Texoma Area Paratransit Systems

Date of Meeting: August 12, 2015
Time of Meeting: 10:00 AM
Location of Meeting: 3400 Texoma Pkwy, Sherman, TX 75090

AGENDA

1. Call to Order, Declaration of a Quorum and Welcome
   Jay Davidson, Chairman

2. Chairman’s Remarks

3. Approve the Minutes of April 8, 2015 Meeting
   Jay Davidson, Chairman

4. Public’s Opportunity to Speak

5. Receive Update on Fiscal Year 2015 5311/5307 Federal Funding
   Lori Cannon, CPA, Interim CFO

   and Receive and Accept Year-to-date Financials through May 2015
   Lori Cannon, CPA, Interim CFO

7. Receive Update and Presentation on TAPS FTA FMO Review
   Lori Cannon, CPA, Interim CFO

8. Receive Presentation and Take Action to approve the Plyer Construction contract for the
   NTRTC Facility
   Brad Underwood, CEO

9. Receive Presentation and Take Action to terminate the Peterbilt Contract
   Tim Patton, COO

10. Receive Presentation and Take Action to approve a Memorandum of Understanding
    Among the City of Wichita Falls, Texoma Area Paratransit System, Incorporated, Rolling
    Plains Management Corporation and Nortex Regional Planning Commission Concerning
    Disabled and Elderly Transit Services
    Brad Underwood, CEO

11. Receive Presentation and Take Action to amend TAPS Whistle Blower Policy
    Brad Underwood, CEO
12. Receive Presentation on Weekend Fixed Route Service and Take any Necessary Action  
   Tim Patton, COO

13. Receive Presentation and Take Action to approve TAPS Acceptable Use Policy  
   Brad Underwood, CEO

14. Receive Presentation and Take Action to amend TAPS Progressive Discipline Policy  
   Brad Underwood, CEO

15. Receive Presentation and Take Action to amend TAPS Floating Holiday accrual  
   Brad Underwood, CEO

16. Consider and Take Action to Suspend Current Procurement Rules to Purchase Capital  
   with McKinney MCDC Grant  
   Tim Patton, COO

17. Receive Presentation and Take Action to approve a TAPS Armed Security Policy  
   Brad Underwood, CEO

18. Receive Presentation and Take Action to approve a TAPS ADA Reasonable Accommodation Policy  
   Brad Underwood, CEO

19. Receive Presentation and Take Action to approve a TAPS Lost and Found Policy  
   Brad Underwood, CEO

20. Consider and Take Action to amend TAPS Benefit Plan to include Same Sex Marriage Couples as mandated by Obergefell v. Hodges for Public Employees  
   Brad Underwood, CEO

21. Consider and Take Action to appoint members of the Board to a Finance Committee  
   Jay Davidson, Board Chairman

22. Recess into Executive Session in compliance with Texas Government Code Section 551.074; Chief Executive Officer, Chief Financial Officer, and Chief Operations Officer:

   (1) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or

   (2) to hear a complaint or charge against an officer or employee
23. **Consent Items:** The following items on the consent agenda are considered to be routine by TAPS and will be enacted with one motion. There will not be separate discussion of these items unless a board member so requests, in which event they will be removed from the general order of business and considered in normal sequence.

A) Receive Ridership Report and Accept For Months of March, April and May 2015
   Tim Patton, COO

B) Consider and Take Action to issue an RFP for Purchase of Transit Bus Tires
   Tim Patton, COO

24. Adjourn

Posted and Amended: August 7, 2015.

If you plan to attend this public meeting and you have a disability that requires special arrangements at the meeting, please contact the TAPS office at 903-893-4601 before 9:00 a.m. on the date of the meeting and reasonable accommodations will be made to assist your needs.
Texoma Area Paratransit Systems

Date of Meeting: August 12, 2015
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Board of Director’s Meeting
August 12, 2015
10:00 A.M.

TAPS Public Transit
at TAPS Public Transit
3400 Texoma Parkway
Sherman, Texas
903-893-4601
Chairman
Jay Davidson, Councilman
City of Decatur
PO Box 2
Decatur, Texas 76234
940-626-4110-Office
817-921-3238 - Cell
jmdconsulting@hotmail.com
Term Started: 11/09
Term Exp: 11/15

Vice-Chairman
Chris Hill, Commissioner
Collin County
2300 Bloomdale Rd, Ste. 4192
McKinney, TX 75071
chill@collincountytx.gov
Ph: 972-242-1460
Term Started: 05/13
Term Exp: 06/17

Secretary
Ken Brawley, Councilman
2813 South Caprice
Denison, TX 75020
Res. Phone 903-465-6210
Bus. Phone 903-818-9975
kenbrawley77@gmail.com
Term Started: 01/12
Term Exp: 06/16

Spanky Carter, Judge
Fannin County
101 E Sam Rayburn Dr, Ste. 101
Bonham, Texas 75418
903-583-7455
rwatts@fanninco.net
Term Started: 09/11
Term Exp: 09/13

H. L. Compton, Councilman
301 Star Street
Bonham, TX 75418
hlcompton@verizon.net
903-640-0000
214-926-8491
Term Started: 05/13
Term Exp: 06/17

Rick Lewis, Judge
Montague County
P.O. Box 475
Montague, Texas 76251
940-894-2401 - Office
v.stout@co.montague.tx.us
Term Started: 01/15
Term Exp: 01/17

Kenneth Liggett, Judge
Clay County
214 N Main
Henrietta, Texas 76355
940 538-4651
cjjudge@claycountytx.com
Term Started: 10/08
Term Exp: 10/16

Randy Pogue, Councilman
City of McKinney
222 N. Tennessee St
McKinney, Texas 75069
972-547-7501 - Office
rtpogue@mckinneytexas.org
Term Started: 05/13
Term Exp: 06/17

Joan Schaffner Civic Leader,
Clay County
402 Pioneer Trail
Henrietta, TX 76355
940-538-5057 - Home
sewnsew@wfquik.com
Term Started: 10/01
Term Exp: 02/16

Bill Magers, Judge
Grayson County Judge
100 W. Houston
Sherman, Texas 75090
(903) 813-4228
bmagers@co.grayson.tx.us
Term Started: 01/15
Term Exp: 01/17

Chuck Branch, Councilman
City of McKinney
222 N. Tennessee St
McKinney, Texas 75069
972-547-7501 - office
cbranch@mckinneytexas.org
Term Started: 06/15
Term Exp: 06/17

Leon Klement, Commissioner
Cooke County
100 S. Dixon – Room 112
Gainesville, Texas 76240
940-668-5433
Leon.Klement@co.cooke.tx.us
Term Started: 07/13
Term Exp: 07/15

Cary Wacker, Mayor
City of Sherman
900 N. Grand, Suite #6G
Sherman, Texas 75090
903-813-2042
cwacker@austincollege.edu
Term Started: 01/15
Term Exp: 01/17
**Texoma Area Paratransit Systems, Inc**

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   Lori Cannon, CPA, Interim CFO  
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6. Receive Update and Take Action to approve amended FY 2014-2015 Annual Budget and Receive and Accept Year-To-Date Financials through May 2015  
   Lori Cannon, CPA, Interim CFO  
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   Brad Underwood, CEO  
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21. Consider and Take Action to appoint members of the Board to a Finance Committee  
   Jay Davidson, Chairman  
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      Tim Patton, COO  
      Page 133

   B) Consider and Take Action to issue an RFP for Purchase of Transit Bus Tires  
      Tim Patton, COO  
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24. **Adjourn**  
   Page 178

*If you plan to attend this public meeting and you have a disability that requires special arrangements at the meeting, please contact the TAPS office at 903-893-4601 before 9:00 a.m. on the date of the meeting and reasonable accommodations will be made to assist your needs.*
1. Call to Order, Declaration of a Quorum and Welcome
   Jay Davidson, Chairman
2. Chairman’s Remark
3. Approve the Minutes of April 8, 2015 Meeting
   Jay Davidson, Chairman
The TAPS Board of Directors met at 3400 Texoma Pkwy Sherman, TX 75090 for a semimonthly board meeting.

1. Chairman, Jay Davidson, opened the meeting at 10:02 am and declared a quorum was present.

2. The minutes from the January 28, 2015 were reviewed. A motion was made by Joan Schaffner to approve the minutes. The motion was seconded by H.L. Compton. Motioned carried.

3. The public was given an opportunity to speak. No one spoke. At 10:04 Randy Pogue arrived.

4. At 10:05 am the TAPS Board convened in executive session to:

   (1) deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or
   (2) hear a complaint or charge against an officer or employee

5. The board reconvened in regular session at 10:32 am.

6. The board received an update on Fiscal Year 2015 5311/5307 Federal Funding. No action was taken.

7. The board received a presentation on TAPS Complaint Policy. No action was taken.

8. Kenneth Liggett motioned to amend TAPS Title VI Policy. H.L. Compton seconded the motion. Motion carried.
9. Leon Klement motioned to amend TAPS ADA Policy. Randy Pogue seconded the motion. Motion carried.

10. Brian Loughmiller motioned to amend TAPS Reservation Policy. Joan Schaffner seconded the motion. Motion carried.


12. Additional business: Kenneth Liggett requested the Board to consider a policy to provide rides between Clay County and Wichita Falls. Brad responded that TAPS is waiting on TTI to do a cost analysis which should be completed around the July/August timeframe. This is being covered 100% by TxDOT.

13. Meeting was adjourned at 11:23 am.

Passed, Approved and Adopted August 12, 2015.

____________________________________  or  _______________________________________
Chairman, TAPS Board of Directors     Secretary, TAPS Board of Directors
4. Public’s Opportunity to Speak
5. Receive update on Fiscal Year 2015 5311/5307 Federal Funding
   Lori Cannon, CPA, Interim CFO
6. Receive Update and Take Action to approve amended FY 2014-2015 Annual Budget and Receive and Accept Year-To-Date Financials through May 2015
Lori Cannon, CPA, Interim CFO
To: TAPS Board of Directors

From: Lori Cannon, Interim CFO

Subject: Item #6 Take Action to approve amended FY 2014-2015 Annual Budget and Accept Year-to-date Financials through May 2015

Recommendation:
### Revenue for Fiscal Year 2015

#### Board Report

**Reporting Period:**
- October 1, 2014 through May 31, 2015
- 8/12's of the year

**S/L %**
- 67%

#### Revenue Sources

<table>
<thead>
<tr>
<th>Board</th>
<th>Approved BUDGET</th>
<th>Revision to Current BUDGET</th>
<th>Current 2015 Budget</th>
<th>ACTUAL YTD</th>
<th>REMAINING BALANCE</th>
<th>% of BDGT Rec'd</th>
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<tr>
<td>M 5307 State FY15</td>
<td>2,782,374</td>
<td>(861,166)</td>
<td>1,921,208</td>
<td>1,921,208</td>
<td>0</td>
<td>100%</td>
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</tbody>
</table>

#### Capital Loan
- 6,000,000 | (6,000,000) | 0 | 0 | 0 | 0% |

#### Board Report

**Financial Report 2015 May**

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<table>
<thead>
<tr>
<th>OPERATING EXPENSES</th>
<th>Board Approved 2015 BUDGET</th>
<th>Revision to Current BUDGET</th>
<th>Current 2014 Budget</th>
<th>ACTUAL YTD</th>
<th>REMAINING BALANCE</th>
<th>% of BDGT EXP</th>
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<tr>
<td>Total Salaries and Fringe</td>
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<td>9,545,246</td>
<td>7,316,772.14</td>
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<td>Insurance (Bldg/O&amp;D/Bond/Veh)</td>
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<td>Audit / Legal / Contract</td>
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<td>Dues / Subscriptions</td>
<td>6,000</td>
<td>8,000</td>
<td>14,000.00</td>
<td>8,051.72</td>
<td>5,948.28</td>
<td>58%</td>
</tr>
<tr>
<td>Other (Misc / Contingencies)</td>
<td>70,000</td>
<td>0</td>
<td>70,000.00</td>
<td>42,599.62</td>
<td>27,400.38</td>
<td>61%</td>
</tr>
<tr>
<td>Purchase Commuter Services</td>
<td>231,750</td>
<td>0</td>
<td>231,750.00</td>
<td>87,800.00</td>
<td>143,950.00</td>
<td>38%</td>
</tr>
<tr>
<td>Purchased NEMT Transportation</td>
<td>250,000</td>
<td>340,000</td>
<td>590,000.00</td>
<td>402,603.14</td>
<td>187,396.86</td>
<td>68%</td>
</tr>
<tr>
<td>Total Operating Expenditures</td>
<td>14,802,750.00</td>
<td>3,068,246</td>
<td>17,870,996.00</td>
<td>12,492,678.63</td>
<td>5,378,317.37</td>
<td>70%</td>
</tr>
<tr>
<td>CAPITAL</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cameras/DVRs</td>
<td>271,500</td>
<td>0</td>
<td>271,500.00</td>
<td>0.00</td>
<td>271,500.00</td>
<td>0%</td>
</tr>
<tr>
<td>Radios</td>
<td>50,000</td>
<td>0</td>
<td>50,000.00</td>
<td>0.00</td>
<td>50,000.00</td>
<td>0%</td>
</tr>
<tr>
<td>CRM Interface development</td>
<td>100,000</td>
<td>0</td>
<td>100,000.00</td>
<td>101,251.00</td>
<td>(1,251.00)</td>
<td>101%</td>
</tr>
<tr>
<td>Barcode Scanners</td>
<td>5,000</td>
<td>0</td>
<td>5,000.00</td>
<td>0.00</td>
<td>5,000.00</td>
<td>0%</td>
</tr>
<tr>
<td>Timeclock system</td>
<td>10,000</td>
<td>0</td>
<td>10,000.00</td>
<td>0.00</td>
<td>10,000.00</td>
<td>0%</td>
</tr>
<tr>
<td>RouteMatch, Misc Software</td>
<td>125,824</td>
<td>0</td>
<td>125,824.00</td>
<td>0.00</td>
<td>125,824.00</td>
<td>0%</td>
</tr>
<tr>
<td>Computers/Servers</td>
<td>259,478</td>
<td>0</td>
<td>259,478.00</td>
<td>79,898.56</td>
<td>179,579.44</td>
<td>31%</td>
</tr>
<tr>
<td>Purchase Transit Vehicles</td>
<td>2,127,257</td>
<td>1,780,000</td>
<td>3,907,257.00</td>
<td>1,560,216.60</td>
<td>2,347,040.40</td>
<td>40%</td>
</tr>
<tr>
<td>Purchase Support Vehicles</td>
<td>225,000</td>
<td>(225,000)</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
<td>0%</td>
</tr>
<tr>
<td>Bus Shelters/signage</td>
<td>50,000</td>
<td>280,000</td>
<td>330,000.00</td>
<td>42,000.00</td>
<td>288,000.00</td>
<td>13%</td>
</tr>
<tr>
<td>Shop Equipment (Sherm)</td>
<td>82,000</td>
<td>0</td>
<td>82,000.00</td>
<td>75,525.00</td>
<td>6,475.00</td>
<td>92%</td>
</tr>
<tr>
<td>Construction (NTRTC)</td>
<td>7,880,000</td>
<td>(7,820,000)</td>
<td>60,000.00</td>
<td>0.00</td>
<td>60,000.00</td>
<td>0%</td>
</tr>
<tr>
<td>Debt Service</td>
<td>1,700,000</td>
<td>(1,133,333)</td>
<td>566,667.00</td>
<td>350,320.00</td>
<td>216,347.00</td>
<td>62%</td>
</tr>
<tr>
<td>Total Capital Expenditures</td>
<td>12,886,059.00</td>
<td>(7,118,333)</td>
<td>5,767,726.00</td>
<td>2,209,211.16</td>
<td>3,558,514.84</td>
<td>38%</td>
</tr>
<tr>
<td>Total Expenditures</td>
<td>27,688,809.00</td>
<td>(4,050,087)</td>
<td>23,638,722.00</td>
<td>14,701,889.79</td>
<td>8,936,832.21</td>
<td>62%</td>
</tr>
</tbody>
</table>
TEXOMA AREA PARA TRANSIT SYSTEM, INC.
BOARD FINANCIAL REPORT REVIEW

REPORTING PERIOD: October 1, 2014 through May 31, 2015  Overall percentage of budget is 67%

REVENUE

EXPENSE

END OF MONTH TOTALS

<table>
<thead>
<tr>
<th>Month</th>
<th>Revenue</th>
<th>Expense</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Farebox History
<table>
<thead>
<tr>
<th></th>
<th>Total Award</th>
<th>Accessible (8/12 of Total Funding)</th>
<th>Pending Application (2/12 of Total Funding)</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sherman</td>
<td>$1,244,538</td>
<td>$829,692</td>
<td>$207,423</td>
<td>$207,423</td>
</tr>
<tr>
<td>McKinney</td>
<td>$2,773,219</td>
<td>$1,848,813</td>
<td>$462,203</td>
<td>$462,203</td>
</tr>
<tr>
<td>Total</td>
<td>$4,017,757</td>
<td>$2,678,505</td>
<td>$669,626</td>
<td>$669,626</td>
</tr>
</tbody>
</table>
7. Receive Update Presentation on TAPS FTA FMO Review
Lori Cannon, CPA, Interim CFO
8. Receive Presentation and Take Action to approve the Plyer Construction contract for the NTRTC Facility
Brad Underwood, CEO
To: TAPS Board of Directors

From: Brad Underwood, CEO

Subject: Item #8 Take Action to approve the Plyer Construction contract for the NTRTC Facility

Board:
Here are the three things that our Procurement Officer believes need to be changed before signing the contract:

- Section 5.1.3: A government agency we are a net 30 day pay.

- Section 9.1: Needs to have the proposal that was submitted by Plyer as part of the Contract Documents.

- Section 3.1: Needs to be done based on Notice to Proceed not start date of August 1, 2015.

Recommendation:
To approve the contract with the above changes.
DRAFT AIA® Document A101™ - 2007

Standard Form of Agreement Between Owner and Contractor
where the basis of payment is a Stipulated Sum

AGREEMENT made as of the Twelfth day of June in the year Two Thousand Fifteen
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

«TAPS Public Transit»
«3400 Texoma Parkway
Sherman, Texas 75092»
« »
« »

and the Contractor:
(Name, legal status, address and other information)

«Lloyd Plyler Construction, LLP», Limited Liability Partnership
«3505 Texoma Parkway
P.O. Box 2406
Sherman, Texas 75090»
«Telephone Number: 903-893-6393»
«Fax Number: 903-892-3523»

for the following Project:
(Name, location and detailed description)

«TAPS North Texas Regional Transportation Center»
«6104 Texoma Parkway
Sherman, Texas 75092»
«Construction of a three story, 39,000 sf facility»

The Architect:
(Name, legal status, address and other information)

«David Baca Studio, LLC», Limited Liability Company
«100 N. Travis Street
Suite 500A
Sherman, Texas 75090»
«Telephone Number: 903-893-5800»
« »

The Owner and Contractor agree as follows.
TABLE OF ARTICLES
1 THE CONTRACT DOCUMENTS
2 THE WORK OF THIS CONTRACT
3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4 CONTRACT SUM
5 PAYMENTS
6 DISPUTE RESOLUTION
7 TERMINATION OR SUSPENSION
8 MISCELLANEOUS PROVISIONS
9 ENUMERATION OF CONTRACT DOCUMENTS
10 INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS
The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT
The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.
(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

«August 01, 2015»

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

« »

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than «415 days after notice to proceed with construction» (« ») days from the date of commencement, or as follows:
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

« »
ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum shall be "Five Million Nine Hundred Twenty Thousand Dollars and Zero Cents" ($5,920,000.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

§ 4.3 Unit prices, if any:

(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

<table>
<thead>
<tr>
<th>Item</th>
<th>Units and Limitations</th>
<th>Price Per Unit ($0.00)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional Asphalt Removal</td>
<td>Square foot</td>
<td>0.75 sf</td>
</tr>
<tr>
<td>18&quot; Diameter Steel Casing</td>
<td>Ln ft</td>
<td>1.00</td>
</tr>
<tr>
<td>18&quot; Diameter Caissons</td>
<td>Ln ft</td>
<td>+.22.00/-.00</td>
</tr>
</tbody>
</table>

§ 4.4 Allowances included in the Contract Sum, if any:

(Identify allowance and state exclusions, if any, from the allowance price.)

<table>
<thead>
<tr>
<th>Item</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lab Testing Allowance</td>
<td>20,000.00</td>
</tr>
</tbody>
</table>

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the «25th» day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the «15th» day of the «following» month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than «20» (« ») days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)
§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor’s Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

1. Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of 10% Percent (10% - 0%); pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™-2007, General Conditions of the Contract for Construction;

2. Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of 10% Percent (10% - 0%);

3. Subtract the aggregate of previous payments made by the Owner; and

4. Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

1. Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and

(Section 9.8.3 of AIA Document A201-2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)

2. Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:
(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

§ 5.1.9 Except with the Owner’s prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 FINAL PAYMENT
§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

1. the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment; and

2. a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner’s final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment, or as follows:

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User Notes: (1963260719)
ARTICLE 6 DISPUTE RESOLUTION
§ 6.1 INITIAL DECISION MAKER
The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker. (If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 6.2 BINDING DISPUTE RESOLUTION
For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

- [ ☐ ] Arbitration pursuant to Section 15.4 of AIA Document A201–2007
- [ ☐ ] Litigation in a court of competent jurisdiction

[ ☐ ] Other (Specify)

According to Exhibit C Attached

ARTICLE 7 TERMINATION OR SUSPENSION
§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007.

ARTICLE 8 MISCELLANEOUS PROVISIONS
§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

[ ☑ ] %

§ 8.3 The Owner's representative:
(Name, address and other information)

«Brad Underwood»
«3400 Texoma Parkway
Sherman, Texas 75092»

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User Notes:
§ 8.4 The Contractor’s representative:
(Name, address and other information)

«David Plyler»
« »
«Telephone Number: 903-813-8003»
«Fax Number: 903-892-3523»
«Mobile Number: 903-821-7149»
«Email Address: dplyler@plylerbuilds.com»

§ 8.5 Neither the Owner nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:
« »

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS
§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

Instruction to proposers
Proposal Form 5/6/15
Price and payment procedures
1325 RFP Package 150217
Drawing dated 2/2/15
Addendum 1, 2, 3, 4
Clarification 1, 2, 3
Specifications dated 2/27/15

§ 9.1.1 The Agreement is this executed AIA Document A101–2007, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

<table>
<thead>
<tr>
<th>Document</th>
<th>Title</th>
<th>Date</th>
<th>Pages</th>
</tr>
</thead>
</table>

§ 9.1.4 The Specifications:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Date</th>
<th>Pages</th>
</tr>
</thead>
</table>

§ 9.1.5 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

<table>
<thead>
<tr>
<th>Number</th>
<th>Title</th>
<th>Date</th>
<th>Pages</th>
</tr>
</thead>
</table>

§ 9.1.6 The Addenda, if any:
Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor’s bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

ARTICLE 10 INSURANCE AND BONDS
The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007.
(STATE bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

<table>
<thead>
<tr>
<th>Type of insurance or bond</th>
<th>Limit of liability or bond amount ($0.00)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment and Performance Bond</td>
<td>Unlimited</td>
</tr>
<tr>
<td>Certificate of Insurance Coverage</td>
<td>See Attached Certificate of Insurance</td>
</tr>
</tbody>
</table>

This Agreement entered into as of the day and year first written above.

