterson@ct.gov,
OU=Office of Rail, O=ConnDOT, CN=Marci
Petterson
Date: 2016.07.19 16:49:45-0400

(Rev. -9/15)

CONNECTICUT DEPARTMENT OF TRANSPORTATION
RFP REQUEST FOR APPROVAL, EXCEPTION, OR CLARIFICATIONS

RFP No.: 16DOT7001

Project Description:
Overhaul of P40 Locomotives for the Connecticut Department of Transportation (CTDOT)

SPECIFICATION SECTION: Contract Section 15. Contractor Guaranties

SPECIFICATION PAGE NUMBER: 10 of 32

PROPOSER'S REQUEST: Particularly for best pricing, we request that the Contractor have the discretion of repairing rather than replacing an item that may be marred or damaged in transit. In addition, the warranty provisions in the Contract adequately cover the Services and Equipment, alleviating the need, and cost, for warranties of fitness for a particular purpose or merchantability. Accordingly, we propose the following revision:

Contractor shall:

- (a) Perform fully under the Contract;
- (b) Guarantee the Goods or Services against defective material or workmanship and to repair any damage or marring occasioned in transit or, at the Contractor's option, replace them;
- (c) Furnish adequate protection from damage for all work and to repair damage of any kind, for which its workers are responsible, to the premises, Goods, the Contractor's work or that of Contractor Parties;
- (d) With respect to the provision of Services, pay for all permits, licenses and fees and give all required or appropriate notices; and
- (e) Adhere to all Contractual provisions ensuring the confidentiality of Records that the Contractor has access to and are exempt from disclosure under the State's Freedom of Information Act or other applicable law.

CTDOT's RESPONSE:

A. APPROVED:

B. APPROVED AS MODIFIED:

C. DENIED: X

D. ADDITIONAL INFORMATION REQUIRED:

CTDOT's COMMENTS (if applicable):

Proposers bid should reflect the additional cost of obtaining such warranties of fitness and merchantability.

SIGNATURE:

Marci Petterson

DATE

Digitally signed by Marci Petterson
DN: C=US, E=marci.petterso@ct.gov,
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CN=Marci Petterson
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(Rev. - 9/ 15)

CONNECTICUT DEPARTMENT OF TRANSPORTATION
RFP REQUEST FOR APPROVAL, EXCEPTION, OR CLARIFICATIONS

RFP No.: 16DOT7001

Project Description:

Overhaul of P40 Locomotives for the Connecticut Department of Transportation (CTDOT)

SPECIFICATION SECTION: Contract Section 16. Implied Warranties

SPECIFICATION PAGE NUMBER: 11 of 32

PROPOSER'S REQUEST: For best pricing, we request the deletion of implied warranties as there are numerous express warranties that provide substantial protections and coverage. Accordingly, we request the following revision:

Contractor disclaims any and all implied warranties, including the implied warranty of fitness for a particular purpose and the warranty of merchantability.

CTDOT's RESPONSE:

A. APPROVED: _____

B. APPROVED AS MODIFIED:

C. DENIED: X

D. ADDITIONAL INFORMATION REQUIRED:

CTDOT's COMMENTS (if applicable): see above

SIGNATURE: _____

DATE: _____

Marci Petterson

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CONNECTICUT DEPARTMENT OF TRANSPORTATION
RFP REQUEST FOR APPROVAL, EXCEPTION, OR CLARIFICATIONS

RFP No.: 16DOT7001

Project Description:

Overhaul of P40 Locomotives for the Connecticut Department of Transportation (CTDOT)

SPECIFICATION SECTION: Contract Section 22. American with Disabilities Act

SPECIFICATION PAGE NUMBER: 12 of 32

PROPOSER'S REQUEST: We request clarification that this provision be limited to the employment title of the ADA (Title I) as the other titles of the ADA are not relevant to this Contract (for locomotive overhauls).

CTDOT's RESPONSE:

A. APPROVED: X

B. APPROVED AS MODIFIED:

C. DENIED: _____

D. ADDITIONAL INFORMATION REQUIRED:

CTDOT's COMMENTS (if applicable):

SIGNATURE: _____

Marci Petterson

DATE: _____

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CN=Marci Petterson
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(Rev. - 9/ 15)

CONNECTICUT DEPARTMENT OF TRANSPORTATION
RFP REQUEST FOR APPROVAL, EXCEPTION, OR CLARIFICATIONS

RFP No.: 16DOT7001

Project Description: Overhaul of P40 Locomotives for the Connecticut Department of Transportation
(CTDOT)

SPECIFICATION SECTION: Contract Section 32, Insurance

SPECIFICATION PAGE NUMBER: 19 of 32

PROPOSER'S REQUEST:

If the Proposer is subject to FELA, rather than Workers Compensation, will CTDOT amend this section to allow for FELA, rather than Workers Compensation coverage, and will CTDOT permit the Contractor to self-insure such FELA liability?

CTDOT's RESPONSE:

A. APPROVED: _____

B. APPROVED AS MODIFIED:

C. DENIED: _____

D. ADDITIONAL INFORMATION REQUIRED:

CTDOT is amenable to allowing FELA rather than Worker's Compensation coverage. Permitting the Contractor to self-insure FELA is reserved for discussion during negotiations.