OWNER (Signature)  
«Brad Underwood», Chief Executive Officer»  
(Printed name and title)

CONTRACTOR (Signature)  
«David Plyler», Vice President»  
(Printed name and title)
TERMINATION

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

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

If it is later determined by TAPS that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, TAPS, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure - TAPS in its sole discretion may, in the case of a termination for breach or default, allow the Contractor thirty (30) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to TAPS's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from TAPS setting forth the nature of said breach or default, TAPS shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude TAPS from also pursuing all available remedies against Contractor and its sureties for said breach or default.

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

e. Termination for Default - If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, TAPS may terminate this contract for default. TAPS shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, TAPS may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to TAPS resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by TAPS in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-
1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of TAPS, acts of another Contractor in the performance of a contract with TAPS, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. The contractor, within ten (10) days from the beginning of any delay, notifies TAPS in writing of the causes of delay. If in the judgment of TAPS, the delay is excusable, the time for completing the work shall be extended. The judgment of TAPS shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor’s right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of TAPS.

BREACHES AND DISPUTE RESOLUTION

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient’s) [title of employee]. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

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

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

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

The Bidder, by signing this Exhibit, agrees to the terms and conditions set forth herein.

END OF EXHIBIT C
CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFER NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
MHBT Inc.
8144 Walnut Hill Lane, 16th Floor
Dallas TX 75231

CONTACT NAME: Peggy Mauldin
PHONE: 972-770-1642
FAX: 972-376-8142
EMAIL ADDRESS: Peggy_Mauldin@mhb.com
INSURER(S) AFFORDING COVERAGE

INJURIES

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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Additional Insured Form #CG7650 Edition 10/13 Applies to the General Liability Policy
Additional Insured Form #CA7450 Edition 07/14 Applies to the Business Auto Policy
Waiver of Subrogation Form #CG7678.3 Edition 08/14 Applies to the General Liability Policy
Waiver of Subrogation Form #CA7450 Edition 07/14 Applies to the Business Auto Policy
Waiver of Subrogation Form #WC420304A Edition 01/00 Applies to the Workers Compensation Policy
Waiver of Subrogation Form #SU085 Edition 10/02 Applies to the Umbrella Policy
See Attached...

CERTIFICATE HOLDER

TAPS Public Transit
3400 Texoma Parkway
Sherman TX 75092

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ADDITIONAL REMARKS SCHEDULE

AGENCY
MHBT Inc.

NAMED INSURED
Lloyd Plyler Construction LP
Plyler Fabrication
P.O. Box 2405
Sherman TX 75091

POLICY NUMBER

CARRIER

EFFECTIVE DATE:

NAIC CODE

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

Additional Insured Form #SU001 Edition 10/02 Applies to the Umbrella Policy
Primary and Non-Contributory General Liability Form #CG7650 Edition 10/13

The general liability and auto liability policies include a blanket additional insured endorsement to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such wording.

The general liability, auto liability, workers compensation and umbrella policies include a blanket waiver of subrogation endorsement that may apply only when there is a written contract between the named insured and the certificate holder that requires such wording.

The general liability policy contains an endorsement with primary and non-contributory wording that may apply only when there is a written contract between the named insured and the certificate holder that requires such wording.

The umbrella policy includes as an insured any person or organization included as an additional insured in any scheduled underlying insurance.

The builders risk policy includes blanket loss payee to the certificate holder when there is a contract or agreement between the named insured and the certificate holder that requires such wording.

Certificate Holder Includes TAPS Public Transit and Architect-David Baca Studio, LLC

Project: TAPS North Texas Regional Transportation Center
Construction of a three story, 39,000sf facility
9. Receive Presentation and Take Action to terminate the Peterbilt Contract
Tim Patton, COO
To: TAPS Board of Directors

From: Tim Patton, COO

Subject: Item #9 Take Action to terminate the Peterbilt Contract

Board:

TAPS has provided Peterbilt service to commuters from Grayson and Cooke Counties since 2001. This program began as a JARC funded program but has since lost all supporting funds. The JARC program was discontinued with the MAP-21 Funding Bill. TAPS may continue to use its formula dollars to support the program; however, in my presentation it is a very costly program. At the meeting I will show ridership trends and costs for your final direction. I am enclosing a draft memo and current contract for the service.

Recommendation:
CONTRACT FOR SERVICES
BETWEEN
TEXOMA AREA PARATRANSIT SYSTEM, INC.
AND
LONE STAR COACHES
FOR THE
PETERBILT COMMUTER BUS SERVICE

This Contract is made between Texoma Area Paratransit System, Inc. (TAPS) and Lone Star Coaches (CONTRACTOR) for the provision of round-trip commuter shuttle bus service between the CONTRACTOR Park & Ride in Sherman, TX and Peterbilt Motor Company in Denton, TX. This contract is hereby made and entered into by and between TAPS and CONTRACTOR for the mutual consideration stated herein.

I. Term

This Contract shall be for a period of 24 months beginning on 05.01.2013 and terminating on 04.30.2015 with the option for three additional one year contracts. This Contract may be terminated earlier or extended in accordance with the terms of this Agreement.

II. Scope of Services

CONTRACTOR shall provide transit services for the operation of round-trip commuter shuttle bus service from the TAPS Park & Ride to and from the Peterbilt Motor Company ("PETERBILT") in the City of Denton, Denton County, Texas, ("PROJECT") as set forth in the terms of this Agreement. CONTRACTOR shall provide transit services for the PROJECT on every weekday (Monday through Friday) for the period described in Section I of this Agreement, excluding those weekdays on which New Year’s Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day fall. Curtailed or modified services may be required by TAPS on the above holidays or on holidays other than those listed. In such event, TAPS shall give the CONTRACTOR a minimum of forty-eight (48) hours prior notification of the applicable revised operating schedule.

CONTRACTOR shall furnish all labor, materials, supplies, maintenance, equipment, vehicles, administration management, and other services necessary for operation of the Scope of Services, and the policies, standards, and specifications established by TAPS. Contractor shall employ the personnel necessary to provide the Scope of Services under this Contract and exercise all employment authority over them.

All buses shall be subject to inspection and approval by TAPS. TAPS reserves the right to inspect the bus equipment and/or the records for maintenance of said equipment, at any time; such right to inspect shall include access to CONTRACTOR’s facilities. All determinations by TAPS as to the appearance, cleanliness, and condition of a bus shall be final; however, the CONTRACTOR shall not be relieved of its duty to maintain the buses in sound and safe condition.
CONTRACTOR shall provide all inspection, repair, maintenance, and replacement services for vehicles and equipment used in the PROJECT necessary to meet the Scope of Services of this Contract and service standards established by TAPS. All buses shall be subject to inspection and approval by TAPS. TAPS reserves the right to inspect the bus equipment and/or the records for maintenance of said equipment, at any time; such right to inspect shall include access to Contractor's facilities. All determinations by TAPS as to the appearance, cleanliness, and condition of a bus shall be final; however, the Contractor shall not be relieved of its duty to maintain the buses in sound and safe condition.

TAPS shall provide administrative services associated with the PROJECT, as set forth in the terms of this Agreement, including, but not necessarily limited to, sale and distribution of bus passes, collection and accounting of fares, providing overnight parking space for the bus.

CONTRACTOR shall have available a minimum of two buses (one primary, one spare), each with a minimum capacity of 50 seated riders. The bus shall make one daily round-trip and include a minimum of four stop locations (Sherman, Whitesboro, Gainesville, and Denton). The round-trip shall begin at 5:20 AM in Sherman and will depart from Denton at 3:40 PM.

TAPS and CONTRACTOR may revise or expand the services described in this section by written agreement of both Parties.

III. Payment for Services

TAPS agrees to pay CONTRACTOR for the PROJECT services described herein a sum not to exceed $1,000.00 per round trip performed. A fuel surcharge of 1% per each $0.25 rise in fuel per gallon will be added if fuel prices exceed $3.90 per/gal.

No later than ten days after the end of each month of the term of this Agreement, CONTRACTOR will submit to TAPS an invoice identifying the period for which the payment is being requested and a detail of the services performed during that period. Such detail shall include the number of round-trips completed, and the number of one-way trips performed. One-way trips are calculated by adding the total number of riders on EACH one-way trip provided during the reporting period.

TAPS shall pay CONTRACTOR within 30 days of receipt of each monthly invoice, unless additional documentation has been requested by TAPS, in which case TAPS shall pay the invoice as soon after receiving the supporting documentation as is reasonable; or unless a dispute arises as to any charge(s) contained in the invoice, in which case TAPS shall pay the undisputed amount of the invoice within 30 days of receipt and shall pay the remaining amount, if any, of the invoice after resolution of the dispute as soon after resolution as is reasonable.

Nothing contained in this Agreement shall require TAPS to pay for any activities or expenditures that are not authorized, performed, or submitted in compliance with the terms of this Agreement, nor shall failure to withhold payment based on this provision constitute a waiver of any right that TAPS may have if CONTRACTOR is in default of the Agreement, including TAPS's right to bring legal action for damages or for specific performance of this Agreement. Waiver of any
default under this Agreement shall not be deemed a waiver of any subsequent default.

IV. Relationship

The Contractor shall have the relationship of independent Contractor with TAPS in carrying out this Contract. TAPS shall not be the employer of Contractor's employees or liable or responsible for the acts or inactions of officers, employees, agents, or Contractors of the Contractor.

V. Fares

TAPS shall administer the sale and distribution of bus passes and the collection of fares for the PROJECT. PROJECT fares shall be determined by TAPS at its sole discretion and all PROJECT revenue shall be the right and ownership of TAPS.

VI. Performance

No later than 12 days after the end of each month, CONTRACTOR shall provide a status report to TAPS detailing PROJECT activities which occurred in the previous month. Each report shall identify for each service route the actual number of rides provided (measured by one-way trips), revenue vehicle hours, route lengths, and delays or problems in service and the applied resolution(s).

VII. Maintenance

CONTRACTOR shall maintain all vehicles providing services for the PROJECT according to vehicle manufacturers' recommendations and in compliance with all state and federal laws. CONTRACTOR shall promptly and properly perform all repairs necessary to keep such vehicles in good, safe, and legal operational condition and shall maintain records of all maintenance, repairs, and inspections performed on each vehicle.

VIII. Licensure

All vehicles providing services for the PROJECT shall be operated by an operator duly licensed by the State of Texas and in current possession of said license to operate vehicles of the type and size described in this Agreement.

CONTRACTOR shall ensure that all persons driving vehicles designed to transport 16 or more passengers (including the driver) have valid commercial driver's licenses, and shall further ensure compliance with rules for employees with commercial driver's licenses as specified in 49 CFR Part 382.

IX. Insurance

Without limiting Contractor's indemnification of TAPS, the Contractor will be required to provide and maintain at its own expense throughout the contract term, a program of insurance that includes comprehensive general liability, endorsed for premises, operations, products and
completed operations, independent Contractors and personal injury, and professional liability insurance that covers all events occurring during the Contract term. Insurance must also include contractual liability coverage and "all perils" or broad form business personal property insurance. The Contractor shall also agree to the following conditions:

a. TAPS shall be included as named insured in all liability insurance policies except Worker’s Compensation and Legal Liability coverage (i.e., fire). TAPS shall be named Loss Payee as its interest may appear in all business personal property insurance.

b. Contractors shall carry minimum Umbrella Vehicle Liability insurance in the amount of $5,000,000.00 at all times, to cover all vehicles used for this contract, including sub-contracted vehicles (where applicable).

c. Such insurance must be provided by an insurer licensed by the State of Texas.

d. Such insurance shall be primary with respect to any insurance maintained by TAPS and not contributing with any other insurance maintained by TAPS.

e. Such insurance shall be obtained from brokers of carriers rated “A” or better in the Best Insurance Guide, and authorized and licensed to transact insurance business in the Contractor’s resident state/jurisdiction.

f. Evidence of such insurance shall be submitted to and approved by TAPS prior to commencement of any work under the Contract.

g. Such insurance shall not be canceled, materially reduced in coverage or limits, or non-renewed in the case of a continuous policy, except after forty-five (45) days’ written notice by registered or certified mail has been given to TAPS.

h. The Contractor will be required to submit a certificate of insurance with endorsements or other evidence acceptable to TAPS.

i. The insurance afforded by the policy for contractual liability insurance (subject to the terms, conditions and exclusions applicable to such insurance) shall include liability assumed by the Contractor under the indemnification and/or hold harmless provisions of the Contract.

j. Worker’s Compensation shall be maintained by the selected firm or individual for all employees engaged in the work under the laws of the State of Texas and shall furnish TAPS with a certificate showing proof of such coverage. Employers Liability Insurance shall be maintained by the selected firm or individual at limits not less than Texas Statutory requirements and shall include a waiver of subrogation in favor of TAPS. Such insurance shall not be canceled or materially changed without a forty-five (45) day prior written notice to and subsequent written approval by TAPS.

CONTRACTOR agrees to the following:

a. CONTRACTOR hereby waives subrogation rights for loss or damage to the extent same are
covered by insurance. Insurers shall have no right of recovery or subrogation against TAPS, it being the intention that the insurance policies shall protect all parties to this Agreement and be primary coverage for all losses covered by the policies.

b. Companies issuing the insurance policies and CONTRACTOR shall have no recourse against TAPS for assessments for any deductible. Premiums and deductibles are the sole responsibility and risk of CONTRACTOR.

c. No special payments shall be made for any insurance that the CONTRACTOR and subcontractors are required to carry; all are included in the contract price and the contract unit prices.

Any of the insurance policies required under this section may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby.

X. Non-appropriation

CONTRACTOR specifically recognizes that the continuation of this Agreement after the close of any given fiscal year of TAPS, which fiscal year ends on September 30th of each year, shall be subject to approval by the TAPS Board of Directors. CONTRACTOR expressly agrees that this Agreement may be terminated by TAPS, without any penalty or liability to TAPS, in the event the Board of Directors fails to approve or appropriate funds for any continuation period of this Agreement.

XI. Right to Inspect Records

CONTRACTOR agrees that TAPS shall have access to and the right to examine all books, documents, papers, and other records of CONTRACTOR involving transactions relating to this Agreement. CONTRACTOR agrees that TAPS shall have access during normal working hours to all necessary CONTRACTOR facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this article. TAPS shall give CONTRACTOR at least 48 business hours advance notice of intended audits.

XII. Breach/Opportunity to Cure

In the event either Party is in breach of its obligations herein, the Party not in breach shall provide the other Party at least 30-days’ written notice and opportunity to cure said breach before exercising any rights it has under this Agreement based on the breach.

In the event CONTRACTOR fails to cure any breach within the 30-day cure period, TAPS shall be entitled to recover all actual, special, and consequential damages it may suffer as a result of any such breach.

XIII. Termination
Either Party may terminate this Agreement at any time by providing 30-days’ written notice to the other Party. Each Party expressly reserves its rights to seek payment for any authorized work performed pursuant to this Agreement prior to the date of the provided notice of said termination.

In the event TAPS terminates this Agreement, TAPS shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had CONTRACTOR completed the services required by this Agreement. The foregoing is cumulative and does not affect any right or remedy that TAPS may have.

XIV. Amendment/Extension

The Parties may amend or modify this Agreement only by written amendment signed by both Parties. This Agreement may be extended for subsequent one-year terms, as mutually agreed in writing and signed by both parties.

XV. Notice

Unless otherwise instructed in writing, each Party shall send via certified mail, return receipt requested, all notices and required communications under this Agreement to the address of each Party’s agent as follows:

Texoma Area Paratransit System, Inc.
Attention: Executive Director
6104 Texoma Parkway
Sherman, Texas 75090

Lone Star Coaches
Attention: Mark Steelman
PO Box 531668
Grand Prairie, Texas 75053

Any notices and communications required to be given in writing by one Party to the other shall be considered as having been given to the receiving Party on the date the notice or communication is posted, faxed, or personally delivered by the sending Party.

XVI. Indemnification

CONTRACTOR does hereby covenant and contract to waive all claims, release, indemnify, and hold harmless taps and all of its officials, officers, agents, employees, and invitees, in both their public and private capacities, from any and all liability, claims, suits, demands, or causes of action, including all expenses of litigation and/or settlement, that may arise by reason of death or injury to persons or damage to or loss of use of property occasioned by any wrongful intentional act or omission of contractor, as well as any negligent omission, act, or error of contractor, its officials, officers, agents, employees, and invitees, or other persons for whom contractor is legally liable with regard to the performance of this agreement, and contractor will, at its own cost and expense, defend and protect taps against any and all such claims and demands.
TAPS will make all reasonable efforts to provide contractor notice of TAPS’s perceived right to indemnification under this provision within thirty (30) days after the taps receives a notice of claim from any person or party alleging a claim or cause of action that falls within the scope of this provision.

XVII. Venue

The laws of the State of Texas shall govern the interpretation, validity, performance, and enforcement of this Agreement. This Agreement is performable in Grayson Cooke, and Denton Counties in Texas, and any legal action based on this Agreement shall be brought in one of these aforementioned counties.

XVIII. Severability

The provisions in this agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation having the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.

XIX. Remedies

No right or remedy granted herein or reserved to the Parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Agreement may be waived without written consent of the Parties. Forbearance or indulgence by either Party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Agreement.

XX. Entire Agreement

This Agreement embodies the complete agreement of the Parties, superseding all oral or written previous and contemporaneous agreements between the Parties relating to matters herein. The contract consists of the following documents: this contract, the solicitation, the proposal provided by the contractor, and the certifications and assurances signed by the contractor.

XXI. Non-Waiver

One or more instances of forbearance by TAPS of CONTRACTOR in the exercise of its rights herein shall in no way constitute a waiver thereof.

XXII. Immunity

In the execution of this Agreement, neither Party waives, nor shall be deemed hereby to have waived, any immunity or defense that would otherwise be available to it against claims arising in the exercise of the Parties’ respective governmental powers and functions. By entering into this
Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.

XXIII. Authority

Each of the parties represents and warrants to the other that they have the full power and authority to enter into and fulfill the obligations of this Agreement.

XXIV. Assignment

This Agreement is not assignable except with the advanced written consent of the non-assigning party.

XXV. No Third Party Beneficiary

For purposes of this Agreement, including its intended operation and effect: (1) the Agreement only affects matters or disputes between the Parties, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding that such third person or entity may be in contractual relationship with TAPS or CONTRACTOR or both; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owed by them to either TAPS or CONTRACTOR.

TAPS

By: Brad Underwood  
Chief Executive Officer  
Date Signed: 5-10-2013

Lone Star Coaches

By: Mark Steelman  
President  
Date Signed: 4-29-2013
**CERTIFICATE OF LIABILITY INSURANCE**

**DATE**: 04/29/2013

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFER NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

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**PRODUCER**

N.A.C.R.M.
NORTH AMERICAN COACH RISK MGT, INC.
P.O. BOX 414
LOMETA, TEXAS 76863

**CONTACT**: BRENDAN ANDERSON
**TEL**: (800) 409-4318
**FAX**: (615) 762-3030
**EMAIL**: BRENDAN@NACRM.COM

**INSURER**

LONE STAR COACHES, INC.
P.O. BOX 831088
GRAND PRAIRIE, TEXAS 75063

**INSURER A**: NATIONAL INTERSTATE INSURANCE COMPANY

**CERTIFICATE NUMBER**: 102300

**REVISION NUMBER**:

**COVERAGE**

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**AUXILIARY LIABILITY**

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**DESCRIPTION OF OPERATIONS / LOCATION OF VEHICLES**

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**CANCELLATION**

**CERTIFICATE HOLDER**:
TEXOMA AREA PARATRANSIT SYSTEM, INC.
6104 TEXOMA PARKWAY
SHERMAN, TEXAS 75090
ATTN: EXECUTIVE DIRECTOR

**AUTHORIZED REPRESENTATIVE**

**SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.**

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10. Receive Presentation and Take Action to approve a Memorandum of Understanding Among the City of Wichita Falls, Texoma Area Paratransit System, Incorporated, Rolling Plains Management Corporation and Nortex Regional Planning Commission Concerning Disabled and Elderly Transit Services
Brad Underwood, CEO
To: TAPS Board of Directors

From: Brad Underwood, CEO

Subject: Item #10 Take Action to approve a Memorandum of Understanding Among the City of Wichita Falls, Texoma Area Paratransit System, Incorporated, Rolling Plains Management Corporation and Nortex Regional Planning Commission Concerning Disabled and Elderly Transit Services

Board:
This is an updated proposed draft approved by our lawyer. This agreement would serve as a policy for our western counties to be a memorandum of understanding on mostly Wichita Falls trips. These trips occur quite often with TAPS doing both A & B trips. This would allow TAPS to perform the “A” leg and another provider to perform the “B” leg should you approve.

Recommendation:
To approve the proposed draft.
This Memorandum of Understanding (MOU) is entered into by the City of Wichita Falls, TAPS Public Transit Texoma Area Paratransit System, Incorporated (TAPS) Rolling Plains Management Corporation and Nortex Regional Planning Commission (Nortex), collectively referred to as parties. The purpose of this MOU is to outline the intentions of each Party stated above with respect to development of regional transit connectivity when providing transit services for persons with disabilities, have special needs, or the elderly, inclusive of veterans. The Parties acknowledge that this MOU is reflective of the Parties’ goals and intentions with regard to transit services outside traditional service areas.

WHEREAS, the Regionally Coordinated Transportation Planning Committee continues to work actively to assist all our citizens in gaining access to transit services; and

WHEREAS, all parties seek to effectively, efficiently and with coordination to provide transit services for the benefit of the traveling public; and

WHEREAS, the citizens of State Planning Region #3 want access to consistent and predictable public transit services connecting them within the region as well as location outside the region; and

WHEREAS, special attention is warranted to those individuals who suffer from disabilities, have special needs, are elderly or a veteran to access public transportation service seamlessly and without additional complications; and

WHEREAS, transportation services may cross traditional service boundaries requiring cooperation and coordination to meet the needs of citizens with special needs, those with disabilities, the elderly or veterans.

NOW, THEREFORE, the Parties agree as follows:

Section 1: Responsibilities of the Parties

1.) Members of the first Party will grant permission to members of the second Party to enter or cross traditional service areas to complete a trip. Members of the second Party will reciprocate in kind.

2.) The Party that is the point of origination, regardless of whether or not that Party provides the service, shall agree, in order to provide effective, efficient, and seamless transportation services to citizens, with special needs, disabilities, elderly or veterans, whose trips terminate in another Party’s service area and requires a return trip, will do the following:
a. Inform the citizen requesting service that the Party providing service will provide the return trip, or

b. Inform the citizen requesting the service, the Party providing service will contact the Party to provide the return trip to schedule the trip, or

c. Inform the citizen requesting the service, the Party providing the service will contact the Party to provide the return trip and request the Party contact the citizen to schedule the return trip.

**Section 2: Reimbursement**

1.) The Party of the point of origination shall reimburse the party providing transportation services on a trip by trip basis. This cost shall not exceed the trip cost charged by the Party of the point of origination based on the funding formula used by the Texas Department of Transportation for the grant fund that is applicable.

2.) Reimbursement is due and payable thirty days (30) after the Party of the point of origination receives the invoice of service.

**Section 3: Indemnifications Liability**

1.) Each Party agrees to be responsible and assume liability for its own acts and those of their respective officials, officers, agents, representatives, or employees, to the fullest extent of the law. Each Party further agrees to save, indemnify, defend and hold the other party harmless from any such liability. No Party shall have such responsibility or liability to another Party or another Party's officials, officers, agents, representatives, or employees.
Section 4: Termination

1.) This MOU may be reviewed at any time by request of any Party. This MOU may be amended only in writing and signed by all Parties. Any Party may withdraw from this MOU, without liability, upon 90 days written notice to the other Parties.

City of Wichita Falls

Signed: ____________________________
Printed Name: _______________________
Title: ______________________________
Date: _____________________________

Nortex Regional Planning Commission

Signed: ____________________________
Printed Name: _______________________
Title: ______________________________
Date: _____________________________

Rolling Plains Management Corp.

Signed: ____________________________
Printed Name: _______________________
Title: ______________________________
Date: _____________________________

TAPS Public Transit Texoma Area Paratransit System, Incorporated

Signed: ____________________________
Printed Name: _______________________
Title: ______________________________
Date: _____________________________
11. Receive Presentation and Take Action to amend TAPS Whistle Blower Policy
Brad Underwood, CEO
To: TAPS Board of Directors

From: Brad Underwood, CEO

Subject: Item #11 Take Action to approve TAPS Whistle Blower Policy

Board:

Currently, we only mention in our handbook that retaliation is forbidden and what the employee will receive if they are retaliated against. Federal and state laws prohibit employers from retaliating against employees who file complaints. Claims for retaliation are one of the most prevalent causes of actions against employers, including nonprofits, today. By having this policy, we are practicing sound governance and exercising prudent risk management. This policy encourages people to report their concerns without fear of retaliation and outlines a process for complaints. It is "stand-alone" policy that will provide better direction for everyone involved.

Recommendation:

To approve policy as presented.
Whistle Blower (5.3.9.4.1 Whistle Blower)

5.3.9.4 RETALIATION

TAPS prohibits retaliation in any form against any employee for making a complaint about any discriminatory conduct or harassment. Any employee who is in violation of this policy is subject to disciplinary action up to and including dismissal.

5.3.9.4.1 Whistle Blower

Federal and Texas law (Whistle Blower Act) prohibits all corporations, including nonprofits, from retaliating against employees who “blow the whistle” on their employer’s financial management and account practices. It is illegal to suspend or dismiss an employee for reporting the violation of a law. An employee who seeks and is granted relief under this act may recover actual damages, exemplary damages, court costs, and reasonable attorneys’ fees. Also, the employee may be entitled to:

1) Reinstatement to the employee’s former position.

2) Compensation for wages lost during the period of suspension or dismissal.

3) Reinstatement of any fringe benefits or seniority rights lost because of the suspension or dismissal.

TAPS requires directors, officers and employees to observe high standards of business and personal ethics in the conduct of their duties and responsibilities. As employees and representatives of TAPS, we must practice honesty and integrity in fulfilling our responsibilities and comply with all applicable laws and regulations.

Reporting Responsibility

This Whistleblower Policy is intended to encourage and enable employees and others to raise serious concerns internally so that TAPS can address and correct inappropriate conduct and actions. It is the responsibility of all board members, officers, employees and volunteers to report concerns about violations of TAPS’ code of ethics or suspected violations of law or regulations that govern TAPS’ operations.

No Retaliation

It is contrary to the values of TAPS for anyone to retaliate against any board member, officer, employee or volunteer who in good faith reports an ethics violation, or a suspected violation of law, such as a complaint of discrimination, or suspected fraud, or suspected violation of any regulation governing the operations of TAPS. An employee who retaliates against
someone who has reported a violation in good faith is subject to discipline up to and including termination of employment.

**Reporting Procedure**

TAPS has an open door policy and suggests that employees share their questions, concerns, suggestions or complaints with their supervisor. If you are not comfortable speaking with your supervisor or you are not satisfied with your supervisor’s response, you are encouraged to speak with Human Resources Director. Supervisors and managers are required to report complaints or concerns about suspected ethical and legal violations in writing to the TAPS’ Human Resources and/or Chief Officers, who have the responsibility to investigate all reported complaints. Human Resources and the Chief Officers are responsible for ensuring that all complaints about unethical or illegal conduct are investigated and resolved. Human Resources and the Chief Officers will advise the CEO and/or the Board of Directors if applicable, of all complaints and their resolution and will report at least annually to the CFO on compliance activity relating to accounting or alleged financial improprieties.

**Accounting and Auditing Matters**

TAPS’ Human Resources and the Chief Officers shall immediately notify the CFO of any concerns or complaints regarding accounting practices, internal controls or auditing and work with the CFO until the matter is resolved.

**Acting in Good Faith**

Anyone filing a written complaint concerning a violation or suspected violation must be acting in good faith and have reasonable grounds for believing the information disclosed indicates a violation. Any allegations that prove not to be substantiated and which prove to have been made maliciously or knowingly to be false will be viewed as a serious disciplinary offense. Confidentiality Violations or suspected violations may be submitted on a confidential basis by the complainant. Reports of violations or suspected violations will be kept confidential to the extent possible, consistent with the need to conduct an adequate investigation. Handling of Reported Violations TAPS’ Human Resources Director will notify the person who submitted a complaint and acknowledge receipt of the reported violation or suspected violation. All reports will be promptly investigated and appropriate corrective action will be taken if warranted by the investigation.
12. Receive Presentation on Weekend Fixed Route Service and Take any Necessary Action
Tim Patton, COO
To: TAPS Board of Directors

From: Tim Patton, COO

Subject: Item #12 Take Any Necessary Action regarding weekend demand response & fixed route service

Board:

TAPS currently operates multiple fixed routes within the city of McKinney seven days per week.

With the tremendous growth that TAPS has experienced in the past two years, we have continued to work toward improving our service system-wide. In an effort to improve the system, TAPS has been analyzing all routes and services to insure that we are using our resources to the fullest capacity. In doing so, we look for improvement by identifying areas of low ridership as well as areas which may have a high cost to trip ratio.

In McKinney TAPS is performing less than .5 trips per hour during weekend service on the current Fixed Route System. The costs of performing weekend service is now in excess of $471,000 annually and requires at least 22 FTE’s per day to perform the service at a cost of over $39,000 per weekend.

Recommendation: Eliminate weekend service based on costs vs ridership analysis.
13. Receive Presentation and Take Action to amend TAPS Acceptable Use Policy
Brad Underwood, CEO
To: TAPS Board of Directors

From: Brad Underwood, CEO

Subject: Item #13 Take Action to approve TAPS Acceptable Usage Policy

Board:

This Acceptable Usage policy is requested to provide accountability to TAPS, and its partners. This would hold the employee or vendor liable in the event of improper usage of social media, internet, TAPS provided IT equipment, email, and data access.

Recommendation:

To approve final recommendations.
Acceptable Use Policy

Voice mail, email, and Internet usage assigned to an employee's computer or telephone extensions are solely for the purpose of conducting Company business. Some job responsibilities at Texoma Area Paratransit Systems (TAPS) require access to the Internet and the use of software in addition to the Microsoft Office suite of products. Only people appropriately authorized, for Company purposes, may use the Internet to access additional software.

Software Access Procedure

Software needed, in addition to the Microsoft Office suite of products, must be authorized by your supervisor and downloaded by the IT department. If you need access to software or websites, not currently on TAPS network, talk with your supervisor and consult with the IT department.

Company Owned Equipment

Any device or computer including, but not limited to, desk phones, cell phones, tablets, laptops, desktop computers, and iPads that TAPS provides for your use, should only be used for TAPS business. Keep in mind that TAPS owns the devices and the information in these devices. If you leave TAPS for any reason, TAPS will require that you return the equipment on your last day of work.

Internet Usage

Internet use, on TAPS time, is authorized to conduct TAPS business only. Internet use brings the possibility of breaches to the security of confidential TAPS information. Internet use also creates the possibility of contamination to our system via viruses or spyware. Spyware allows unauthorized people, outside TAPS, potential access to company passwords and other confidential information. Removing such programs from TAPS network requires IT staff to invest time and attention that is better devoted to progress. For this reason, and to assure the use of work time appropriately for work, we ask staff members to limit Internet use. Additionally, under no circumstances may TAPS-owned computers or other electronic equipment, including devices owned by the employee, be used on Company time, to obtain, view, or reach any pornographic, or
otherwise immoral, unethical, or non-business-related Internet sites. Doing so can lead to disciplinary action up to and including termination of employment.

Social Media

Your employer understands that part of what you do in social media is outreach that recruits new employees and enhances our Company brand. Many employees have social media responsibilities in their job description including the social media marketers, tech support, and recruiters. Your employer also understands that the relationship of our employees to an online world that you spend time in 24/7 can lead to the blurring of work time and off work time. We strongly encourage you to limit the use of social media to work-related content and outreach during work hours. Additionally, you are prohibited from sharing any confidential or protected information that belongs to or is about TAPS. You are strongly encouraged not to share disparaging information that places your Company or coworkers in an unfavorable light. TAPS’s reputation and brand should be protected by all employees. The lives and actions of your coworkers should never be shared online. In social media participation from work devices or during working hours, social media content that discriminates against any protected classification including age, race, color, religion, sex, national origin, disability, or genetic information is prohibited. It is our company policy to also recognize sexual preference and weight as qualifying for discrimination protection. Any employee, who participates in social media, who violates this policy will be dealt with according to the harassment policy.

Email Usage at Company

Email is also to be used for Company business only. Company confidential information must not be shared outside of TAPS, without authorization, at any time. You are also not to conduct personal business using TAPS computer or email. Please keep this in mind, also, as you consider forwarding non-business emails to associates, family or friends. Non-business related emails waste company time and attention. Viewing pornography, or sending pornographic jokes or stories via email, is considered sexual harassment and will be addressed according to our sexual harassment policy.
Emails That Discriminate

Any email content that discriminates against any protected classification including age, race, color, religion, sex, national origin, disability, or genetic information is prohibited. It is our company policy to also recognize sexual preference and weight as qualifying for discrimination protection. Any employee who sends email that violates this policy will be dealt with according to the harassment policy. These emails are prohibited at TAPS. Sending or forwarding non-business emails will result in disciplinary action that may lead to employment termination.

Company Owns Employee Email

Keep in mind that TAPS owns any communication sent via email or that is stored on company equipment. Management and other authorized staff have the right to access any material in your email or on your computer at any time. Please do not consider your electronic communication, storage or access to be private if it is created or stored on work systems.

Printed Name: ________________________________________________

Signature: ____________________________________________________
14. Receive Presentation and Take Action to amend TAPS Progressive Discipline Policy
Brad Underwood, CEO
To: TAPS Board of Directors

From: Brad Underwood, CEO

Subject: Item #14 Take Action to amend TAPS Progressive Discipline Policy

Board:

There are several locations in our employee handbook that addresses discipline but the policy for progressive discipline is the best place to outline a more thorough process and expectation for our employees. Our handbook currently, doesn't addresses how long the reprimands stay active in the employee’s record. It's a good idea to document this process so that we can show we set clear expectations on how to correct unacceptable behavior and that after a period of time, those corrected behaviors no longer influence certain employment decisions. The additions to this policy will be another layer of protection against discrimination and inconsistent discipline procedures. Also included are some examples of acceptable conduct and unacceptable conduct so as to give the employees a range of what is expected from them.

Recommendation:

To approve final recommendations.
Progressive Discipline (5.17.1 Progressive Discipline)

5.17.1 PROGRESSIVE DISCIPLINE

TAPS strives for an efficient, productive, fair and safe work environment that fosters dedication and mutual respect among employees. Each of our employees shall conduct themselves with integrity and show respect for all those around them in the workplace, including fellow employees, our clients and our vendors. Although the Director, or his/her designee, may take disciplinary action, including dismissal, against an employee at any time, such discipline is not required. In order to ensure that employees are given every opportunity to correct problems, TAPS adheres to a system of progressive discipline, which normally consists of a verbal reprimand, a written warning, a suspension, if applicable, a discharge, or some combination of the four depending upon the severity of the offense. Each level of reprimand will remain active in the employees file for 90 days beginning the date it was issued and communicated to the employee. If further disciplinary action, related to like events, is warranted within the active 90 days, the next step of reprimand will then be issued and it too will be active for 90 days beginning the date it was issued and communicated to the employee. If the behavior is corrected and reprimand is not escalated within the active 90 days of the action, then that reprimand will fall off active record. Corrected action of more than 12 consecutive months will remain in the employees file but will no longer have bearing on any employment actions. All disciplinary action requires advance approval of the Director.

5.17.2 PROCEDURES TO DOCUMENT VIOLATIONS OF TAPS POLICIES

5.17.2.1 VERBAL REPRIMAND

An employee found to be in violation of TAPS policies (knowingly or unknowingly) will discuss with management staff the nature and seriousness of said deficiency in performance. The purpose of this verbal reprimand is to make the employee aware of the problem and the need to correct it. Although this reprimand may only be verbal, a written notice of the verbal reprimand will be prepared and put into the employee’s personnel file. The employee may be given a reasonable, but specific, amount of time to correct any deficiencies.

5.17.2.2 WRITTEN WARNING

Continued deficiencies of the same type, or multiple infractions of various types, will receive written warnings to give the employee notice that more serious action may result if the employee does not take corrective action within a specified time.

5.17.2.3 SUSPENSION

If an employee is suspected of a serious infraction, particularly one involving a safety or security infraction or illegal activities, the employee may be placed on
paid or unpaid suspension to allow management reasonable time to investigate the situation.

5.17.2.4 DISMISSAL

Although employees are employed “at will” and, within the limits of state and federal law applying to public employment, may at any time during their employment, be terminated with or without notice, for any reason or no reason, TAPS supervisors are encouraged to utilize the progressive discipline process before terminating an employee.

Dismissal is the final action and will be taken when all other remedies are exhausted, or in cases where the offense is extremely serious. Reasons for dismissal include, but are not limited to the following:

1. Continued unsatisfactory work or job performance in spite of documented performance improvement actions (disciplinary discharge).
2. Failure to comply with the employment contract or conditions of employment.
3. Excessive absence, repeated tardiness and/or failure to keep appointments.
4. Knowingly falsifying employee records or company records/statistics.
5. Violation of company policies.
6. Unsatisfactory conduct, insubordination, failure to comply with the rules and regulations governing all personnel.
7. Malfeasance, criminal activities, alcohol, or other substance abuse.

Upon immediate dismissal an employee will be paid only for time actually worked up to the point of dismissal, plus the remaining balance of accrued vacation time, not to exceed the maximum accrual amount of 120 hours (5.10.3.1.5). Immediate dismissal will not result in any severance pay.

As an employee of TAPS, conducting yourself with integrity means, but is not limited to:

- Taking pride in the quality of your work;
- Taking pride in your professional appearance and adhering to the dress code;
- Communicating in a courteous, respectful and professional manner at all times whether in person, in writing or on the telephone;
- Protecting and preserving company and client property;
- Being honest and truthful with customers regarding products, services, and capabilities about which they inquire;
- Complying with safety procedures, requirements, and guidelines;
- Maintaining company, client, and customer confidentiality.

Examples of unacceptable actions include but are not limited to the following:

- Sleeping on the job or anytime during your scheduled work period;
- Failure to correct inappropriate personal appearance, grooming, or personal hygiene affecting your job;
• Discourtesy to customers, coworkers, vendors, or anyone doing business with TAPS;
• Behaving in an unprofessional manner is considered insubordination; which may include refusal to perform a reasonable request of supervisor.
• Inappropriate phone handling of customer and/or coworker calls including but not limited to integrity, rudeness, tone of voice, not acknowledging calls or deliberately hanging up on a customer and/or coworkers.
• Dishonesty in providing information to TAPS, customers, or clients. This includes falsification of any agency documents, employment records, time records, whether your own or someone else’s, or furnishing false information. Only you, your supervisor, or Human Resources may record or correct your work time.
• Refusal or failure to cooperate with any agency investigation;
• Unauthorized use or disclosure of agency or customer confidential information;
• Working unauthorized overtime, or failure to report overtime hours worked;
• Reporting to work intoxicated or under the influence of any type of drug or alcohol;
• Conflict of interest such as working for another agency engaged in the same or similar business to TAPS;
• Any criminal conduct, including gambling, violence, or possession or distribution of illegal substances.
15. Receive Presentation and Take Action to amend TAPS Floating Holiday accrual
Brad Underwood, CEO
To: TAPS Board of Directors

From: Brad Underwood, CEO

Subject: Item #15 Take Action to amend TAPS Floating Holiday accrual

Board:

Our current HR/Payroll system is not set up to automatically apply our Floating Holiday policy. As such, the policy has been amended to clearly state who gets how many hours and when. This will also help HR and Payroll to be consistent with our process and figure out how to accommodate a more manual process for tracking hours.

Recommendation:

To approve final recommendations.
Floating Holiday (5.11.1 DRESS CODE)

5.11 HOLIDAYS

5.11.1 PAID HOLIDAYS

The Board establishes paid holidays each year. The following normally are observed as paid holidays for all employees:

1) New Year’s Day
2) Good Friday
3) Memorial Day
4) Independence Day
5) Labor Day
6) Thanksgiving Day
7) Day after Thanksgiving
8) Christmas Eve
9) Christmas Day

10) Two additional holidays of the employee’s choosing, termed a “Floating Holiday” (with prior departmental approval). The floating holiday must be taken within each calendar year. Unused floating holiday hours cannot be carried over to another calendar year. Employees beginning employment during the year will be granted floating holidays on a pro-rated basis of 4 hours per full quarter of employment. You will receive the following number of floating holiday hours your first year, based on the month that you were hired:

(a) First Quarter – 12 hours
(b) Second Quarter – 8 hours
(c) Third Quarter – 4 hours
(d) Fourth Quarter – 0 hours

**16 Hours will then be awarded to you at the beginning of each new calendar year.**

All regular employees working 30 hours or more per week will receive a pro-rata share for the above holidays.
16. Consider and Take Action to Suspend Current Procurement Rules to Purchase Capital with McKinney MCDC Grant
Tim Patton, COO
To: TAPS Board of Directors

From: Tim Patton, COO

Subject: Item #17 Take Action to suspend current procurement rules to purchase capital with the MCDC grant funds for the McKinney Fixed Route System

Board:

In 2014 TAPS was the recipient of McKinney Community Development Corporation (MCDC) funding. This funding is intended to improve and enhance the McKinney Fixed Route system. These improvements are to include bus shelters, bike racks, concrete pads, electric signage and curb cuts, which will vastly improve the existing system. TAPS’ current procurement policy states that we follow a formal open procurement process for all capital purchases over $50,000, which will be required on portions of the remaining purchases. This process takes at least 8 weeks on the average. TAPS personnel have been working with McKinney City Staff to meet the deadline for expending the granted funds within this cycle. However, many of the remaining items are in need of unexpected engineering support and some would require an RFP to satisfy our current procurement rules. The funds are considered local dollars which do not require that we follow the full FTA procurement. Therefore TAPS would still use a three-bid system for procurement internally but will not be required to adhere to the standard open procurement process.

Total sum of MCDC grant funding $218,500.00

Total spent on project to date $46,794.55

Total funds remaining to be spent $171,705.45

Recommendation:

Suspend TAPS procurement rules for the MCDC grant project until completed.
2.4.0 ACQUISITION PLANNING

2.4.1 General
TAPS recognizes that advance procurement planning is a significant factor in providing and enabling full and open competition. Such planning, for large or complex procurements, will involve the efforts of all personnel responsible for a procurement far enough in advance to assure adequate time to solicit maximum participation by prospective vendors in meeting the requirement. Generally, planning for large or complex non-inventory procurements will begin with the annual budgeting and capital planning process. However, very complex procurements may require advance procurement planning to begin before the annual budget cycle in order to properly define a project scope and budget.

2.4.2 Planning Major Procurements
In order to provide for a smooth flow of major procurement work, the Chief Executive Officer will annually convene one or more staff meetings after annual budget approval for the purpose of advance procurement planning for the coming year. The expected result of such meeting(s) will be agreement as to responsibilities for and the general timing of procurement effort for major projects in order that consistency of procurement activity is achieved and timely solicitations are made. Minutes of these meetings will be made and retained.

The most appropriate method of procurement for each purchase will be determined by the Chief Executive Officer in consultation with the Board of Board Members and/or county administrator. Purchases will be made by the following methods:

a) Micro purchase
b) Small Purchase
c) Emergency purchase
d) Request for Bids (RFB),
e) Requests for Proposals (RFP)
f) Non-competitive procurements.

2.5.0 SMALL PURCHASES

2.5.1 Micro Purchases General
Section 9.a of FTA Circular 4220.1F authorizes the use of micro-purchases as a method of procurement, when appropriate. If used, the following apply:
a) Micro-purchases are defined as those purchases under $3,000.

b) Micro-purchases may be made without obtaining competitive quotations if the grantee determines that the price to be paid is fair and reasonable.

c) Micro-purchases are exempt from the Buy America requirements.

d) Micro-purchases should be equitably distributed among qualified suppliers in the local area and purchases shall not be split to avoid the requirements for competition above the $3,000 micro-purchase threshold.

e) The requirements of the Davis-Bacon Act apply to construction contracts between $2,000 and $3,000. Other than the Davis-Bacon Act clauses for construction contracts between $2,000 and $3,000, no other Federal clauses are required.

f) Minimal documentation is required: (a) a determination that the price is fair and reasonable and (b) how this determination was derived.

2.5.2 Small Purchases General

A significant portion of TAPS purchasing activity involves purchases of materials or services under the threshold for formal advertising and bidding, generally termed "small purchases". Small purchase procedures are covered in this section.

A Purchase Requisition is required and the necessary approvals secured prior to the commitment of TAPS funds. The only exceptions to this rule are:

a) Petty cash purchases within limits,

b) Emergency purchases coordinated with the Chief Executive Officer, and

c) Direct pay items under existing contracts or with proper prior approvals or authority for expenditure.

2.5.3 Petty Cash Purchases
The purchase of small-dollar value non-inventory items, $250.00 or less may be accomplished using petty cash, only with prior approval of the petty cash custodian. The petty cash account is intended to satisfy immediate small-dollar needs. All petty cash expenditures must be supported by appropriately detailed receipts for reimbursement. TAPS is tax exempt and no sales tax should be paid.

2.5.4 Small Purchase Procedures

2.5.4.1 General
While Federal Transit Administration (FTA) regulations contained in FTA Circular 4220.1F, and the Federal Acquisition Regulation, define small purchases as those relatively simple and informal procurement methods for securing supplies, services, or property that do not cost more than $100,000 in the aggregate, TxDOT regulations lower this limit to $50,000. Circular 4220.1F requires that price or rate quotations will be obtained from an adequate number of qualified sources when small purchase procedures are used.

2.5.4.2 Competition Guidelines
TAPS's competition guidelines for purchases which are below $3,000 permit purchase without quotation if, in the best judgment of the purchaser, the prices furnished are reasonable and comparable to prices for the same or similar supplies or materials which have been actively competed.

Purchases above $3,000 but below $15,000 will require that informal requests for quotation be solicited from at least three vendors, if available.

Purchases over $15,000 but less than $50,000 will require written bids (or proposals). Small purchases are not automatically excluded from consideration for formal bidding if cost-savings or other factors make bidding advisable.

For all types of purchases less than the statutory threshold for formal bids, competition guidelines will be relieved when the purchase is known to be "sole source" or when there are less than three potential sources available or willing to quote. In such cases, FTA-required procedures for sole-source acquisition and documentation (see Section 8.0, Non-Competitive Negotiation) will be followed and all efforts to identify and solicit competitive
quotations from an adequate number of vendors will be documented.

2.5.4.3 Small Purchase Documentation
When oral quotations are solicited or obtained, an informal record of notation may be made on or attached to the requisition showing names of suppliers contacted, prices and other terms and conditions quoted by each. Written records of solicitation may include actual written or faxed quotations received or abstracts showing suppliers contacted and responding, price and delivery terms quoted, or references to current printed price lists of a vendor.