CTDOT's COMMENTS (if applicable):

SIGNATURE: _____

DATE: _____

Marci Petterson

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OU=Office of Rail, O=ConnDOT,
CN=Marci Petterson
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(Rev. - 9/ 15)

CONNECTICUT DEPARTMENT OF TRANSPORTATION
RFP REQUEST FOR APPROVAL, EXCEPTION, OR CLARIFICATIONS

RFP No.: 16DOT7001

Project Description:

Overhaul of P40 Locomotives for the Connecticut Department of Transportation (CTDOT)

SPECIFICATION SECTION: Contract Section 38, Background Checks

SPECIFICATION PAGE NUMBER: 22 of 32

PROPOSER'S REQUEST: If the Contractor performs background checks only at the time of hire, will CTDOT delete this requirement?

CTDOT's RESPONSE:

A. APPROVED: _____

B. APPROVED AS MODIFIED:

C. DENIED: X

D. ADDITIONAL INFORMATION REQUIRED:

CTDOT's COMMENTS (if applicable): Please refer to subsections of Section 38 - Background Checks

SIGNATURE: _____

Marci Petterson

DATE: _____

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CN=Marci Petterson
Date: 2016.07.19 16:50:27-04'00'

(Rev. - 9/ 15)

CONNECTICUT DEPARTMENT OF TRANSPORTATION
RFP REQUEST FOR APPROVAL, EXCEPTION, OR CLARIFICATIONS

RFP No.: 16DOT7001

Project Description: Overhaul of P40 Locomotives for the Connecticut Department of Transportation (CTDOT)

SPECIFICATION SECTION: Contract Section 40. Working and Labor Synergies

SPECIFICATION PAGE NUMBER: 22 of 32

PROPOSER'S REQUEST: We request that the last sentence be replaced with the following:

"Neither this Contract nor any provision thereof shall require, or be construed to require, the Contractor to contravene the provisions of any of its labor agreements. In the event of a conflict or inconsistency between this Contract and such labor agreements, the labor agreements shall control as to such provisions."

CTDOT's RESPONSE:

A. APPROVED: _____

B. APPROVED AS MODIFIED:

CTDOT will consider only adding the first sentence proposed above to Section 40 as it currently appears in the Contract document

C. DENIED: _____

D. ADDITIONAL INFORMATION REQUIRED:

CTDOT's COMMENTS (if applicable):

SIGNATURE: _____

DATE: _____

Marci Petterson

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(Rev. - 9/ 15)

CONNECTICUT DEPARTMENT OF TRANSPORTATION
RFP REQUEST FOR APPROVAL, EXCEPTION, OR CLARIFICATIONS

RFP No.: 16DOT7001

Project Description:

Overhaul of P40 Locomotives for the Connecticut Department of Transportation (CTDOT)

SPECIFICATION SECTION: Contract Section 39, Continued Performance

SPECIFICATION PAGE NUMBER: 23 of 32

PROPOSER'S REQUEST: We request deletion of this requirement.

CTDOT's RESPONSE:

A. APPROVED: _____

B. APPROVED AS MODIFIED:

C. DENIED: X

D. ADDITIONAL INFORMATION REQUIRED:

CTDOT's COMMENTS (if applicable):

SIGNATURE: _____

DATE: _____

Marci Petterson

Digitally signed by Marci Petterson
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Date: 2016.07.19 16:50:43-04'00'

(Rev. - 9/ 15)

CONNECTICUT DEPARTMENT OF TRANSPORTATION
RFP REQUEST FOR APPROVAL, EXCEPTION, OR CLARIFICATIONS

RFP No.: 16DOT7001

Project Description:

Overhaul of P40 Locomotives for the Connecticut Department of Transportation (CTDOT)

SPECIFICATION SECTION: Contract Section 51. Health Insurance Portability and Accountability Act

SPECIFICATION PAGE NUMBER: 24 of 32

PROPOSER'S REQUEST: This provision is inapplicable to this type of contract (locomotive overhauls) and accordingly, we request its deletion.

CTDOT's RESPONSE:

A. APPROVED: _____

B. APPROVED AS MODIFIED:

C. DENIED: _____

D. ADDITIONAL INFORMATION REQUIRED:

CTDOT's COMMENTS (if applicable):

The provision is only applicable "IF" the Contractor is a "Business Associate." Therefore it will not apply if the Contractor is not a "Business Associate". This provision will not be deleted.

SIGNATURE: _____

DATE: _____

Marci Petterson

Digitally signed by Marci Petterson
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of Rail; O=ConnDOT, CN=Marci
Petterson
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CONNECTICUT DEPARTMENT OF TRANSPORTATION
RFP REQUEST FOR APPROVAL, EXCEPTION, OR CLARIFICATIONS

RFP No.: 16DOT7001

Project Description:

Overhaul of P40 Locomotives for the Connecticut Department of Transportation (CTDOT)

SPECIFICATION SECTION: Contract New Section 52. Limitation of Liability

SPECIFICATION PAGE NUMBER: 31 of 32

PROPOSER'S REQUEST: To provide best pricing, we request a limitation of liability for lost profits, etc and propose the following language:

NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST REVENUES OR LOST PROFITS, AS A RESULT OF THIS CONTRACT OR ANY BREACH OF THIS CONTRACT.

CTDOT's RESPONSE:

A. APPROVED: _____

B. APPROVED AS MODIFIED:

C. DENIED: X

D. ADDITIONAL INFORMATION REQUIRED:

CTDOT's COMMENTS (if applicable):

SIGNATURE: _____

DATE: _____

Marci Petterson

Digitally signed by Marci Petterson
DN: C=US, E=marci.petterso@ct.gov,
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Date: 2016.07.19 16:51:16-04'00'