2.5.5 Emergency Purchase
Emergency purchases are separately covered under Section 2.3.2 of TAPS Purchasing Policies and Procedures. Emergency procedures will not be used to circumvent established policies and procedures elsewhere described herein. Persons initiating emergency purchases are responsible for all documentation required to the point the procurement is taken over by the Chief Executive Officer.

In the event of an emergency purchase over the threshold for formal bids, the TAPS must be informed at the earliest opportunity.

2.5.6 Check Request/ Direct Pay Items
Certain expenses are incurred without the issuance of a purchase requisition or purchase order supporting each payment. Such expenses are typically the following types:

a) periodic vendor payments under established vendor contracts or leases
b) utility and telephone bills
c) licenses and permits
d) organizational membership dues
e) postage
f) investigative expenses
g) settlement of claims and litigation
h) travel expenses

For some of these payments, TAPS will receive a bill or invoice and for others TAPS may bear the responsibility for meeting a scheduled payment.
### 2.6.0 FORMAL ADVERTISING/INVITATIONS FOR BID (IFB)

#### 2.6.1 General

When TAPS requirements for an item of material exceeds $50,000, or a simple service contract shall be over $50,000, competitive bidding is required.

In addition to the above required IFB solicitations, TAPS may determine in certain circumstances that issuing an IFB for a purchase requirement under the threshold would be appropriate in order to secure a favorable price or other benefit to TAPS.

#### 2.6.2 Conditions Determining When Formal Advertising is Appropriate

The following conditions should be present for an IFB to be considered:

(a) A complete, adequate and realistic specification or purchase description can be made available. Specifications may include one or more of the following conditions:

   (1) that bids will be received and contracts let, separately, for each line or class of materials,

   (2) that bids will be received and contracts let for purchase or lease of an (estimated but) unspecified number of items at a fixed price per unit, or

   (3) that bids will be evaluated on the basis of such factors as reliability, productivity, and the cost of maintenance and services (i.e., life-cycle cost).

(b) Reasonable certainty exists that two or more bidders are able and willing to compete effectively for the bid; and

(c) The purchase lends itself to a firm fixed-price contract and the selection of the successful bidder can be made principally on the basis of price.

#### 2.6.3 Public Advertising

Invitations for Bid for purchases where the estimated aggregate amount is expected to exceed $50,000 will be publicly advertised at least once in either the largest local newspaper of general circulation or on the TAPS website, the day that the solicitation is released. Documentation of the placement of advertisement on the websites shall be included with the procurement documents. As appropriate to the purchase, publication may also be placed in the
construction or equipment trade journals, or transit trade journals, etc. to foster competition.

TAPS will maintain bidders lists for routine types of purchases, containing current and prospective vendors. Prospective bidders on TAPS’s bidders list or identified by other sources may also be contacted directly to solicit interest.

All IFBs for purchase of supplies, materials, equipment and contractual services in amounts or estimated amounts in excess of $50,000 shall be submitted to the Board of Directors for approval.

### 2.6.4 Solicitation: Preparation of IFB

An "IFB" is the complete assembly of related documents, either attached or incorporated by reference, furnished prospective bidders. It is based on a clear and accurate description of the material, equipment or service to be purchased not containing features that unduly restrict full and open competition. IFB’s should contain the following information if applicable to the purchase:

(a) IFB (sequence) number,

(b) name and address of TAPS,

(c) date of issue,

(d) date, hour and place of bid opening,

(e) description of material, equipment, or services to be furnished under each item, in sufficient detail to promote competition,

(f) time of delivery or other performance requirements,

(g) permission, if appropriate, to submit bids of alternate material or design (in addition to bid called for),

(h) statement that "Bids must set forth full, accurate, and complete information as required by the IFB",

(i) bid guarantee, performance and payment bond requirements,

(j) a minimum bid acceptance period required of the bidder,
(k) any special technical specifications,
(l) any special provisions relating to progress payments, patents, liquidated damages, etc.,
(m) any contract provisions required by federal, State, or local law,
(n) all factors to be considered in evaluation of bids, such as shipping costs, taxes and surcharges, etc., and how they will be considered,
(o) how to obtain copies of documents incorporated by reference,
(p) instructions regarding how late bids will be handled.

2.6.5 Solicitation Guidelines

6.5.1 Specifications - Specifications and purchase descriptions will provide accurate descriptions of the technical requirements for the material, equipment or service and will include the procedure for determining whether the requirement has been met. When possible, TAPS will state performance specifications defining the expected performance standards the end product is expected to achieve.

Purchase descriptions may refer to a "brand name or equal" product when it is not feasible to provide a more detailed description. All known acceptable brand name products will be listed. Potential bidders will be given opportunity to offer products other than those specifically referenced by brand name if those other products can be shown to meet TAPS needs in the same manner.

6.5.2 Bidding Time - Adequate time will be given between the issuing of bid notice and the time set for receipt of bids to permit prospective contractors to prepare bids. Generally, no less than 20 days will be allowed for standard commercial items and no less than 30 days when purchasing other than standard commercial items, or purchasing services. Complex procurements for certain items of equipment or construction will require significantly longer bidding time.

6.5.3 Distribution of IFB's - IFB's over $50,000 will be publicly advertised in accordance with Section 6.3. At first publication, they will also be mailed to known prospective vendors. Records of IFB's and
bids will be maintained for a reasonable period in order that they may be consulted in preparing a source list for similar IFB's.

6.5.4 Amendment of IFB - Any change or correction necessary in bid quantities, specifications, delivery schedules, opening date, etc., which is required after issuing IFB's but before bid opening, will be made by issuing an amendment. Any new information given to one prospective bidder will be furnished to all others in the form of an amendment. Consideration will be given to the period of time remaining to opening and the period will be extended in such amendment, if necessary. Notice of amendment will be furnished to each person furnished an IFB.

6.5.5 Responsiveness of Bids - A bid must comply in all material respects with the IFB, including the method and timeliness of submission. Telegraphic or facsimile bids will not be considered under the competitive sealed bid procedure, unless specifically permitted in the IFB. Bidders are expected to use the TAPS bid form, and in failing to do so may be considered non-responsive. Should a bidder submit a bid on its own bid form or a letter, it may only be considered if the bidder specifically states it accepts all terms and conditions of the IFB, and if the award would result in a binding contract not varying from the IFB.

6.5.6 Modification/Withdrawal of Bids - Bids may be modified or withdrawn by written, telegraphic, or facsimile notice or in person if submitted to and received by the purchasing professional not later than twenty-four (24) hours before the time set for bid opening. Telegraphic or facsimile modifications or withdrawals will be sealed in an envelope by an TAPS official and noted for opening with the bid package. Information will not be disclosed prior to opening.

6.5.7 Time and Place of Bid Submission - The IFB, and public advertisement if advertised, will set forth the time, date, and place for opening of bids. A bidder will not be required to (but may) submit a bid before the time specified for receipt of bids. Bid specifications will set forth the manner in which sealed bids are to be marked and identified as sealed bids. When received by TAPS, sealed bids will be date stamped "Received" and the time of receipt noted.

Bids will be opened at the time and place designated in the notice. To be considered responsive, bids must be submitted not later than the exact time specified. Late bids will only be accepted if
proven to be late due to TAPS's mishandling after receipt at its offices.

2.6.6 Award of Bids under IFB Procedures

2.6.6.1 Cancellation After Opening - Award will be made to the responsible bidder who submits the lowest responsive bid unless all bids contain unreasonable prices, there is evidence of collusion or bad faith, or competition was not adequate to ensure a reasonable price. Bids will not be cancelled and re-advertised due solely to increased requirements for items being purchased.

2.6.6.2 Rejection of Individual Bids - Any bid failing to conform to the essential requirements of the IFB, such that it materially affects price, quantity, quality, or delivery of the items offered, or in which the bidder imposes conditions modifying the requirements of the IFB or limiting its liability to TAPS in a way that gives the bidder an advantage over others, will be rejected as non-responsive. Minor informalities, errors that don't go to the substance of a bid, may be waived. A low bidder may be requested to delete certain conditions from its bid, provided they don't go to the substance of the bid. If the bidder fails to furnish a bid guarantee required as a condition of the bid, the bid must be rejected.

2.6.6.3 Rejection of All Bids - When it is determined to reject all bids, all bidders will be notified that all bids were rejected stating the reasons for rejection.

2.6.6.4 Delay of Award - If after bid opening administrative problems delay potential award of the bid beyond the bid acceptance period, and all bids are not to be rejected, bidders will be requested in writing, prior to the expiration of their bids, to extend the bid acceptance period by a specified amount of time. Written confirmation must be received if their bid is to remain in consideration.

2.6.6.5 Award - Award of a bid will be made by written notice within the time period specified for acceptance (or extension). Award will be made to the responsible bidder whose bid, conforming to the IFB, will be most advantageous to TAPS, price and other factors affecting price considered. Award will not be made until all required approvals to contract are obtained.
Selection of a contractor must be supported and documented, justifying why the contractor was selected. Refer to all of section 6.5 for guidelines for selection and justification.

2.6.6.6 **Responsible Bidder** - The following factors will be considered in determining responsibility of a bidder:

(a) possession of and limit on any required license  
(b) financial responsibility,  
(c) experience, and 
(d) ability of bidder to complete performance.

2.6.6.7 **Responsive Bidder** - The following factors will be considered in determining the responsiveness of a bidder:

(a) whether the bid conforms in all material respects with the specifications,  
(b) whether the bid complies specifically with the invitation to bid and instructions to bidders, and  
(c) whether the bidder complied with all applicable statutes or regulations pertaining to the award of a public contract.

2.6.6.8 **Price Analysis** - Some form of price analysis is required for every procurement transaction. In addition, cost analysis is required when it is necessary to examine individual cost elements, such as labor hours or materials prices, to determine the reasonableness of price. In most cases, when competition exists under an IFB, price analysis will be used. Price analysis alone is appropriate when the price will be based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or where prices are set by law or regulation. The purchaser must document, for the contract file, that the price is fair and reasonable and give the basis for that conclusion.

Price analysis is the process of examining and evaluating a proposed price, to conclude the price is fair and reasonable, without evaluating its separate cost elements and proposed profit. Price analysis should include at least two of the following approaches:

(a) comparison of competitive price quotations,
(b) comparison of prior quotations/bids and contract prices with current quotations/bids for the same or similar items,

(c) use of yardsticks such as dollars per pound, per horsepower, or other units to identify inconsistencies,

(d) comparison of published price lists or prices issued on a competitive basis, or published market prices of commodities, together with discount or rebate schedules,

(e) comparison of proposed prices with independent cost estimates prepared before bid.

Price analysis is based on data that is obtained from sources other than the prospective contractor. Prices proposed by competitors are the best data because they reflect current economic conditions and are based on identical specifications. If using prior pricing information, the following factors must be considered:

(a) the prices must be adjusted for changes in economic conditions between the times of the two procurements;

(b) adjustments must be made for differences in quantity;

(c) consideration must be given to inclusion of nonrecurring costs in prices. To make a fair comparison, nonrecurring costs should be removed from both prices.

2.6.6.9 Single Bids - TAPS may award a contract to a single bidder provided that an analysis can be completed which documents the price is fair and reasonable. Price analysis will only be used when price reasonableness can be established based on catalog or market price of a commercial product sold in quantity or set by law or regulation. A cost analysis is required in all other cases of single bid evaluation. Cost analysis is covered in Section 7.6.6.

FTA Circular 4220.1F specifies that single bids must be considered as non-competitive negotiations, and negotiated procurement procedures must be followed. Negotiated procurements are covered under Section 7.7.

FTA Circular 4220.1F, Chapter III, requires recipient agencies who have not "self-certified" to submit to FTA for pre-award review any
2.6.7 Bonding Requirements

2.6.7.1 **General** - A bid bond, performance bond, payment bond or any combination thereof, or sufficient other surety, in an amount determined necessary by TAPS, may be required of each bidder or contractor on a particular contract. The purpose of such bonds or other surety will be to insure proper performance of the contract, and save, indemnify and keep harmless TAPS against all loss, damages, claims, liabilities, judgments, costs and expenses which may accrue against it in consequence of the awarding of the contract.

Excessive or unnecessary surety requirements can restrict and inhibit competition. Therefore, TAPS shall carefully consider the nature of the performance and the need for future protection. TAPS will consider the risks if a successful offeror fails to enter into a formal contract or to perform under a contract, based on the type of supply or service to be performed, the dollar amount of the contract, and the delivery time requirements. Generally, no surety should be required for any procurement made under the small purchase limitation or for standard commercial items that are formally solicited. Performance and payment surety requirements are generally only applied to construction contracts.

In addition to bonds furnished by a surety company licensed in the State, TAPS may also accept as surety an irrevocable letter of credit no to exceed $100,000, a cashier's check, certified check, bank money order or bank draft issued by a New Hampshire bank, or certificates of deposit or money market certificates issued by any New Hampshire bank or savings and loan association.

The Federal Transit Administration (FTA Circular 4220.1F) requires bid, performance and payment bonds for construction or facilities improvement contracts over $100,000. Minimum requirements include a bid guarantee of five percent (5%) in the form of a bid bond, certified check or other negotiable instrument accompanying the bid, a performance bond of one hundred percent (100%) of the contract amount, and a payment bond assuring payment of all
persons furnishing labor and material in furnishing the work of one hundred percent (100%) of the contract amount.

2.6.7.2 **Bid Bonds** - Bid bonds shall not be required for any purchase under the small purchase limitation of $5,000.

Except where bid guarantee is required by law or regulation, the Chief Executive Officer shall assess the need for such protection in view of the nature of material, equipment or service to be purchased, the expected level of competition, and the extent of urgency in securing it. As a general rule, a bid guarantee will not be required for standard commercial items where adequate competition is expected to exist.

Bid guarantees shall be required for construction or facilities improvement contracts over $100,000. The bid guarantee amount shall be ten percent (10%) of the contract amount when bid security is required.

2.6.7.3 **Performance and Payment Bonds** - The requirement for a performance bond shall be determined by the Chief Executive Officer in view of the nature of purchase, its scope, and potential impact to TAPS of the contractor's failure to perform. When required, performance bonds shall be not less than 5 percent (5%) of the contract amount. Performance bonds for purchases of standard commercial items generally will not be required.

Performance and payment bonds in the amount of one hundred percent (100%) of the contract amount shall be required for TAPS public construction or facilities improvement contracts over $100,000.

2.6.7.4 **Handling and Documentation** - When negotiable instruments are submitted as bid guarantee, the bid guarantees of unsuccessful bidders will be returned to the bidders immediately upon award of bid (or rejection or expiration of bid). Bid guarantees of successful bidders will be retained until successful completion of the purchase.

Should the Chief Executive Officer determine a need for bid guarantee, performance bond, or payment bond where not required by law or regulation, documentation justifying the need for and the amount of guarantee or bond will be included in the contract file.
2.7.0 COMPETITIVE NEGOTIATION/REQUESTS FOR PROPOSALS (RFP)

2.7.1 General
When TAPS requirements for professional or personal services contracts over $50,000 exist, competitive proposals and negotiation will be used, except where the service to be performed can be described in an IFB and qualitative evaluation is unnecessary. The competitive proposal process may also be appropriate for certain other procurements in which it is infeasible to fully detail a specification suitable to the IFB process. Proposals are formally advertised and a fixed-fee or cost-reimbursement type contract is negotiated and awarded to the responsible proposer whose proposal is most advantageous to TAPS with price and other factors considered. In competitive negotiation, negotiation is undertaken with all offerors who are in competitive range.

In addition to the above-required formally advertised RFP solicitations, TAPS may determine in certain circumstances that issuing an RFP for an amount below the over $50,000 threshold would be appropriate to secure favorable competition or price to TAPS.

2.7.2 Conditions Determining When Competitive Negotiation is Appropriate
The following conditions should be present for an RFP to be considered:

(a) a complete, adequate and realistic specification or purchase description is infeasible, or a more general description is appropriate to assure full and open competition;

(b) factors other than price, or price-related, will be evaluated and weighed, with price, for award (except architect/engineering contracts prohibiting price consideration in evaluation);

(c) oral/written discussions may be needed with offerors;

(d) reasonable certainty that two or more proposers are able and willing to compete with proposals; and

(e) it is appropriate if a cost-reimbursement contract must be used instead of a fixed-fee contract.

2.7.3 Public Advertising
Requests for Proposal for purchases over $50,000 will be publicly advertised in the largest local newspaper of general circulation and on the TAPS website at least 10 business days prior to the due date for receipt of
proposals. As appropriate to the purchase, publication may also be placed in trade journals or other media to foster maximum opportunity for competition.

TAPS will also maintain and establish lists of prospective proposers and may directly contact prospective contractors to solicit interest in the project.

2.7.4 Solicitation: Preparation of RFP
A Request for Proposal (RFP) is the complete assembly of related documents, either attached to or incorporated by reference, furnished prospective proposers. RFP's should include the following information if applicable to purchase:

(a) RFP (sequence) number,
(b) name and address of TAPS,
(c) date of issue,
(d) date, hour, and place for receipt of proposals,
(e) as complete a description of TAPS's needs as possible, set forth clearly to promote understanding of those needs by an adequate number of qualified sources to promote reasonable competition,
(f) request for technical and cost proposals (ceiling price or budget will not be disclosed),
(g) list of evaluation factors/criteria in descending order of importance as indicated by relative weights applied to each factor,
(h) statement that TAPS reserves the right to select and award based on original proposals without discussion or negotiation with offerors, or with negotiation,
(i) proposal guarantee, performance and payment bond requirements, if any,
(j) minimum proposal acceptance period required of proposer,
(k) special contract provisions and contract provisions required by federal, State, and local law, and
(l) how to obtain copies of documents incorporated by reference.

2.7.5 Solicitation Guidelines

2.7.5.1 Departmental Responsibilities - The Chief Executive Officer, or the Procurement Officer responsible for the procurement, will prepare the following:

(a) specification, scope of work, statement of desired services, in as much detail as possible

(b) suggested evaluation factors, in rank order of importance, and weights.

(c) suggested evaluation team members

(d) a detailed independent estimate of costs for the required services.

2.7.5.2 Independent Estimate of Costs - An independent estimate of costs is required to be prepared prior to all negotiated procurements. The independent estimate will be retained in the contract file and will be used as a basis to establish the competitive range for the resulting negotiations. The independent estimate will be provided to the Chief Executive Officer by the department head or Procurement Officer before proposals are received.

2.7.5.3 Distribution of RFP - Public advertising as described in Section 7.3 will be conducted for all RFP solicitations over $50,000. The Chief Executive Officer will furnish RFP solicitations to (at least three, if possible) known qualified firms or persons who may propose, no earlier than the first date of publication.

2.7.5.4 Discussion with Proposers - During the solicitation process and through evaluation and award, the Chief Executive Officer shall be the primary contact with all proposers, unless such authority is delegated to the Procurement Officer. Care will be given to avoid providing any information to an offeror that would give them competitive advantage. Only the Chief Executive Officer shall discuss issues of expected cost with prospective proposers, and no ceiling or budget price will be furnished.

2.7.6 Evaluation of RFP Submissions
2.7.6.1 Evaluation Committee - The Chief Executive Officer, or Procurement Officer, shall establish written evaluation criteria and weighing of criteria that shall become part of the solicitation. An evaluation committee shall be designated by the Chief Executive Officer prior to opening of the RFP. The size and make-up of the committee will be dependent upon the nature and scope of the procurement. It may consist of the requesting Procurement Officer or department head, other senior managers of TAPS, DBE Officer, Board Member, and/or community representatives from outside the TAPS with expertise in the subject of the procurement. The evaluation committee may also continue to serve in conducting negotiations with a proposer and in a project coordinating capacity after award, as determined by the Chief Executive Officer.

2.7.6.2 Selection of Offerors - Written or oral discussion may be conducted with all responsible offerors who submitted proposals within a competitive range, price and other factors considered. Exceptions to this requirement are:

(a) purchases under $50,000,

(b) purchases where rates or prices are fixed by law or regulation, and

(c) purchases in which it can be clearly demonstrated that acceptance of the most favorable initial proposal without discussion would result in a fair and reasonable initial price, and only if TAPS reserved the right to do so in the solicitation.

In instances where a proposal is deemed to be most favorable, but that proposal involves a material departure from the requirements stated in the RFP, all offerors shall be given the opportunity to submit new proposals on a basis comparable to that proposed.

2.7.6.3 Proposal Openings - At the time and date set for proposal openings, proposals will be opened and the name of each proposer read. Price proposals will not be read aloud or otherwise disclosed to anyone other than the evaluation committee upon its first meeting. To protect the integrity of the RFP process, in most instances, no additional information regarding the contents of a proposal will be released or made available to other proposers or the public until award by the TAPS and conclusion of any protests.
2.7.6.4 **Conduct of Evaluation** - In conducting a technical and cost evaluation of proposals, the evaluator or evaluation committee will consider only those factors set forth in the solicitation as evaluation factors; no other evaluation factors may be used. Findings related to evaluation factors should be concrete and specifically related to those factors.

Responsibility factors may be included in evaluation. However, responsibility factors will only be evaluated to establish a proposer's eligibility or ineligibility for award; there will be no weighing of responsibility factors other than to establish a proposer eligible or ineligible for award (i.e., one responsible vendor can be no "more responsible" than another, only more responsive).

Evaluation criteria will vary with each RFP, but might include a range of weights given to such factors as:

(a) quality of similar work known to have been performed,
(b) depth of experience in the field,
(c) competence of technical personnel,
(d) quality of the responses to the RFP,
(e) ability to meet contract schedules, and
(f) best estimate of total cost.

2.7.6.5 **Architect/Engineer Contracts** - FTA Circular 4220.1F, Chapter I, paragraph 5(c) incorporates requirements of P.L. 92-582, known as the "Brooks Act", which requires selection of architect and engineering firms based upon their technical qualifications. Price cannot be considered as an evaluation factor in determining the most qualified offeror. The most qualified competitor is selected for award of a contract, subject to negotiation of a fair and reasonable contract price. Negotiation is conducted only with the most qualified offeror, rather than all qualified offerors. These rules apply to related services including construction management, feasibility studies, preliminary engineering, design, mapping and similar services commonly performed by architect or engineering firms. These services are the only services that may be procured in such a manner by TAPS.

2.7.6.6 **Cost Analysis** - In a competitive negotiation, price analysis will generally only be used where price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities or where prices are fixed by law or regulation. In all other cases of competitive
negotiation, or non-competitive negotiations including single bid, option, contract modification, or change order, cost analysis will be performed if price reasonableness cannot be established. Cost analysis is appropriate to professional service, personal service, and architect/engineer contracts when the offeror is required to submit the elements of his estimated cost.

A cost analysis is the review and evaluation of the separate cost elements and proposed profit of an offeror's or contractor's cost and pricing data. Performance of the contract should cost, assuming reasonable economy and efficiency, and whether costs are proper, allowable, and allocable.

Cost analysis is different from price analysis because it focuses on the reasonableness of the estimated costs of performance, not the reasonableness of the price. It is necessary to review each element of cost to determine whether the contractor's estimate contains an accurate and reasonable prediction of the costs that will be incurred during performance. The contract price is determined by adding a rate of profit that is determined to be fair.

Major elements of cost analysis are as follows:

1. Verification of cost or pricing data and evaluation of cost elements, including the following:
   a. necessity for and reasonableness of proposed costs, including allowances for contingencies;
   b. projection of offeror's cost trends on basis of current and historical cost and pricing data;
   c. technical appraisal of estimate labor, material tooling, and facilities requirements and reasonableness of scrap and spoilage factors; and
   d. application of audited or negotiated indirect cost rates, labor rates, etc.

2. Evaluating the effect of the offeror's current practices on future costs, to ensure the effects of inefficient or uneconomic past practices are not projected into the future.
(3) Comparison of cost proposed by the offeror for individual cost elements with the following:

(a) actual costs previously incurred by the same offeror;
(b) previous cost estimates from the offeror or other offerors for the same or similar items;
(c) other cost estimates received in response to TAPS’s requests;
(d) independent cost estimates by TAPS technical personnel; and
(e) forecasts or planned expenditures.

(4) Verification that the offeror's cost submissions are in accordance with federal cost principles and procedures.

(5) Review to determine whether any cost or pricing data necessary to make the contractor's proposal accurate, complete, and current have not been either submitted or identified in writing by the contractor.

(6) Analysis of the results of any make-or-buy analysis in evaluating subcontract costs.

Cost analysis will be performed by the Chief Executive Officer prior to initiating any negotiation with offerors, and will be used as a basis for negotiation of a fair and reasonable price. A memorandum will be prepared for the contract file reflecting how the cost analysis was conducted, the factors considered, including profit, and the judgments made.

2.7.7 Negotiations

2.7.7.1 General - The Chief Executive Officer shall be responsible for negotiation of all competitively negotiated or non-competitively negotiated contracts over $50,000.

With the exception of architect/engineering contracts, all qualified offerors whose proposals are in competitive range will be included in the negotiation process.
All proposers selected to participate in negotiations shall be advised of deficiencies in their proposals and offered reasonable opportunity to correct or resolve the deficiencies and to submit such price or cost, technical, or other revisions to their proposals that may result from the discussions. A deficiency is defined as that part of a proposal that would not meet TAPS's requirements.

During separate discussions with offerors, TAPS shall not disclose the strengths or weaknesses of competing proposers or disclose any information regarding one proposer that would enable another proposer to improve his/her proposal as a result thereof.

2.7.7.2 Negotiation of Profit

2.7.7.2.1 General - Negotiation of profit as a separate cost element is required whenever a cost plus fixed-fee contract will result. A fair and reasonable contract provision for profit or fee will not be a simple percentage of the cost estimate or selling price, but must be stated in the contract as a dollar amount. Profit is influenced by such things as the amount of subcontracting, travel, subsistence, and material, and as these items increase in relation to direct labor, the percent of profit should decrease. Federal rules governing direct procurement by the federal government, regarding profit or fee on cost plus fixed-fee contracts, apply to TAPS. The amount of profit on a non-research and development contract is limited to ten percent (10%) maximum. The following factors will be considered in determining profit in all negotiated contracts.

2.7.7.2.2 Effect of Competition - When competition is adequate and market-place pressures on price are evident, TAPS will not ordinarily need to consider profit in detail. When competition is lacking, profit will need to be carefully considered.

2.7.7.2.3 Degree of Risk - The degree of risk assumed by the contractor will influence profit; when elements of risk are shifted to TAPS through provisions of cost-reimbursement or price escalation, profit should be less.
2.7.7.2.4 Nature of Work - Difficulty or complexity of the work, unusual demands of the contract (i.e., new technology, approaches), and whether contractor must use highly skilled professionals will influence profit.

2.7.7.2.5 Extent of TAPS Assistance - To the extent the contractor utilizes TAPS's facilities, equipment, financial resources or other assistance, profit will be reduced.

2.7.7.2.6 Extent of Contractor's Investment - The extent of contractor investment, both equity and borrowed capital, will influence acceptable profit.

2.7.7.2.7 Character of Contractor's Business - When turnover of contractor's working capital is characteristically low, profit on individual contracts is generally higher than in industries where turnover is higher.

2.7.7.2.8 Contractor's Performance - Consistent excellent past performance merits consideration in higher fee, record of quality control, cost control, meeting delivery schedules, creative ability merits consideration.

2.7.7.2.9 Subcontracting - Subcontracting should be segregated for separate profit or fee evaluation. When subcontractors perform a substantial portion of the work, the prime contractor's profit should be lower. Subcontractors should be entitled to a fair and reasonable profit; contractors and subcontractors cannot both receive full profit for the same work.

2.7.7.2.10 Unrealistic Estimates - If records reveal a contractor's actual costs are consistently lower than estimated costs and the contractor will not provide what is considered to be a realistic estimate of costs, a lower profit or fee is appropriate.

2.7.7.3 Negotiation Memorandum - Each negotiation regarding a procurement must be documented and included in the contract file. A Negotiation Memorandum will generally include:
2.7.7.3.1 **Background** - covering the requirement, its purpose, special characteristics; statement of when and where negotiations were conducted, principal participants, and result; record of any unusual aspects such as changes in requirements, progress payments, major subcontracts.

2.7.7.3.2 **Justification for Type of Contract** - summary justification for the type of contract chosen to be used (i.e., fixed fee, cost reimbursement plus fixed fee, time and materials, labor hour, etc.).

2.7.7.3.3 **Technical Evaluation of Cost Elements** - an analysis of reasonableness of contractor's estimates of work to be performed under the proposal.

2.7.7.3.4 **Cost or Price Analysis** - summary of cost or price analysis performed.

2.7.7.3.5 **Pre-negotiation Position** - statement of pre-negotiation position on cost elements, profit, price, delivery schedule, etc. (independent cost analysis may be used).

2.7.7.3.6 **Procurement History** - including procurement authority, whether it is new or sole source, change order or modification, number of RFPs issued, number of proposals received, discussion of proposals received.

2.7.7.3.7 **Negotiation of Costs** - how final cost elements were determined, including profit.

2.7.7.3.8 **Signature, Title, Date**

### 2.7.8 Award

2.7.8.1 **General** - Unless all proposals are rejected, award will be made to the lowest or best proposer based on the evaluation criteria established in the RFP. Award will not be made until all required signature approvals have been obtained.
In the event the Board of County Board Members should disagree with the recommendation of the evaluation committee or staff, the Board of County Board Members is not bound by their recommendations in the making of an award. However, the decision of the Board of County Board Members must be consistent with the written evaluation criteria and requirements as set forth in the solicitation, and it cannot consider other factors than those. If awarded to other than the recommended proposer, contract file documentation must be provided by counsel justifying the basis for award.

2.7.8.2 Award of Contract - Upon award of a contract, the Chief Executive Officer will return any negotiable bid guarantees to unsuccessful proposers. Bid guarantee furnished by the successful proposer will be retained in the contract file. The Chief Executive Officer (or Procurement Officer) will notify unsuccessful proposers in writing. If not already incorporated in the solicitation document and including signatures of the proposer, a contract will be prepared in duplicate and mailed to the contractor for signature. When returned with any necessary performance bond, certificates of insurance, etc., it will be furnished to the Chief Executive Officer, etc. for appropriate signature. One copy will be retained in the contract file and the second returned to the contractor.

2.8.0 NON-COMPETITIVE NEGOTIATION

2.8.1 General
Non-competitive negotiation, or sole source, procurement is accomplished through solicitation or acceptance of a proposal from only one source or when, after solicitation of a number of sources, competition is determined inadequate. A contract amendment or change order not within the original scope of a contract is considered a non-competitive procurement, as is exercise of an option clause in a contract.

2.8.2 Limitations
Purchase by non-competitive negotiation will be used only when the award of a contract is infeasible under small purchase procedures, sealed bids (formal advertising), or competitive proposal methods, and at least one of the following circumstances exists:

(a) the item is only available from a single source,

(b) there is unusual or compelling urgency or an emergency not permitting delay from competitive processes,
(c) after solicitation of a number of sources, competition is determined inadequate, OR

(d) pursuant to Urban Mass Transportation Act Section 9(j) the item is an associated capital maintenance item that is procured directly from the original manufacturer or supplier as the only available source for such an item.

### 2.8.3 Processing Non-Competitive Procurements

The Chief Executive Officer, or the Procurement Officer responsible for a purchase, is responsible for providing accurate and complete information necessary to support the recommendation for a non-competitive procurement.

The Chief Executive Officer will assure that, before initiating a non-competitive purchase:

(a) written justification is documented in the contract file,

(b) it is certified as accurate and complete by the Chief Executive Officer or other responsible official,

(c) appropriate approvals are secured consonant with required signature authority levels,

(d) cost analysis, as covered in Section 7.6.6, is required and must be documented in the contract file, AND

(e) non-competitive or sole-source capital procurements over $100,000 must be submitted to FTA for prior approval pursuant to FTA Circular 4220.1F, Chapter III.

Negotiated procurement procedures as outlined in Section 7.0, Competitive Negotiation, must be followed for non-competitive procurements.

### 2.8.4 Contract Options

#### 2.8.4.1 General

An option is a unilateral right in a contract by which, for a specified time, TAPS may elect to purchase additional materials or services called for by the contract or may elect to extend the term of the contract. When used properly, options can enhance the flexibility of procurement by TAPS. The Chief
Executive Officer must address several considerations to determine the best interest of TAPS before electing to include an option clause in a solicitation and contract award, including:

(a) how long the option period should be,
(b) what an appropriate option quantity should be, in relation to the base quantity, and
(c) how option prices should be evaluated in the selection process for award.

Options generally will not be used when the any of the following circumstances exist:

(a) the option represents known firm requirements for which funds are available,
(b) the foreseeable requirements involve the production and delivery of minimum economic quantities (permitting recovery of start-up costs and delivery of requirements at a reasonable price) and delivery requirements far enough into the future to permit competitive acquisition in a single order,
(c) the materials or services are readily available on the open market,
(d) the contractor may incur undue risks in quoting an option (i.e., price or availability of necessary materials or labor is not reasonable foreseeable) or market prices are likely to change substantially in the future, or
(e) an indefinite quantity or requirements contract is appropriate (except that such contracts may be extended with use of an option clause).

2.8.4.2 Use of Options - In using options, TAPS will follow the requirements of FTA Circular 4220.1F as follows:

8.4.2.1 Option Quantities - The contract shall limit option quantities for additional equipment, materials and services to not more than fifty percent (50%) of the initial quantity of the same contract line item.
2.8.4.2.2 **Option Period** - The total of the basic contract and option periods shall not exceed five years in any contract.

2.8.4.2.3 **Option Price** - The contract shall specify the price for the products or services for the specified option period.

2.8.4.2.4 **FTA Approval** - Prior to issuing a solicitation, TAPS will obtain FTA approval for the inclusion of any option provision in excess of the amounts or periods set forth above. The request to FTA will set forth the need for the option and why it is in the best interest of TAPS and the FTA.

2.8.4.3 **Solicitation Guidelines for Options** - The following guidelines will be incorporated in specifications when making solicitations in which option clauses will be used:

(a) TAPS will state that the evaluation of options will not obligate TAPS to exercise the option.

(b) TAPS will state the bid or proposal may be rejected if it is materially unbalanced as to prices for the base requirement and option quantities.

(c) TAPS will state that the total proposal or bid price including the base requirement plus the option prices will be evaluated as part of the award decision. However, when calling for options, TAPS may elect to evaluate all proposals without options and award a contract without options.

(d) TAPS will indicate how the option will be exercised, including the time frame for exercise of the option. In order to exercise the option after contract award, it must have been evaluated as part of the initial competition.

2.8.4.4 **Exercise of Contract Options** - TAPS will exercise an option only after making a written determination, signed by the appropriate official and placed in the contract file, that the exercise of the option is the most advantageous method of filling TAPS's need, price and other factors considered. The following methods may be used to make such a determination:
(a) A new solicitation may be made and the option awarded if the new solicitation fails to produce a more favorable price or offer. This method will not be used when it is reasonably certain the option price or offer is the best available;

(b) An analysis of prices or examination of the market indicates that the option price is better than the prices available on the market or that the option is a more advantageous offer; or

(c) The time between the award of the contract and the exercise of the option is so short that it indicates the option price is the lowest obtainable or it is the most advantageous offer.

In determining whether to exercise an option, TAPS will take into account its need for continuity of operations and potential costs of disrupting operations. Options will only be exercised in accordance with the conditions of this section, the terms of the option and within the option period specified in the solicitation.

2.9.0 FTA-SUPPORTED CONSTRUCTION CONTRACTS

2.9.1 General
Under federal laws and regulations and FTA grant contracts, certain special solicitation and contract requirements apply to construction contracts which are not necessarily applicable to non-construction contracts. These special requirements include mandatory requirements for bid bonds, performance bonds and payment bonds for construction contracts above $100,000 (see Section 6.7, Bonding Requirements), minimum insurance requirements, liquidated damages provisions in contracts, Anti-Kickback provisions and labor provisions applicable to all construction contracts under the Davis-Bacon Act.

The New Hampshire Code, also, has specific provisions pertaining to public construction or "public works".

Construction contract solicitation and administration requirements will not be covered in detail in this Manual. Solicitations and contracts for construction or "public work" activity will require careful review by counsel to assure completeness.

2.9.2 Federal Labor Requirements
2.9.2.1 **Davis-Bacon Act** - TAPS is subject to the requirements of the Davis-Bacon Act, under which the advertised specifications for every TAPS contract over $2,000 for construction, alteration and/or repair, including painting and decorating, of public buildings or public works which requires or involves the employment of laborers and/or mechanics must contain a provision stating the minimum wages to be paid them based on determinations by the Secretary of Labor of local prevailing wage rates for comparable work. The rates must be posted at the site, and the wages must be paid in full no less often than weekly.

A copy of the determination of the Secretary of Labor must be included in each solicitation and the award of any contract must be conditioned upon the contractor accepting the terms of it. As an FTA grantee, TAPS must report all reported or suspected violations to the FTA.

2.9.2.2 **Copeland Anti-Kickback Act** - TAPS is subject to the requirements of the Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented by Department of Labor regulations (29 CFR Part 3) applicable to all contracts or subcontracts for construction or repair. This Act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he/she is otherwise entitled. TAPS is required to report any suspected or reported violations to the FTA.

2.9.2.3 **Contract Work Hours and Safety Standards Act** - All contracts issued for construction in excess of $2,000 by TAPS or its subcontractors (and all contracts over $2,500 which involve the employment of mechanics or laborers) shall include a provision for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 - 330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under Section 103 of the Act, each contractor will be required to compute the wages of every mechanic and laborer on the basis of a standard workday of eight (8) hours and a standard workweek of forty (40) hours. Work in excess of the standard work day or work week is permissible provided that the worker is compensated at a rate of not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 8 hours in a calendar day or 40 hours in the work week.
Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to his/her health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

2.10.0 CONTRACT ADMINISTRATION

2.10.1 Chief Executive Officer's Post-Award Responsibilities
The Chief Executive Officer's post-award contract administration responsibilities include the following responsibilities (these may be delegated to Procurement Officers):

2.10.1.1 Monitoring for Contract Compliance - The Chief Executive Officer is responsible for monitoring contract compliance. If relying on the department head or Procurement Officer for contract compliance monitoring, the Chief Executive Officer must assure that the department head or Procurement Officer gives timely notice of contract compliance problems.

2.10.1.2 Enforcing Contract Provisions - It is the Chief Executive Officer's responsibility to enforce the contract as written or amended. If not enforced, a loss of time or product quality may be incurred.

2.10.1.3 Issuing Timely Performance and Payment Approvals - The Chief Executive Officer is the person with authority to approve contract performance so that progress payments or other authorized expenditures of funds to the contractor are made. Timely approvals enable the work to proceed on a timely basis.

2.10.1.4 Modifying the Contract as Necessary - As the contract work proceeds, modifications or changes may become necessary. After technical considerations are resolved (by department head/Procurement Officer), it is the Chief Executive Officer who has authority to initiate contract changes on behalf of TAPS.

2.10.1.5 Closing Out the Contract - When the contract performance is completed, it is the Chief Executive Officer's responsibility to
closeout the contract. Timely close-out enables comparison of performance to be checked against contract requirements while information is fresh and maximizes TAPS's ability to correct any deficiencies of performance against contract requirements.

2.10.2 **Project Management**

For major projects, the Chief Executive Officer may designate a Procurement Officer for every project in excess of over $50,000 (this excludes purchase of standard items of material exceeding over $50,000). It is the Procurement Officer's responsibility to follow the contractor through the work process, providing technical direction to the contractor regarding the Scope of Work (which defines specific tasks, milestones and review procedures for the specific project). When authorized by the Chief Executive Officer, the Procurement Officer will respond to correspondence on technical matters from the contractor, either orally or in writing, and shall furnish the Chief Executive Officer with a copy of or memorandum reflecting all correspondence with the contractor. The Procurement Officer shall review the progress of all the work on a periodic basis and initiate any required reviews by the Chief Executive Officer.

The contractor may be required to document the amount of time and money spent on work on a periodic basis as specified by the contract. It is the Procurement Officer's responsibility to review the contractors' documentation and invoices in relation to the milestones, work expended, and budget, and to advise the Chief Executive Officer whether the contractor is in compliance with the contract.

2.10.3 **Contract Amendments and Change Orders**

Change orders are amendments to a contract and may be required to adjust a contract quantity or performance period due to unanticipated conditions. Change orders are considered non-competitive procurements and are subject to the same requirements as noted in Section 8.0. The Chief Executive Officer shall determine whether the proposed change order contains a change in scope that may be grounds for bidding the extra work. All change orders are subject to the Chief Executive Officer's review and approval. If a change order, or the cumulative effect of all change orders, is to increase the original contract amount by over ten percent (10%) of the original contract amount approved by the TAPS, the Chief Executive Officer shall submit it to the TAPS for prior approval before the change is made. Change orders are subject to the availability of funds.

A cost analysis must be performed and filed in the contract file in connection with any change order, unless price reasonableness can be
established based on catalog or market price of a commercial product or on the basis of prices set by law or regulation.

2.10.4 Contract Requirements

Contracts established by TAPS should set forth each party's responsibilities and rights clearly and completely in order to minimize the potential for conflict, and should set forth the directions for resolutions of disputes, if any. Contracts should include the following elements, as appropriate to the specific purchase:

(a) Statement of Work/Scope of Work
   (1) Contract Objectives
   (2) Contract Scope
   (3) Specifications/Purchase Descriptions
   (4) Progress Report Requirements (consultant/professional services contracts and any contract containing progress payment provisions)

(b) Delivery Schedule

(c) Contract Period

(d) Pricing Schedule (should include description of each line item, quantity, unit of measure, unit price and total price for each item)

(e) Payment Schedule (including special terms such as progress payments and authorities to withhold payments)

(f) Inspection Provisions and Acceptance Criteria

(g) FOB Point and Delivery Instructions

(h) Other Requirements (if appropriate):
   (1) identification of key personnel and facilities
   (2) extent of subcontracting and consulting
   (3) provision for changes by TAPS within general scope of the contract
(4) provision for termination for default by TAPS for its convenience and, where appropriate, suspension of the contractor's work under the contract

(5) provisions for resolution of protests (required in solicitation), contract claims and disputes

(6) sanctions or remedies, such as liquidated damages or performance bonds, for contractor's non-performance

(7) notice of any FTA or other federal requirements applicable to the contract.

2.10.5 **Other Provisions**

2.10.5.1 **Liquidated Damages Provisions** - The Chief Executive Officer shall determine whether or not the use of a liquidated damages provision is appropriate for each specific procurement. The amount of liquidated damages set forth must be reasonable to compensate TAPS for possible damages and not be so large as to be construed as a penalty. TAPS will not include such provisions in contracts unless:

(a) the time of delivery is of such importance that TAPS can reasonably expect to suffer damage if the delivery is delinquent,

(b) TAPS determines the delivery schedule is reasonable at the time of contract award, and

(c) damages would be difficult or impossible to establish.

If the Chief Executive Officer determines that a liquidated damages provision is necessary in a contract, he/she shall document the derivation of the rate of assessment and assure it is reasonable, proper, and not arbitrary.

2.10.5.2 **Progress Payment Provisions** - The following standards relate to TAPS's use of progress payment provisions:

(a) Progress payments may be appropriate if:
(1) the contractor won't be able to bill the first delivery of products, or other performance milestones, for a substantial time after work must begin, and

(2) the contractor will make expenditures for contract performance during the period prior to delivery having significant impact on its working capital.

(b) Progress payments may be appropriate for small or DBE businesses if the contractor demonstrates actual financial need or unavailability of private financing.

(c) When progress payments are used in equipment manufacturing contracts, TAPS will obtain title to property (i.e., materials, work in progress, and finished goods) for which progress payments are made. Such title must be free of all encumbrances, or TAPS will secure a priority lien pursuant to Article 9 of the Uniform Commercial Code and applicable state law and local ordinances.

2.10.5.3 Insurance Provisions - The Chief Executive Officer should determine when insurance is required and include in any solicitation and contract document a clause informing contractors of the minimum coverage requirements required by federal or State statutes. When FTA grant funds are used the minimum requirements shall be as follows:

(a) Workers Compensation and Employers Liability - $100,000,

(b) General Liability - $500,000 per occurrence,

(c) Property Liability as required by TAPS in special circumstances,

(d) Auto Liability for Personal Injury and Property Damage - $200,000 per person and $500,000 per occurrence for personal injury and $20,000 for property damage.
Insurance specifications shall provide that an insurance certificate be provided prior to contract work beginning and that, no less than 60 days prior to expiration of the insurance policy date, the contractor shall give notice to TAPS of his/her intent to provide a new certificate. The Chief Executive Officer or Procurement Officer shall assure a current certificate is on file at all times during performance of the contract.

2.10.5.4 Contract Termination Provisions - As required by FTA Circular 4220.1F, all contracts over $10,000 shall contain provisions for Audit/Inspection of Records, Remedies/Sanctions for Breach of Contract, and Contract Termination Provisions.

The performance of work under a contract containing such provisions may be terminated in part or in whole when the Chief Executive Officer, in consultation with counsel as necessary, determines that such termination is in the best interests of TAPS. Contracts may be terminated for convenience (i.e., a reduced need or otherwise in the best interests of TAPS) or for default (i.e., the contractor has failed to perform under the contract requirements). Contractors will not be granted the right of termination.

When the decision to terminate is made, a "Notice of Termination" shall be sent by the Chief Executive Officer to the contractor by Certified Mail, with a return receipt requested. The Notice of Termination shall specify the reason for termination, the extent to which the performance of work is terminated (i.e., in whole or in part), and the day upon which such termination becomes effective. Settlement of claims shall be made as soon as possible after the issuance of a Notice of Termination/Default to protect the interests of and minimize the liability of TAPS. When settlement cannot be made, TAPS shall reserve the right to issue a determination of the amount due consistent with the termination clause and applicable cost principles, subject to appeal under the disputes provisions of the contract.

TAPS will consider a no-cost settlement instead of issuing a termination notice when it is known the contractor will accept one, TAPS's property was not furnished, and there are no outstanding payments, debts due TAPS, or other contractor obligations to TAPS.

2.10.5.5 Buy America Provisions - Section 165 of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 1601), Section
337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR Parts 660 and 661 impose Buy America provisions on the procurement of foreign products and materials.

All TAPS procurements are subject to the Buy America regulation, which requires that all steel and manufactured products (and cement in construction) have 100% U.S. content and be manufactured in the United States. There are special provisions relating to purchase of buses and communications equipment which require sixty percent (60%) U.S. content and final assembly in the United States. In purchasing buses, TAPS is required (49 CFR Part 663) to conduct a pre-award and post-delivery audit of the manufacturer's Buy America certification.

All vendors are required to certify that they can or cannot comply with the Buy America requirements of Section 165(a). When a vendor cannot so certify, Part 661.7 of the regulation provides guidance under which TAPS may submit a request for waiver of the Buy America requirements to the FTA Administrator.

Buy America Certification forms will be included with each IFB or RFP solicitation and will be required to be executed and submitted with a bid or proposal. Purchases made using small purchase procedures are most often made under a purchase order, in order to set up the account payable. TAPS's purchase order states conditions of purchase, including Buy America requirements. It is a condition of TAPS's purchase order that when accepting the order, the vendor certifies that Buy America requirements are met by signing and returning the certification printed on the purchase order. In those few instances where a purchase order is not used, a certification form will be furnished to the vendor for execution. Once a certification is received from a vendor for a particular item, it is not necessary to require receipt of a certification for each subsequent purchase provided there is a certification on file for that item.

2.10.5.6 Federal Provisions and Required Contract Clauses

When FTA operating or capital funds are used in a purchase, certain solicitation provisions and required contract clauses must be incorporated in TAPS's solicitation and award. These requirements are stated in the TAPS's FTA grant contract (Part II), FTA Circulars, and in the various regulations themselves. Some provisions and
clauses apply only over certain contract dollar thresholds, and some apply separately to construction and non-construction contracts, contracts for bus purchases, and so forth. Appendix 1 includes those provisions and required clauses generally applying to non-construction contracts. Part II of the TAPS’s FTA grant contract and procedures in Section 9.0 of this Manual will be referenced in preparing for an FTA-funded construction contract.

When including “boilerplate” provisions and contract clauses in an IFB or RFP, the Chief Executive Officer will separately reference in bid instructions those provisions and/or clauses which are not applicable to the procurement, and will cross out and initial those inapplicable sections of the “boilerplate” document which is included in the solicitation.

2.10.6 Contract File Documentation

TAPS will comply with the requirements of Circular 4220.1F, Chapter I, Para. 3 (i) requiring maintenance of records sufficient to detail the significant history of a procurement. Contract files will be organized so as to allow a reviewer to reconstruct and understand the history of the contract in the absence of the contract administrator, and will provide complete background supporting the actions taken.

The extent of file documentation will vary with the complexity of purchase. At a minimum, small procurements made under purchase order procedures will include the following file documentation:

(1) purchase requisition including independent cost estimate;

(2) list of sources solicited and abstract of offers received, including form of quotations received (book, telephone, fax, written, etc);

(3) Buy America certificate and any other required submissions;

(4) Award and receiving documents.

Contract files for more complex procurements will contain some or all of the following, as appropriate to the procurement:

(1) purchase requisition, acquisition planning information, and other pre-solicitation documents;

(2) evidence of availability of funds;
(3) rationale for method of procurement;

(4) list of sources solicited;

(5) independent cost estimate;

(6) Scope of work or technical specifications;

(7) copies of published notices;

(8) copies of solicitation and all amendments;

(9) an abstract of offers or quotes;

(10) contractor's certifications including a Buy America certification supporting every equipment, material or supply contract;

(11) source selection documentation, if applicable;

(12) Chief Executive Officer's determination of contractor responsibility;

(13) records of contractor's compliance with labor policies, including EEO policies, as required by the contract;

(14) determination that price is fair and reasonable including price analysis or cost analysis, with source materials of price analysis data or vendor certificates of current cost data;

(15) required internal approvals;

(16) notice of award;

(17) notice to unsuccessful quoters or offerors;

(18) bid, performance, payment or other bond documents and notices to sureties;

(19) notice to proceed, stop orders, and any overtime premium approvals granted at time of award;
(20) approvals or disapprovals for requests for waivers of deviations from contract documents;

(21) documentation regarding timely close-out or any early termination actions for which the Chief Executive Officer is responsible.

2.11.0 PROTEST PROCEDURES

2.11.1 General
Protests may be made by prospective contractors, vendors or proposers whose direct economic interest would be affected by award of a contract or by failure to award a contract. TAPS will consider all protests requested in a timely manner regarding the award of a contract, whether submitted before or after an award.

All protests are to be submitted in writing to:

TAPS Public Transportation
6104 Texoma Parkway
Sherman, TX 75090

Protest submissions should be concise, logically arranged, and clearly state the grounds for protest. A protest must include at least the following information:

(a) name, address, and telephone number of protestor,

(b) identification of contract solicitation number,

(c) a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents, and

(d) a statement as to what relief is requested.

Protests must be submitted to TAPS in accordance with these procedures and time requirements, must be complete and contain all issues that the protestor believes relevant.

In the procedures outlined below, the Chief Executive Officer is considered to be the Contracting Officer.

2.11.2 Protests Before Bid Opening
Protests alleging restrictive specifications or improprieties which are
apparent prior to bid opening or receipt of proposals must be submitted in writing to the Contracting Officer at the address above and must be received at least seven (7) days prior to bid opening or closing date for receipt of bids or proposals. If the written protest is not received by the time specified, bids or proposals may be received and award made in the normal manner unless the Contracting Officer determines that remedial action is required. Oral protests not followed up by a written protest will be disregarded. The Contracting Officer may request additional information from the appealing party and information or response from other bidders, which shall be submitted to the Contracting Officer not less than ten (10) days after the date of TAPS’s request. So far as practicable, appeals will be decided based on the written appeal, information and written response submitted by the appealing party and other bidders. In failure of any party to timely respond to a request for information, it may be deemed by TAPS that such party does not desire to participate in the proceeding, does not contest the matter, or does not desire to submit a response, and in such a case, the protest will proceed and will not be delayed due to the lack of a response. Upon receipt and review of written submissions and any independent evaluation deemed appropriate by TAPS, the Contracting Officer shall either:

a) Render a final decision, or

b) At the sole election of the Contracting Officer, conduct an informal hearing at which the interested parties will be afforded opportunity to present their respective positions and facts, documents, justification, and technical information in support thereof. Parties may, but are not required to, be represented by counsel at the informal hearing, which will not be subject to formal rules of evidence or procedures. Following the informal hearing, if one is held, the Contracting Officer will render a decision, which shall be final, and notify all interested parties thereof in writing but no later than ten (10) days from the date of informal hearing.

2.11.3 Protests After Bid/ Proposal Opening/ Prior to Award

Protests against the making of an award by the TAPS must be submitted in writing to the Contracting Officer and received within seven (7) days of the award by the TAPS. Notice of the protest and the basis therefore will be given to all bidders or proposers. In addition, when a protest against the making of an award by the TAPS is received and it is determined to withhold the award pending disposition of the protest, the bidders or proposers whose bids or proposals might become eligible for award shall be requested, before expiration of the time for acceptance, to extend or to withdraw the bid. Where a written protest against the making of an
award is received in the time period specified, award will not be made prior to seven (7) days after resolution of the protest unless TAPS determines that:

a) The items to be purchased are urgently required.

b) Delivery or performance will be unduly delayed by failure to make award promptly.

c) Failure to make award will otherwise cause undue harm to TAPS or the federal government.

2.11.4 Protests After Award
In instances where the award has been made, the Contractor shall be furnished with the notice of protest and the basis therefore. If the contractor has not executed the contract as of the date the protest is received by TAPS, the execution of the contract will not be made prior to seven (7) days after resolution of the protest unless TAPS determines that:

a) The items to be purchased are urgently required, 

b) Delivery or performance will be unduly delayed by failure to make award promptly, or

c) Failure to make award will otherwise cause undue harm to TAPS or the federal government.

2.11.5 Decision
Any decision pertaining to a protest following the guidelines contained in this section is final.

2.11.6 Protests to Federal Transit Administration (FTA)
Under certain limited circumstances, an interested party may protest to the FTA the award of a contract pursuant to an FTA grant. FTA's review of any such protest will be limited to:

a) Alleged failure by TAPS to have written protest procedures or alleged failure to follow such procedures, or

b) Alleged violations of specific federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with that federal regulation.
c) Protestors shall file a protest with FTA not later than five (5) working days after a final decision of TAPS's Contracting Officer is rendered under the TAPS protest procedure. In instances where the protestor alleges that TAPS failed to make a final determination on the protest, the protestor shall file a complaint with FTA no later than five (5) federal working days after the protestor knew or should have known of TAPS's failure to render a final determination in the protest.

2.11.7 Submission of Protest to FTA
Protests submitted to FTA should be submitted to the FTA Region 5 Office in Chicago, Illinois with a concurrent copy to TAPS. The protest filed with FTA shall:

a) Include the name and address of the protestor

b) Identify the TAPS project number and the number of the contract solicitation

c) Contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow TAPS's protest procedures, or the alleged failure to have procedures, and be fully supported to the extent possible

d) Include a copy of the local protest filed with TAPS and a copy of the TAPS decision, if any.

2.11.8 Notice of Federal Changes
Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.
17. Receive Presentation and Take Action to approve a TAPS Armed Security Policy
Brad Underwood, CEO
To: TAPS Board of Directors  

From: Josh Walker, Director of Safety & Security  

Subject: Item #17 Take Action and approve TAPS Armed Security Policy  

Board:  
The Safety and Security Department for TAPS has researched requirements for obtaining Commission for Armed Security through the State Of Texas. This is the first version of policy pertaining to armed security. Additional revisions will be forthcoming for review. Please note that this policy will be revised as time goes on. This requires training certifications that will take some time to complete. Potentially this program would not begin until September or October depending on time frames and offerings. This policy has been approved by legal.  

Recommendation:  

To approve final recommendations.
TAPS PUBLIC TRANSIT

Armed Security Policy
Mission Statement

The Safety and Security Department at TAPS Public Transit will continually strive to serve all of the employees at TAPS in the most effective, efficient, and professional manner possible and is dedicated to the safety of the employees, ensuring that the employees can conduct their business without disruption.
PATROL

Patrol is the most basic security function. No matter what area of security the officer works in, he/she may, at some time, be asked to conduct patrols. Patrols may consist of clock rounds. Patrol is a necessary evil of the security officer’s job. The purpose of patrol is to prevent and detect crime, unauthorized activity and safety problems. The most common type of patrol is the foot patrol. An officer on foot patrol should be looking for any safety violations such as blocked fire exits, open or unlooked doors, blocked fire extinguishers and wet floors. He should check all fire extinguishers to ensure they are fully charged. Also an officer should also be checking for potential fire hazards. While on patrol, check problem areas, such as employee parking areas, entrances and exits or other areas that have reported problems in the past. If any of these are encountered while on patrol, the officer should investigate and take appropriate action.

APPROACHING SUSPICIOUS PERSONS

A suspicious person should be approached on foot in a casual manner. For safety purposes the officer should leave a few feet distance between himself and the subject. When talking to the subject the officer should use tact and courtesy. The lone officer should never box a subject in or make him feel that he is trapped. Subjects should be left a means of escape. This is for the officer’s safety. If the subject runs, he runs, as long as the officer is safe. If the subject does run the officer should get a good description of the subject and the direction he left in and notify the police. If the officer feels he may be entering a dangerous situation, he should notify other security officer (s), if possible, or dispatch or the police and wait for backup to arrive before taking any action.
USE OF FORCE

It is the policy of TAPS Public Transit that security personnel use only the force that reasonably appears necessary to effectively bring an incident under control, while protecting the lives and safety of the invitees, employees, and others as is reasonably possible. Security personnel should attempt to de-escalate any situation before using any level of force upon a person. Should the use of physical force be deemed required, security personnel are to use only that amount of force necessary to overcome the opposing resistance. The use of force must be objectively reasonable. The security personnel must only use that force which a reasonably prudent person would use under similar circumstances.

USE OF DEADLY FORCE

- Security personnel are authorized to use deadly force to protect the officer or others from what is objectively and reasonably believed to be an imminent threat of death or serious bodily harm.

USE OF NON-DEADLY FORCE

- Where deadly force is not appropriate, security personnel may use only that level of force that is objectively reasonable to bring an individual under control.

Use of Force Factors

- Seriousness of the act or crime.
- Size, age and weight of the subject.
- Apparent physical ability of the subject.
- Weapons possessed by or available to the subject.
- Known history of violence by the subject.
- Whether the subject appears to be under the influence of an intoxicating substance.
- Presence of bystanders.
- Distance from the threat, ability to retreat, and the availability of back up.

Use of Handcuffs

- Security personnel use handcuffs on subjects to ensure the safety of all persons, to protect and to maintain security of the subject.
Handcuff Techniques

- Maximum security of subject is accomplished by handcuffing the subject’s hands behind his/her back.
- Injury to the prisoner is avoided by double locking handcuffs whenever they are used.
- Security personnel remove handcuffs as soon as practical for the safety of all concerned.

Documentation

All incidents involving the use of force by security personnel will be documented. All documentation will be reported to Chief Staff within 24 hours of occurrence. Legal will be notified as well and all documentation will be retained for legal purposes.

USE OF FORCE CONTINUUM

Officer Presence- No force is used. Considered the best way to resolve a situation.

Verbalization- Force is not physical.

Empty-Hand Contact- Officers use bodily force to gain control of a situation.

Less-Lethal Methods- Officers use less-lethal technologies such OC Spray to gain control of a situation.

Deadly Force- Officers use lethal weapons to gain control of a situation. Should only be used if a suspect poses a serious threat to the officer or another individual.
AFTER USE OF FORCE RESPONSIBILITIES

In the event that physical force used to detain a subject acting in an unlawful manner and the subject is injured. The subject will be treated as soon as possible by qualified medical personnel and documented. The amount of force used and any injuries will be noted in the incident report.

In the event that an authorized neutralizing agent is used the following procedure will be used:

1. The local law enforcement that has jurisdiction will be summoned to the scene.
2. The person sprayed will not be laid on their back.
3. As soon as possible, water will be made available to flush the agent from the subject’s eyes.
4. The subject will be monitored in person by trained security personnel until the scene has been turned over to law enforcement personnel.
5. Security personnel are required to cooperate with law enforcement.
6. Security personnel are required to prepare a detailed incident report.

WEAPONS AND AMMUNITION

FIREARMS

A. Handguns:

1. Manufacture:
   a. Smith & Wesson
   b. Colt
   c. Ruger
   d. Browning
   e. Glock
   f. Other brands for duty use as approved by Director of Safety and Security.

2. Action:
   a. Semi-Automatic Pistol

3. Caliber:
   a. .45
b. 9mm

4. Barrel Length:
   a. 3 ½”
   b. 4”
   c. 5”

AMMUNITION

A. Handgun:

   1. Full jacketed hollow point ammunition **ONLY**.
      a. Full jacketed or ball ammunition is not authorized for on-duty carry for handguns.

   2. Full jacketed hollow point ammunition in all semi-automatic pistols. Special caution should be taken not to continuously feed the same bullet into the firing chamber of an autoloader.

   3. All handgun ammunition shall possess a high shocking power with low penetration potential. Exceptions to handgun ammunition specifies stated above shall be with the approval of the Director of Safety and Security.

SPECIAL PROVISIONS

A. Any officer wanting to carry and weapon or ammunition not on the lists in this policy must obtain approval before they carry the weapon or ammunition. Approval will be by the Director of Safety and Security.

B. Only one handgun will be carried while on duty.

C. Public display of an upholstered firearm will be avoided unless such display is absolutely necessary.

D. Carrying of a barrel longer that five (5) inches will not be allowed.
QUALIFICATIONS AND CONTINUING EDUCATION

Texas Level II - Must have this certification to legally work as a Security Officer in the State of Texas.

Texas Level III - Commissioned Security Officer

Texas Level III - Commissioned Security Officer Requalification

Texas Department of Public Safety’s Private Security Bureau (PSB) requires 6 hours of Continuing Education training and firearms re-qualification every two (2) years to renew the Commissioned Security Officer License. This course provides the Level III re-qualification training and certification as required by the State of Texas and the PSB to renew your expired or expiring Commission. It includes both classroom and firearms range qualification.

Every quarter personnel are required to report to the designated shooting range and shoot fifty (50) rounds of ammunition and this must be documented. The following is the proficiency demonstration course of fire:

Stage 1: Twenty (20) shots will be fired from 3 yards.
A: Five (5) shots fired in a “One Shot Exercise” 2 seconds allowed for each shot.
B: Ten (10) shots fires in a “Two Shot Exercise” 3 seconds allowed for each two shot sequence.
C: Five (5) shots fired in 10 seconds.

Stage 2: Twenty (20) shots will be fired from 7 yards- fired 5 stages.
A: Five (5) shots will be fired in 10 seconds.
B: Five (5) shots will be fired in 2 stages:
   1. Two (2) shots will be fired in 4 seconds.
   2. Three (3) shots will be fired in 6 seconds.
C: Five (5) shots fired in a “One Shot Exercise” 3 seconds allowed for each shot.
D: Five (5) shots fired in 15 seconds.

Stage 3: Ten (10) shots fired from 15 yards- fired in two 5-short strings.
A: Five (5) shots fired in two stages:
   1. Two (2) shots fired in 6 seconds.
   2. Three (3) shots fired in 9 seconds.
B: Five (5) shots fired in 15 seconds.
18. Receive Presentation and Take Action to approve a TAPS ADA Reasonable Accommodation Policy
Brad Underwood, CEO
To: TAPS Board of Directors

From: Josh Walker Interim Director of Risk Management/Angelica Kluss, ADA Specialist

Subject: Item #18 Take Action regarding TAPS Reasonable Accommodation Policy

Board:
This policy is needed in order be in compliance with ADA rule revision made on March 13\textsuperscript{th}, 2015. This policy provides individuals with disabilities to request reasonable modification(s) by TAPS. It further establishes expectations for the individual making the request and for TAPS as well.

Recommendation:

To approve final recommendations.
Texoma Area Paratransit System (TAPS) ADA Reasonable Accommodation Policy

Overview:

Public accommodations must:

Provide goods and services in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity.

Eliminate unnecessary eligibility standards or rules that deny individuals with disabilities an equal opportunity to enjoy the goods and services of a place of public accommodation.

Make reasonable modifications in policies, practices, and procedures that deny equal access to individuals with disabilities, unless a fundamental alteration would result in the nature of the goods and services provided.

Furnish auxiliary aids when necessary to ensure effective communication, unless an undue burden or fundamental alteration would result.

Remove architectural and structural communication barriers in existing facilities where readily achievable.

Provide readily achievable alternative measures when removal of barriers is not readily achievable.

Provide equivalent transportation services and purchase accessible vehicles in certain circumstances.

Maintain accessible features of facilities and equipment.

Design and construct new facilities and, when undertaking alterations, alter existing facilities in accordance with the Americans with Disabilities Act Accessibility Guidelines issued by the Architectural and Transportation

Revision #1 7/6/2015
Barriers Compliance Board and incorporated in the final Department of Justice title III regulation.

A public accommodation is not required to provide personal devices such as wheelchairs; individually prescribed devices (e.g., prescription eyeglasses or hearing aids); or services of a personal nature including assistance in eating, toileting, or dressing.

A public accommodation may not discriminate against an individual or entity because of the known disability of a person with whom the individual or entity is known to associate.

Commercial facilities are only subject to the requirement that new construction and alterations conform to the ADA Accessibility Guidelines. The other requirements applicable to public accommodations listed above do not apply to commercial facilities.

A public accommodation must make reasonable modifications in its policies, practices, and procedures in order to accommodate individuals with disabilities.

A modification is not required if it would "fundamentally alter" the goods, services, or operations of the public accommodation.

For example, a department store may need to modify a policy of only permitting one person at a time in a dressing room if an individual with intellectual developmental disorders needs the assistance of a companion in dressing.

- Physical barriers to entering and using existing facilities must be removed when "readily achievable."
- Readily achievable means "easily accomplishable and able to be carried out without much difficulty or expense."
- What is readily achievable will be determined on a case-by-case basis in light of the resources available.

**How to make a new request:**

- To make a new request please submit a formal written letter to the address listed below for the ADA Department.
- This request must be made when feasible before service is to be provided
- If this request is not made at the time of service, operating personnel will have the right to determine if it can be provided
- Request should contain any and all information pertinent to the reason the request is being made, and how it affects the client’s use of transportation
- Once the information has been received in its entirety by the ADA department, the process will begin
- The ADA department will notify immediately the Director of Risk Management and will log the request for recordkeeping
- The Director of Risk Management will work with Operations Management Staff and/or Executive Staff approve or deny the modification requested
- Once a decision has been reached regarding the modification requested. The client will be notified by formal letter via USPS by the Director of Risk Management
- Please note this process can take anywhere from 30 – 90 days depending on the level of approval needed

TEXOMA AREA PARATRANSIT SYSTEM
DEPT OF A.D.A CERTIFICATIONS
3400 TEXOMA PKWY
SHERMAN, TX 75090
(844) 500-1165
19. Receive Presentation and Take Action to approve a TAPS Lost and Found Policy
Brad Underwood, CEO
To: TAPS Board of Directors

From: Josh Walker, Director of Safety & Security

Subject: Item #19 Take Action regarding TAPS Lost and Found Policy

Board:
The Safety and Security Department has developed a formal Lost and Found Policy for review. This policy is designed to set responsibilities for lost and found property that is located on TAPS’ property.

Recommendation:
To approve final recommendations.
Texoma Area Paratransit System (TAPS)
LOST AND FOUND POLICY

TAPS Public Transit is not responsible for passenger items left on buses. However, any lost item that is found on a TAPS Public Transit vehicle will be turned into the Dispatch/Supervisor Office.

Some items may be immediately disposed of such as food items, travel cups, undergarments, soiled clothes uniforms, dirty caps, toiletries, tobacco products, and any items deemed hazardous.

Loose change will be placed into fare box if it is under $5.00.

The following will be logged on the Lost and Found form:
- Date
- Item
- Location/vehicle where found
- Time turned into Operations
- Time turned into Safety and Security
- Finders Initials
- Supervisors Initials

After the form is filled out the items will be turned into Safety and Security, there will be a form for Safety and Security to log. This form will have the following:
- Date
- Item
- Location where found
- Date Released/Disposed
- Time Released/Disposed
- Safety and Security Initials
- Owners Initials

Items will be kept for 14 days. At the end of 14 days an item left unclaimed will be discarded.
20. Consider and Take Action to amend TAPS Benefit Plan To include Same Sex Marriage Couples as mandated by Obergefell v Hodges for Public Employees
Brad Underwood, CEO
To: TAPS Board of Directors

From: Brad Underwood, CEO

Subject: Item #10 Take Action to amend TAPS Benefit Plan to include Sane Sex Marriage Couples as mandated by Obergefell v. Hodges for Public Employees

Board:

As a result of the Supreme Court opinion in Obergefell v. Hodges, it is our understanding that as a public employer (TAPS) and political subdivisions of the state (TMS/TSNT) we must make adjustments to our policy regarding those who qualify for Benefits under the classification of marriage. With that, this proposal is for the board to approve this newly updated policy outlining that TAPS recognizes same-sex marriage on par with opposite-sex marriage.

Recommendation:

To approve amendment.
Health Benefits (Same-Sex Spouses)

On June 26, 2015 the Supreme Court of the United States (SCOTUS) issues its opinion in Obergefell v. Hodges. SCOTUS held in a 5-4 vote that the Fourteenth Amendment requires a state to license the marriage of same-sex couples and to recognize a same-sex marriage when the marriage was lawfully licensed and performed outside of the state.

Public employers (i.e. school districts, state and local governments) are not governed by ERISA and are required to treat same-sex spouses like opposite-sex spouses for benefit purposes. As a public employer, it is our policy that we will provide health coverage to same-sex spouses consistent to the coverage that we provide for opposite-sex spouses.
21. Consider and Take Action to appoint members of the Board to a Finance Committee
Jay Davidson, Chairman
To: TAPS Board of Directors

From: Jay Davidson, Chairman

Subject: Item #10 Take Action to appoint members of the Board to a Finance Committee

Board:

As a recommendation of the FMO TAPS will establish a permanent finance committee.

Recommendation:

To appoint members to committee.
22. Recess into Executive Session in compliance with Texas Government Code Section 551.074; Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, and Finance Director:

(1) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or

(2) to hear a complaint or charge against an officer or employee
23. **Consent Items:** The following items on the consent agenda are considered to be routine by TAPS and will be enacted with one motion. There will not be separate discussion of these items unless a board member so requests, in which event they will be removed from the general order of business and considered in normal sequence.

A) Receive Ridership Report and Accept For Months of March, April and May 2015
   Tim Patton, COO

B) Consider and Take Action to issue an RFP for Purchase of Transit Bus Tires
   Tim Patton, COO
## TAPS FOR FY 2014-2015

### TAPS Ridership

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<th>APR</th>
<th>MAY</th>
<th>JUN</th>
<th>TOTAL</th>
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<td>13,943</td>
<td>11,696</td>
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<td>34,350</td>
<td>35,627</td>
<td>32,548</td>
<td>28,349</td>
<td>317,349</td>
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<tr>
<th></th>
<th>MAR</th>
<th>APR</th>
<th>MAY</th>
<th>JUN</th>
<th>TOTAL</th>
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<td>9,670</td>
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<td>25,149</td>
<td>22,878</td>
<td>20,176</td>
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<tr>
<td><strong>Total</strong></td>
<td>34,350</td>
<td>35,627</td>
<td>32,548</td>
<td>28,349</td>
<td>317,349</td>
</tr>
</tbody>
</table>
TEXOMA AREA PARATRANSIT SYSTEM  
D/B/A TAPS  

REQUEST FOR PROPOSALS  

FOR  

PURCHASE OF TRANSIT BUS TIRES  


ISSUE DATE: Date  
OFFEROR WRITTEN INQUIRES DUE: Date  
DUE DATE: Date  
BEST AND FINAL OFFERS (IF REQUESTED): Date  
AWARD ANNOUNCEMENT DATE: Date  

Issued By: Texoma Area Paratransit System (TAPS)  
Procurement Officer  
3400 Texoma Parkway  
Sherman, Texas 75090  
Phone (903) 868-9192  
FAX (903) 893-4766  
Email: jenniferwright@tapsbus.com  

The Request for proposals and related documents may be obtained during normal business hours from the TAPS Procurement Officer located at 3400 TEXOMA PARKWAY, SHERMAN, TEXAS 75090
Sealed proposals will be received on or before 2:00 P.M., Date, for furnishing the services and/or items described herein. Late proposals will not be accepted.

All questions must be submitted before 4:00 p.m., DATE. If necessary, an addendum will be issued and posted to the TAPS website at www.tapsbus.com.

If proposals are mailed, send directly to the TAPS Procurement Officer at the address listed above. If hand delivered, deliver to TAPS’s Procurement Officer at 3400 Texoma Parkway, Sherman, Texas 75090.

TAPS reserves the right to cancel this RFP and/or reject any or all proposals and to waive any informality in any proposal.

This section is to be completed by the Offeror and this page must be returned with the proposal. In compliance with this Request for proposals and subject to all terms and conditions imposed herein, which are hereby incorporated herein by reference, the undersigned offers and agrees to furnish the services and/or items requested in this solicitation if the undersigned is selected as the Successful Offeror. No proposal may be withdrawn for a period of sixty (60) days after the opening of the proposal, except as provided in the RFP.

Legal Name and Address of Firm:

_________________________________________ Date:______________________
_________________________________________
_________________________________________ By:_______________________
_________________________________________ (Signature in Ink)
_________________________________________ Name:_____________________
_________________________________________
_________________________________________ (Please Print)
_________________________________________ Zip:
_________________________________________ Title:_______________________

Phone:_________________________________ FAX:________________________________

________________________________________
Email:_____________________________ Business License#

________________________________________
Texas State Corporation Commission Identification
Number:_____________________________

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REQUEST FOR PROPOSALS

PURCHASE OF TRANSIT BUS TIRES

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<th>PAGE</th>
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<td>SECTION 1. PURPOSE.</td>
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<td>SECTION 2. BACKGROUND.</td>
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<td>SECTION 3. INSTRUCTIONS TO OFFERORS.</td>
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<td>SECTION 5. PROTESTS</td>
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<td>13</td>
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<td>SECTION 7. EVALUATION CRITERIA</td>
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<td>SECTION 8. SELECTION PROCESS</td>
<td>15</td>
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<td>SECTION 9. INFORMATION ON CONTRACT TO BE AWARDED</td>
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<td>27</td>
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<td>ATTACHEMENT B. REQUEST FOR APPROVED EQUAL/CLARIFICATIONS</td>
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<td>ATTACHEMENT C. OFFEROR PRICE SHEET</td>
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<td>ATTACHEMENT D. PROPOSAL CHECKLIST</td>
<td>30</td>
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<td>ATTACHEMENT E. SAMPLE CONTRACT FOR TRANSIT BUS TIRES</td>
<td>31</td>
</tr>
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</table>
The Texoma Area Paratransit System d/b/a TAPS is seeking competitive proposals from qualified Offerors to provide a purchasing solution for transit bus tires.

All Offerors are advised that the Federal Transit Administration (FTA) and the Texas Department of Transportation (TxDOT) provide funds to TAPS, which funds from some or a combination of these sources may be used to fund any resulting contract from this RFP. As such, any resultant contract will be subject to the laws, rules, regulations, and procedures applicable to all such funding.

Proposals, to be considered and evaluated, must be sealed and received on or before 2:00 p.m. on DATE in the TAPS Reception Area located at 3400 Texoma Parkway, Sherman, Texas 75090. Proposals appropriately received will be opened at this time. Proposals received after 2:00 p.m. will not be accepted or considered. Faxed or e-mailed proposals are not acceptable.

Each proposal, one (1) original and two (2) copies, must be appropriately signed by an authorized representative of the Offeror, and must be submitted in a sealed envelope or package. The notation “Purchase of Transit Bus Tires”, and the specified opening time and date must be clearly marked on the front of that sealed envelope or package.

TAPS and its officers, employees, or agents will not be responsible for the opening of a proposal envelope or package prior to the scheduled opening if that envelope or package is not appropriately sealed and marked as specified.

TAPS reserves the right to cancel this RFP and/or reject any or all proposals, to waive informalities in any proposal, to award any whole or part of a proposal, and to award to the Offeror whose proposal is, at the sole discretion of TAPS, determined to be in the best interest of TAPS.

Project evaluation and award will be accomplished in accordance with this RFP including the price or value of the benefits offered TAPS in the proposal.

No proposal may be withdrawn for a period of sixty (60) days after the opening of the proposal. A proposal may be withdrawn prior to proposal opening.

Inquires regarding this RFP should be directed to the TAPS Procurement Officer at (903) 868-9192 or jenniferwright@tapsbus.com. Inquires for information regarding procurement
procedures and/or proposal submission shall also be directed to the TAPS Procurement Officer.

This RFP consists of this Introduction, ten (10) numbered sections, and the attachments hereto.

The RFP and related documents may be obtained during normal business hours from the TAPS Procurement Officer located at the 3400 Sherman, Texas 75090. TAPS reserves the right to and may elect to issue separate awards to more than one Offeror.
SECTION 1. PURPOSE.

The Texoma Area Paratransit System d/b/a (TAPS) is seeking competitive proposals from qualified Offerors to provide a purchasing solution for transit bus tires.

A. The Successful Offeror will be required to provide tires for the following transit vehicles presently in service:

<table>
<thead>
<tr>
<th>Units</th>
<th>Description</th>
<th>Tire Type</th>
<th>Tire Size</th>
<th>Load/Speed Rating</th>
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<td>80</td>
<td>UniversalsTYPE III</td>
<td>Radial</td>
<td>245-75-R16</td>
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<td>7</td>
<td>15 Passenger Van</td>
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<td>245-75-R16</td>
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<td>21</td>
<td>VPG MV1</td>
<td>Radial</td>
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<td>3</td>
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<td>4</td>
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<td>19</td>
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<td>Radial</td>
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<td>3</td>
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</table>

B. The Successful Offeror will be required to provide options for six (6) tires per vehicle for dual-wheeled transit buses and four (4) tires per vehicle for single axle conversion vehicles accordingly. The number of spare tires shall be mutually agreed upon by TAPS and Contractor. TAPS may purchase additional vehicles during the term of any resultant Contract. The Successful Offeror will be required to provide tires for any such new vehicles in accordance with any such resultant Contract at a mutually agreed to rate.

SECTION 2. BACKGROUND.

TAPS is a nonprofit public service corporation wholly operated in accordance with rules and regulations established by the FTA and TxDOT.

TAPS provides a comprehensive range of transportation services to the residents of the counties of Grayson, Collin, Fannin, Cooke, Wise, Montague, Clay and Bryan through various services. Services are provided along fixed routes, special services for the disabled, commuter services, and special event shuttle service.
SECTION 3. INSTRUCTIONS TO OFFERORS.

A. Proposals must be submitted in accordance with the instructions and requirements contained in this RFP, including the Introduction. Failure to do so may result in the proposal being considered non-responsive and it may be rejected. An Offeror must promptly notify the TAPS Procurement Officer of any ambiguity, inconsistency, or error which may be discovered upon examination of the RFP. An Offeror requiring clarification or interpretation of this RFP should contact the Procurement Officer at (903) 868-9192.

B. Prospective Offerors, sometimes referred to as providers, operators, contractors, company, consultants, or vendors, are to address the criteria below at a minimum as part of their submitted proposal. Each proposal should include a transmittal letter and management overview of the proposal. Proposals are to include and will be evaluated on the following factors, together with such other factors as will protect and preserve the interests of TAPS, which may also be considered.

1. Organizational structure of firm and qualifications of management personnel.

Prospective Offerors should submit at a minimum the length of time in the business, corporate experience, strengths in the industry, business philosophy, and a description of the organizational structure of the firm; a description of the organizational structure for the management and operation of the services requested and/or provision of the items referred to in this RFP, including an organizational chart denoting all positions and the number of personnel in each position.

2. Financial condition of the firm and ability to perform all obligations of any resultant contract.

The sufficiency of the financial resources and the ability of the Offeror to comply with the duties and responsibilities described in this RFP. Each Offeror shall provide a current annual financial report.

3. Each Offeror is to state whether or not any of Offeror’s owners, officers, employees, or agents, or their immediate family members, is currently, or has been in the past year, an employee of TAPS or has any responsibility or authority with any such entities that might affect the procurement transaction or any claim resulting therefrom. If so, please state the complete name and address of each such person and their connection to any such entities.

4. Experience in providing the services and/or items requested by this RFP.

Offerors shall describe their qualifications and experience to perform the work described in this RFP. Information about experience should include direct experience with the specific subject matter.
5. Price.

The Offeror must submit a cost proposal for the tire purchase or options being presented, which shall include any proposed fees and rebate structures. The proposal shall contain adequate detail to verify any proposed fee(s).

For any proposed fees, Offerors should provide a price breakdown for separate services as well as totals for services provided together, if prices differ.

The rebate, if any, structure should include how and when TAPS will receive rebates.

Each Offeror should complete and submit with its Proposal Response the Offeror Price Sheet in this RFP.

6. Each Offeror should provide the names, addresses, and telephone numbers of at least three (3) references in connection with supplying the services or items requested in this RFP, especially from other operations similar to those being requested in this RFP by TAPS. Each reference should include organizational name, official address, contact person, title of contract, and any hardware or software elements in use, number of years in use and phone number.

E. Responses to this RFP must be in the prescribed format.

F. TAPS may request additional information, clarification, or presentations from any of the Offerors after review of the proposals received.

G. TAPS has the right to use any or all ideas presented in reply to this RFP, subject only to the limitations regarding proprietary/confidential data of Offeror.

H. TAPS is not liable for any costs incurred by any Offeror in connection with this RFP or any response by any Offeror to this RFP. The expenses incurred by Offeror in the preparation, submission, and presentation of the proposal are the sole responsibility of the Offeror and may not be charged to any of the entities listed in this paragraph.

I. Only TAPS will make news releases pertaining to this RFP or the proposed award of a Contract.

J. Each Offeror who is a stock or non-stock corporation, limited liability company, business trust, or a limited partnership or other business entity shall be authorized to transact business in the State of Texas as a domestic or foreign business entity if required by law. Any Offeror that is not required to be authorized to transact business in the State as a domestic or foreign business entity as required by law
shall include in its proposal response a statement describing why the Offeror is not required to be so authorized.

K. Each Offeror is required to state if it has ever been debarred, fined, had a contract terminated, or found not to be a responsible proposer or Offeror by any federal, state, or local government, and/or private entity. If so, please give the details of each such matter and include this information with the proposal response.

L. Each Offeror is specifically advised that there are certain certification forms that the FTA requires to be completed and submitted with each Offeror's proposal. Please refer to the following Section 9: Certifications and Assurances. A copy of each certification needs to be completed by each Offeror as to such Offeror’s submittal of a proposal for each item on which the Offeror is making a proposal. If any Offeror has any questions about this, they should contact the TAPS Procurement Officer at (903) 893-4601.

M. Each Offeror is advised that Attachment A to this RFP is a Proposal Checklist that lists certain items in this RFP that should be completed. Each Offeror should complete and submit with its Proposal Response all such applicable items.

SECTION 4. MISCELLANEOUS.

A. Ownership of Material - Ownership of all data, materials, and documentation originated and prepared for TAPS pursuant to the RFP shall belong exclusively to TAPS and be subject to public inspection in accordance with the State of Texas Freedom of Information Act. Trade secrets or proprietary information submitted by the Offeror shall not be subject to public disclosure under the Freedom of Information Act, unless otherwise required by law or a court. The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary, or trade secrets, is NOT ACCEPTABLE and may result in REJECTION of the proposal.

B. As this is a RFP, no information regarding the proposal records or the contents of responses will be released except in accordance applicable laws. Once an award has been made, all proposals will be open to public inspection subject to the provisions set forth above.

C. Any interpretation, correction, or change of the RFP will be made by an addendum. Interpretations, corrections or changes of this RFP made in any other manner will not be binding and Offerors must not rely upon such interpretations, corrections, or changes. TAPS or its designee will issue Addenda. All Offerors are advised that it is their responsibility to check with the TAPS Procurement Officer to be sure they have the most current RFP documents, including any Addenda, before submitting a proposal.
D. It is the policy of TAPS to maximize participation by minority and women owned business enterprises in all aspects of TAPS contracting opportunities.

E. Providers of any outside services shall be subject to the same conditions and requirements as the Successful Offeror in regards to law, code, or regulation compliance. TAPS reserves the right of approval for any subcontract work, including costs thereof.

F. Insurance Requirements.

Successful Offeror, and any of its subcontractors, shall, at its sole expense, obtain and maintain during the life of the resulting Contract the insurance policies and/or bonds required. Any required insurance policies and/or bonds shall be effective prior to the beginning of any work or other performance by Successful Offeror, or any of its subcontractors, under any resultant Contract. All such insurance shall be primary and noncontributory to any insurance or self-insurance TAPS, First Transit, SVTMC, and/or the City may have.

SECTION 5. PROTESTS.

Who May File the Protest. A proposer or prospective proposer or prospective contractor who is aggrieved in connection with the Request for proposals (RFP) or award of the contract may file a protest. No protest may be filed if the Request for proposals (RFP) is cancelled or if all proposals received in response to the RFP are rejected.

Place for Filing. A protest must be filed with the Issuing Office identified in the RFP.

Time for Filing.
A. A prospective proposer who is considering filing a proposal must file the protest within seven (7) days after the prospective proposer knew or should have known of the facts giving rise to the protest, but in no event later than the proposal submission deadline specified in the RFP.
B. A protest filed by a proposer who submits a proposal must be filed within seven (7) days after the protesting proposer knew or should have known of the facts giving rise to the protest, but in no event may a proposer file a protest later than seven (7) days after the date the notice of award of the contract is posted on the TAPS website.
C. The date of filing is the date of receipt of the protest.
D. TAPS will disregard any protest received beyond the deadlines established in this Section.

Contents of Protest.
A. A protest must be in writing.
B. A protest shall state all grounds upon which the protesting party asserts the RFP or contractor selection was improper.
C. The protesting party may submit with the protest any documents or information it deems relevant.
Notice of Protest
A. The Issuing Office will notify the successful proposer of the protest if contractor selection has already been made.
B. If the Issuing Office receives the protest before selection, and it determines that substantial issues are raised by the protest, the Issuing Office will notify all proposers who appear to have a substantial and reasonable prospect of selection.
C. Any proposer notified of a protest pursuant to this Section may file its agreement/disagreement with the Issuing Office within the time period specified in the acknowledgement of protest letter sent by the Issuing Office.

Stay of Procurement
A. The Executive Director or designee will promptly decide upon receipt of a timely protest whether or not the award of a contract shall be delayed, or if the protest is timely received after the award, whether the performance of the contract should be suspended.
B. The Issuing Office shall not proceed further with the RFP unless the Executive Director or designee makes a written determination that the protest is clearly without merit or that award of the contract without delay is necessary to protect the substantial interests of TAPS.

Response and Reply.
A. Within 15 days of receipt of the protest, the Issuing Officer may submit to the Executive Director or designee and to the protesting party a response to the protest.
B. The protesting party may file a reply to the Issuing Officer's response within ten days of the date of the response.

Review.
A. The Executive or designee shall review the protest and any response or reply.
B. The Executive Director or designee may decide the merits of the protest on the written, submitted documentation; request and review any additional documents or information deemed necessary to render a determination; or, in his sole discretion, conduct a hearing.

Determination. The Executive Director or designee shall promptly, but in no event later than 60 days from the filing of the protest unless both parties agree to an extension, issue a written determination. The determination shall:
A. State the reason for the decision, and
B. If the determination is a denial of the protest, inform the protesting contractor of its right to file an action in the Commonwealth Court within fifteen (15) days of the determination mailing date.

The agency head or designee shall send a copy of the determination to the protesting party and any other person determined by the agency head or designee to be affected by the determination.

SECTION 6. SERVICES AND/OR ITEMS REQUIRED.
The following are the services and/or items that the Successful Offeror (also referred to sometimes as Contractor) may be required to provide and should be addressed in each Offeror’s proposal. The following are the items for goods and services being requested by this RFP:

A. The Successful Offeror will be required to furnish all services, goods, materials, equipment, repair and inflation material, and any other items necessary for providing to TAPS transit bus tires on a purchase basis, according to the transit vehicles presently in service, including delivery of such tires, and any associated work in accordance with the resultant contract. Each Offeror is specifically advised that it should carefully review the proposed Sample Contract.

B. TAPS will not accept re-grooved tires, and will not re-groove tires, and TAPS will provide the following tire maintenance: mount and demount from wheels, repair flats, and maintain recommended inflation.

C. TAPS will make all wheel changes to and from buses in the TAPS garage during the hours its service staff is available.

D. Contractor will keep on hand a sufficient number of un-mounted spare tires so that TAPS at all times may have satisfactory stock of tires to ensure continuous operation of its buses.

E. All tires furnished to TAPS by the Successful Offeror shall be delivered to TAPS and all freight or delivery charges shall be paid for by the Successful Offeror.

F. TAPS will furnish storage and work space for the storage and maintenance of tires used on the vehicles.

G. The Successful Offeror shall furnish a tire spreader, changer, and tire balancer to accommodate the tires and wheels listed in this RFP.

H. The Successful Offeror shall furnish valve stems, valve caps, repair patches and any tools needed for airing and checking the tires to be used by TAPS.

I. The Successful Offeror shall, at its expense, dispose of the tires and appurtenances returned to such Offeror and/or rendered used up and/or unfit for service and/or permanently removed from vehicles. The response to this RFP must state completely the provisions for disposition of such items.

J. Any response to this RFP must provide a Run-Out Option.

K. Any response to this RFP must expand on the safety certification process, and how such certifications will be available to TAPS.

L. The term of any resultant contract is anticipated to be as set forth below:
1. The term of any Contract will be for three years (3), from DATE, through DATE, at which time it will terminate unless sooner terminated pursuant to the terms of the Contract or by law or unless renewed as set forth in the Contract.

2. By mutual agreement of the parties, the Contract may be renewed for up to two (2) additional one (1) year periods or any combination thereof. If either party wants to renew the Contract that party shall give a written request to renew to the other party within forty five (45) days of the expiration of the original term or any renewal term of the Contract. The party receiving such request shall either accept or reject in writing such request within fifteen (15) days of receipt of that request, provided, however, if the party receiving the request to renew fails to respond within fifteen (15) days, the request to renew shall be deemed to be rejected, unless the parties mutually agree otherwise.

3. All terms and conditions shall remain in force for the term of this Contract and for any renewal period unless modified by mutual agreement of both parties. Prices shall not be increased during the initial term of this Contract. Prices for any extension periods shall be included on the Offeror Price sheet.

Each Offeror is advised that any resultant contract and the administration of any such contract will be subject to the requirements, conditions, and certifications required by the FTA and/or TxDOT, and will also be subject to the funding provided by one or more of those entities. Accordingly, each Offeror is specifically advised to be sure to review the provisions of the Sample Contract wherein such information is set forth. Each Offeror is further advised that this RFP contains FTA requirements, conditions, and the certifications. Such certifications need to be completed and submitted with each Offeror’s proposal in accordance with the FTA requirements.

A description and/or listing of the other services and/or items that the Successful Offeror will or may be required to provide to TAPS under this RFP are those as set forth and/or referred to in any way in this RFP, in the Sample Contract attached to this RFP, in any terms and/or conditions referred to in this RFP, and/or any attachments to this RFP.

Each Offeror should carefully read and review all such items and should address such items in its proposal. However, the final description of the services and/or items to be provided to TAPS under this RFP is subject to negotiations with the Successful Offeror, and final approval by TAPS.

SECTION 7. EVALUATION CRITERIA.
Award will be made based on the following: 60% Price and 40% References/Experience

SECTION 8. SELECTION PROCESS.
A. All proposals submitted in response to this RFP will be reviewed by the TAPS Procurement Officer or his/her designee for responsiveness prior to referral to a
selection committee or person. A committee consisting of TAPS personnel will then evaluate all responsive proposals, conduct the negotiations, and make recommendations to the TAPS Executive Director, or the TAPS Executive Director's designee, as appropriate. The award of a contract, if made, will be made to the Offeror with the best value that is a responsive and responsible offer, as determined by the TAPS Executive Director, or the TAPS Executive Director's designee.

B. Oral Presentation: Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to the selection committee or person. This provides an opportunity for the Offeror to clarify or elaborate on the proposal. This is a fact finding and explanation session only and does not include negotiation. Oral presentations are strictly at the option of TAPS and may or may not be conducted.

SECTION 9. INFORMATION ON CONTRACT TO BE AWARDED.

The Sample Contract marked as Attachment B contains terms and conditions that TAPS plans to include in any contract that may be awarded, but such terms and conditions may be changed, added to, deleted, or modified as may be agreed to between TAPS, and the Offeror during negotiations. However, if an Offeror has any objections to any of the terms or conditions set forth in the Sample Contract or any changes or additions thereto that the Offeror wants to discuss during negotiations, the Offeror should set forth such objections, changes, or additions in such Offeror’s proposal submitted in response to this RFP. Otherwise, submission of a proposal by an Offeror will obligate such Offeror, if it is the Successful Offeror, to enter into a contract containing the same or substantially similar terms and conditions as contained in such Sample Contract. Other terms and conditions, if necessary, will be negotiated with the Successful Offeror.

SECTION 10. CERTIFICATIONS AND ASSURANCES.

I. FOR ALL PROPOSALS:

The undersigned vendor certifies to aproposale by these clauses and include the following clauses in each subcontract financed in whole or in part with Federal Transit Administration (FTA) funds. Vendors are certifying by reference the entire list of FTA FY 2011 Certifications and Assurances, and shall download the same at: http://www.gpo.gov/fdsys/pkg/FR-2010-11-02/pdf/2010-27563.pdf.

A. Disadvantaged Business Enterprises (DBE) Certification

The vendor will provide products compliant with 49 CFR 26.49 regarding the vehicle manufacturer’s overall DBE goal.

B. Access to Third Party Contract Records
As required by 49 U.S.C. § 5325(g). The VENDOR agrees provide sufficient access to records as needed to assure proper project management and compliance with Federal laws and regulations.

C. Interest of Members of or Delegates to Congress

The vendor certifies that no member of or delegate to the Congress of the United States (US) shall be admitted to any share or part of this contract or to any benefit arising therefrom.

D. Prohibited Interest

The vendor certifies that no member, officer or employee of the Public Body or of a local public body during his or her tenure or one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

E. Cargo Preference - Use of United States-Flag Vessels

The vendor agrees: a. to use privately owned US -Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the US or within 30 working days following the date of loading for shipments originating outside the US, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading).

F. Energy Conservation

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

G. No Obligation by the Federal Government

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

H. Program Fraud and False or Fraudulent Statements or Related Acts
The vendor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. The vendor certifies truthfulness and accuracy of any statement it makes pertaining to the FTA-assisted project. The vendor acknowledges that if it makes, or causes to be made, a false, fictitious or fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 as deemed appropriate. The vendor acknowledges that if it makes, or causes to be made, a false, fictitious or fraudulent claim, statement submission, or certification to the Federal Government relating to the FTA-assisted project, per 49 U.S.C. §5307, the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n)(1) on the Contractor, as deemed appropriate.

I. Contract Work Hours

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

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section, the contractor & any subcontractor responsible therefore shall be liable for unpaid wages and shall be liable to the United States for liquidated damages which shall be computed for each individual laborer, mechanic, watchman or guard employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day that an individual was required / permitted to work over 40 hours in a workweek without payment of overtime wages required by the clause in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - The purchaser shall upon its own action or upon written request of the Department of Labor (DOL) withhold or cause to be withheld, from any money payable for work performed by the contractor or subcontractor under any contract or other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as set-forth in paragraph (2) of this section.

(4) Subcontracts - The contractor or subcontractor shall include the clauses set forth in this section and require the same from subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these clauses.

(5) Payrolls and basic records - Payrolls and related basic records shall be maintained by the contractor during the course of the work and preserved for three years thereafter for
all laborers and mechanics working at the work site (or under the United States Housing Act of 1937 or the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address and social security number of each worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records showing that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and records of the costs anticipated or actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of registration of apprenticeship programs, certification of trainee programs, registration of the apprentices and trainees, and ratios & wage rates prescribed in applicable programs.

J. Civil Rights

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act (CRA), as amended, 42 U.S.C. §2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. §12132, and Federal transit law at 49 U.S.C. §5332, the vendor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the vendor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VI of the CRA, as amended, 42 U.S.C. §2000e, and Federal transit laws at 49 U.S.C. §5332, the vendor agrees to comply with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, DOL," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. §2000e note), and with any applicable Federal statutes, executive orders, regulations and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The vendor agrees to take affirmative action to ensure that applicants are employed & treated during employment without regard to their race, color, creed, national origin, sex or age. Action shall include but not be limited to employment, upgrading, demotion, transfer, recruitment, layoff, termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The vendor agrees to comply with any implementing requirements FTA may issue.
(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. §§623 and 49 U.S.C. §5332), the vendor agrees to refrain from discrimination against present and prospective employees for reason of age and comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act (42 U.S.C. §12112), the contractor agrees to comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities, and to comply with any implementing requirements FTA may issue.

K. Altoona Test Certification (for rolling stock purchases) (Check one of the following):

☐ The vehicle has been Altoona tested, report number:____________________
☐ The vehicle is exempt from testing IAW 49 CFR 665.
☐ The vehicle is currently being tested at Altoona.

Funds will not be released until the purchasing agency gets a copy of the Altoona test report, as appropriate, per 49 CFR 665.

L. Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any transit agency requests which would cause the transit agency to violate FTA terms and conditions.

M. Application of Federal, State, & Local Laws, Regulations, & Directives (Federal Changes)

The VENDOR agrees that Federal laws and regulations control project award and implementation. The VENDOR understands and agrees that unless the recipient requests FTA approval in writing, the VENDOR may incur a violation of Federal laws or regulations or this agreement if it implements an alternative procedure or course of action not approved by FTA. The VENDOR understands and agrees that Federal laws, regulations, and directives applicable on the date on which Federal assistance is awarded may be modified from time to time. In particular, new Federal laws, regulations, and directives may become effective after the date the project agreement is effective, and might apply to that project agreement. The VENDOR agrees that the most recent versions of such Federal laws, regulations, and directives will apply to the administration of the project at any particular time.
N. Right of the Federal Government to Terminate

Upon written notice, the VENDOR agrees that the Federal Government may suspend or terminate all or any part of Federal assistance if terms of the project agreement are violated, if the Federal Government determines that the purposes of the laws authorizing the Project would not be adequately served by the continuation of Federal assistance for the Project, if reasonable progress on the Project is not made, if there is a violation of the project agreement that endangers substantial performance of the Project, or if the Federal Government determines that Federal assistance has been willfully misused by failing to make appropriate use of Project property. Termination of Federal assistance for the Project will not typically invalidate obligations properly incurred before the termination date to the extent those obligations cannot be canceled. The Federal Government reserves the right to require the refund of the entire amount of Federal assistance provided for the Project or a lesser amount.

O. Disputes, Breaches, Defaults, or Other Litigation

The VENDOR agrees that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

a. Notification to FTA. The VENDOR is aware that recipients of Federal assistance must notify FTA in writing of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the administration or enforcement of Federal laws or regulations. If the Federal Government is to be named as a party to litigation for any reason, in any forum, the appropriate FTA Regional Counsel is to be notified in writing before doing so.

b. Federal Interest in Recovery. The VENDOR is aware that the Federal Government retains the right to a proportionate share, based on the percentage of the Federal share awarded for the Project, of proceeds derived from any third party recovery.

c. Enforcement. The VENDOR agrees to pursue its legal rights and remedies available under any third party contract or available under law or regulations.

d. FTA Concurrence. The VENDOR is aware that FTA reserves the right to concur in any compromise or settlement of any claim involving the Project.

e. Alternative Dispute Resolution. The VENDOR is aware that FTA encourages the use of alternative dispute resolution procedures, as may be appropriate.

P. Fly America

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

Q. Recycled Products

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

R. Access for Individuals with Disabilities

The VENDOR agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The VENDOR also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S. C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the VENDOR agrees to comply with applicable implementing Federal regulations any later amendments thereto, and agrees to follow applicable Federal directives except to the extent FTA approves otherwise in writing. Among those regulations and directives are: (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37; (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27; (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38; (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35; (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36; (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19; (7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630; (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer

II. Federal Motor Vehicle Safety Standards (FMVSS) Certification (for rolling stock purchases)

Any vehicles provided by the vendor will comply with all applicable FMVSS. The vendor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

<table>
<thead>
<tr>
<th>FMVSS Certification</th>
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<tbody>
<tr>
<td>Name of Company</td>
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<tr>
<td>Date</td>
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</tbody>
</table>

III. REQUIRED CLAUSES FOR PROPOSALS OVER $100,000:

The vendor agrees to include the following in subcontracts exceeding $100,000 financed by the FTA, and certifies the following:

A. Debarment and Suspension

The vendor hereby certifies that it and its principals have not presently or within a three year period been debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal agency; and the vendor hereby certifies that it and its principals have not presently or within a three-year period been convicted of or had a civil judgment rendered against them for the commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, state or local) transaction; 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.

B. Clean Water & Air

The vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§7401 et seq. The vendor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to the FTA and the EPA.
IV. REQUIRED CERTIFICATIONS FOR PROPOSALS OVER $100,000:

The vendor agrees to include the following in subcontracts exceeding $100,000 financed by the FTA, and certifies the following:

A. **Buy America** (Check where applicable):

- ☐ The vendor or offeror hereby certifies it will comply with the requirements of 49 USC 5323(j) and the applicable regulations in 49 CFR 661, providing Buy America compliant manufactured goods.
- ☐ The vendor or offeror cannot comply with the requirements 49 USC 5323(j), but may qualify for an exception to the requirement pursuant to the regulations in 49 CFR 661.

**Buy America Certification**

<table>
<thead>
<tr>
<th>Name of Company</th>
<th>Printed Name of Person Completing Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date</td>
<td>Signature</td>
</tr>
</tbody>
</table>

B. **Non-Lobbying**

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

1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned to any person for influencing or attempting to influence any officer or employee of an agency, a member of Congress, an officer or employee of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit standard form LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite...
for making or entering into this transaction imposed by section 1352, title 31, USC. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Lobbying and Disclosure Certification

<table>
<thead>
<tr>
<th>Name of Company</th>
<th>Printed Name of Person Completing Form</th>
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</thead>
<tbody>
<tr>
<td>Telephone</td>
<td>Signature</td>
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</tbody>
</table>

V. SPECIAL PROJECT TYPE PROVISIONS - the following addenda are attached and endorsed as appropriate:

- Construction or Architectural & Engineering Projects
- Intelligent Transportation System or Research & Development
- Transit Operations or Management Projects

VI. CERTIFICATION TO PURCHASER:

A. The undersigned vendor certifies that the manufactured good(s) furnished will meet or exceed the specifications, and/or that services rendered will comply with the terms of the solicitation or contract.

B. The undersigned vendor certifies that it has read all of the proposal, proposal, or contract documents and agrees to aproposale by the terms, certifications, and conditions thereof.

<table>
<thead>
<tr>
<th>Name of Company</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Printed Name of Person Completing Form</td>
<td></td>
</tr>
<tr>
<td>Telephone</td>
<td>Signature</td>
</tr>
<tr>
<td>Date</td>
<td>SS# or Tax ID #</td>
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</tbody>
</table>

Description of Commodity or Service

<table>
<thead>
<tr>
<th>Disadvantaged Business Enterprise Information</th>
<th>Type of Organization</th>
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</thead>
<tbody>
<tr>
<td>Is your firm a DBE?</td>
<td>Sole Proprietorship</td>
</tr>
<tr>
<td>Is your firm a DBE?</td>
<td>Corporation</td>
</tr>
<tr>
<td>If yes, what type?</td>
<td>Limited Proprietorship</td>
</tr>
</tbody>
</table>
ATTACHMENT A

PROPOSAL RESPONSE FOR TAPS PURCHASE OF TRANSIT BUS TIRES

ADDITIONA PAGE

The undersigned acknowledges receipt of the following addenda to the RFP Documents.

(Give number and date of each):

Addendum No. ____________________ Dated ____________________
Addendum No. ____________________ Dated ____________________
Addendum No. ____________________ Dated ____________________
Addendum No. ____________________ Dated ____________________
Addendum No. ____________________ Dated ____________________
Addendum No. ____________________ Dated ____________________
Addendum No. ____________________ Dated ____________________
Addendum No. ____________________ Dated ____________________

____________________________  Offeror

____________________________  Authorized Signature

____________________________  Print Name and Title

____________________________  Date

____________________________  Phone

Failure to acknowledge receipt of all addenda may cause the proposal to be considered non responsive to this RFP, which will require rejection of the proposal.
ATTACHMENT B

PROPOSAL RESPONSE FOR TAPS PURCHASE OF TRANSIT BUS TIRES
REQUEST FOR APPROVED EQUAL/CLARIFICATION SPECIFICATIONS

Name of Prospective Offeror

Request for an approved equal or clarification of a specification or statement
Page Title Paragraph

Basis of Request or Question:

Offeror Date

Authorized Signature Phone

Print Name and Title

Attach additional pages if needed.

Response:

Approved: Remarks:

Disapproved:

Authorized Signature
ATTACHMENT C

PROPOSAL RESPONSE FOR TAPS PURCHASE OF TRANSIT BUS TIRES

OFFEROR PRICE SHEET

The undersigned hereby declares that Offeror has carefully read and examined the Advertisement for the Request for proposals, Instructions to Offerors, the Contract, Contract Documents, Appendices to Instruction to Offerors, and Specifications, with all supporting certificates and affidavits, for the purchase of transit bus tires and all related work. Offeror hereby agrees that if Offeror’s proposal is accepted by TAPS, Offeror will provide all such work as selected by TAPS and that delivery will be made as specified at the price stated below.

Initial 3 year Contract Period

<table>
<thead>
<tr>
<th>Bus</th>
<th>Tire Size</th>
<th>Est. Annual Usage</th>
<th>Tires per Bus</th>
<th>Per Tire Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Universals/Type 3</td>
<td>225-75-R16</td>
<td>500</td>
<td>6</td>
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<tr>
<td>15 Passenger Van</td>
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<td>75</td>
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<tr>
<td>VPG MV1</td>
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<td>175</td>
<td>4</td>
<td></td>
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<tr>
<td>Chevy Uplander</td>
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<td>30</td>
<td>4</td>
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</tr>
<tr>
<td>Ford Transit Connect</td>
<td>215-55-R16</td>
<td>150</td>
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</tr>
<tr>
<td>Concorde II</td>
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<td>10</td>
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First 1 year Contract Renewal Period

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</table>

Second 1 year Contract Renewal Period

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<th>Per Tire Rate</th>
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<tr>
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<td>4</td>
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</tr>
<tr>
<td>Model</td>
<td>Size</td>
<td>Discount</td>
<td>Price</td>
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<tr>
<td>Ford Transit Connect</td>
<td>215-55-R16</td>
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<tr>
<td>International</td>
<td>245-70-R19</td>
<td>12</td>
<td>6</td>
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</tbody>
</table>

TAPS may, from time to time, require the use of tire sizes not listed above. The discount from MSRP or posted vendor pricing for all additional non-typical tires shall be:

TAPS requires the delivery of Transit Bus tires to be completed as set forth in the resultant Contract. Offeror agrees that such prices are subject to further negotiations between the Offeror and TAPS, but that such prices will not be increased without the specific written approval of TAPS.

__________________________  
Legal Name of Offeror

__________________________  
Authorized Signature

__________________________  
Print Name and Title

__________________________  
Date

__________________________  
Phone
ATTACHMENT D

RFP - PURCHASE FOR TRANSIT BUS TIRES

PROPOSAL RESPONSE FOR TAPS PURCHASE OF TRANSIT BUS TIRES

PROPOSAL CHECKLIST
(to verify that all necessary documents are included)

This form must be completed and returned with the proposal. Failure to return this form may be cause for considering your proposal non-responsive.

Offeror TAPS
Check Off Check Off

Proposal Checklist

Offeror Price Sheet

Request for Approved Equal

Certifications and Assurances

Addendum Page

Brochures on tires and related materials

__________________________  __________________________
Offeror  Authorized Signature

__________________________  __________________________
Print Name and Title  Date
ATTACHMENT E
SAMPLE CONTRACT FOR PURCHASE OF TRANSIT BUS TIRES
TEXOMA AREA PARATRANSIT SYSTEM

By submitting a proposal, each Offeror agrees that if it is awarded a contract for the Project, it will enter into the following Contract with TAPS set forth below without any material or substantive changes. The Parties may revise, amend or modify this agreement only by written agreement signed by TAPS and the Successful Offeror.

THIS CONTRACT (Contract or Agreement) is dated ____________, 20___, by and between_____________________________________________________________, hereinafter referred to as the “CONTRACTOR”, and TEXOMA AREA PARATRANSIT SYSTEM D/B/A TAPS, hereinafter referred to as the “OWNER” or “TAPS”;

WITNESSETH:

WHEREAS, the Contractor has been awarded a Contract by TAPS for the purchasing of transit bus tires, equipment, and materials, in accordance with the Contract Documents as contained in the Request for proposals (RFP) hereafter and in the Contract Documents.

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

SECTION 1. WORK TO BE PERFORMED AND DOCUMENTS.

Contractor agrees to sell to TAPS and TAPS agrees to purchase from Contractor and use such number of transit bus tires as may be sufficient to keep the TAPS transit buses specified in the RFP fully equipped and to provide an adequate reserve supply; provided, however, that TAPS shall have the right at any time during the term of this Contract upon thirty (30) days prior written notice to Contractor, to equip for testing purposes up to five percent (5%) of its bus fleet with tires obtained from other suppliers. As used in this Contract, “tires” shall mean a casing, tube and flap for a tube type tire and a casing only for a tubeless tire, and TAPS’s transit buses shall, unless otherwise indicated, mean all buses referenced in the Contract that are owned by TAPS and/or operated by TAPS or, its subsidiaries and affiliated companies at any time during the term of this Contract. Rims shall be the property of TAPS and extra rims shall be provided by TAPS. Contractor agrees to furnish a tire spreader, changer, and tire balancer to accommodate the tires and wheels referenced in the RFP and Contract. Contractor agrees to furnish valve stems, valve caps, repair patches and any tools needed for airing and checking the tires. Contractor agrees to, at its expense, to dispose of the tires and appurtenances returned to the Contractor and/or rendered used up and/or unfit for service and/or permanently removed from vehicles. It is also agreed by the parties hereto that the documents to this Contract consist of this Contract and the following documents listed below (Contract Documents), all of which are and constitute a part of this Contract as if attached hereto or set out in full herein;
1. The Request for proposals, as amended by any addenda, which is incorporated herein by reference.
2. Proposal to be provided by Contractor to TAPS.

SECTION 2. CONTRACT AMOUNT.

A. TAPS agrees to furnish Contractor by the tenth day of each month a record of the number of tires installed during the preceding month. The Contractor and TAPS agree that any dispute will attempt to be resolved by good faith negotiations between the parties if possible. The amount of the monthly payment shall be computed by using the applicable billing rate or rates based off of the negotiated discount for non-typical tires, determined as hereinafter provided. The base rate or rates per tire for equipment now being operated are set forth below. The base rate or rates per tire for other buses which may be acquired by the TAPS shall be determined in line with the base rate or rates then in effect, taking into consideration the weight of buses, carrying capacities, sizes and types of tires and all other pertinent factors, and such additional base rate or rates shall be included in this Contract by letter amendment. TAPS agrees to use a method of computing and recording tire use of its buses acceptable to Contractor and Contractor or its agents shall have the right at any reasonable time during business hours to audit TAPS’s records for the purpose of verifying actual tire use.

B. The base rate or rates shown below assume the Contractor’s ability to procure and use such materials and manufacturing methods as were procured and used prior to the date of this Contract, and are based upon proven experience of mileage delivered hereunder. If laws, changes in buses, governmental regulations or other causes beyond the Contractor’s reasonable control require any change in such materials, performance or methods which reduce the mileage available from the tires to be furnished hereunder or which increase the Contractor’s costs, TAPS agrees that the base rate or rates may be adjusted to a mutually agreeable rate to compensate therefore, or that either party may terminate the Contract if such rates cannot be agreed upon.

<table>
<thead>
<tr>
<th>Tire size</th>
<th>Rate Initial 3 years</th>
<th>Rate First 1 year renewal</th>
<th>Rate Second 1 year renewal</th>
</tr>
</thead>
<tbody>
<tr>
<td>245-75-R16</td>
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<tr>
<td>235-65-R17</td>
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<tr>
<td>275-70-R22.5</td>
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</tr>
</tbody>
</table>
SECTION 3. TAX EXEMPT DOCUMENTS.

TAPS agrees to furnish state and federal tax exemption certificate numbers or documents to the Contractor for any sales, excise, use processing, disposal or similar tax or fees, including any state imposed new tire fee or tax, imposed upon the goods sold or services rendered hereunder.

SECTION 4. TERM OF CONTRACT.

A. The term of this Contract shall be effective for a period of three (3) years beginning on ____ and terminating on ____ , at which time it will terminate unless sooner terminated pursuant to the terms of the Contract or by law or unless renewed as set forth in the Contract.

B. By mutual agreement of both parties, the Contract may be renewed for up to two (2) additional one (1) year periods or any combination thereof. If a party wants to renew the Contract that party shall provide a written notice to renew to the other party no later than ninety (90) days before the expiration of the original term or any renewal term of the Contract. The party receiving such notice shall either accept or reject in writing such notice within thirty (30) days of receipt of that notice. However, if the party receiving the notice to renew fails to respond within thirty (30) days, the notice to renew shall be deemed rejected, unless the parties mutually agree otherwise.

C. All terms and conditions shall remain in force for the term of this Contract and for any renewal period unless modified by mutual agreement of both parties.

SECTION 5. TIME OF PERFORMANCE.

The Contractor shall commence the work to be performed under this Contract on such date as is established and fixed for such commencement by written notice (which may be initially given verbally in an emergency situation) to proceed given by the TAPS representative to the Contractor, and the Contractor covenants and agrees to fully provide the tires and perform and complete the Work and/or provide the goods called for by this Contract established by such notice. The Contractor further agrees that the Work shall be started promptly upon receipt of such notice and shall be perform the Work regularly, diligently, and uninterruptedly at a rate of progress that will ensure full completion thereof in the shortest length of time consistent with the Contract Documents. The Contractor agrees that it will reasonably cooperate and coordinate with the other TAPS contractors or employees doing other work or using the area where Contractor is working.

SECTION 6. FTA INFORMATION.

A. Notice is hereby given that pursuant to Federal Transit Administration (FTA) regulations, TAPS has implemented its own procurement procedure by adopting the
procurement procedures followed by the FTA and the State of Texas, as amended, and those provisions are incorporated herein by reference.

B. Notice is further given that TAPS will comply with the requirements of FTA Circular 4220.1F, “Third Party Contracting Requirements”, and as it may be amended, and that those requirements, as they may be applicable, are incorporated in this Contract by reference.

C. Contractor hereby agrees to and shall comply with all applicable procedures and requirements as set forth above, including the FTA Best Practices Procurement Manual, and in the Contract documents and as may be required by any applicable federal, state, or local laws, ordinances, and regulations.

D. The requirements of FTA Circular 4220.1F and the procurement procedures of the Texoma Area Paratransit System (TAPS) referred to above are intended to be and shall be construed to be consistent with each other whenever possible. However, if a court or agency of competent jurisdiction determines that a conflict should exist between them, then to the extent of any such conflict, the requirements of FTA Circular 4220.1F shall be deemed to take precedence, and as to any other conflict within the Contract documents, the more stringent provisions shall take precedence, unless otherwise required by law.

E. Copies of the TAPS procurement procedures and FTA Circular 4220.1F, the FTA Best Practices Procurement Manual, and applicable grant Agreements may be examined or obtained from the business office of TAPS located at 3400 Texoma Parkway, Sherman, Texas 75090.

F. The FTA Requirements, Conditions, and Certificates set forth in this Contract are hereby incorporated into and made a part of this Contract and Contractor shall comply with them as applicable to this Contract.

SECTION 7. CONTINGENCIES.

In the event of fire, strikes, accidents, consequences of foreign or domestic wars or any cause beyond either party’s reasonable control which will delay or interfere with its performance of its obligations hereunder, such performance may, at the option of either party, be suspended during the period required to remove such cause; however, if such delays by the Contractor interfere with TAPS’s ability to provide bus service, TAPS retains the right to obtain from other sources tires needed to maintain bus service. Furthermore, if the Contractor is unable to supply tires to TAPS on a regular basis for a period of three (3) consecutive months, TAPS may terminate this Contract at any time thereafter by giving thirty (30) days prior written notice to Contractor. In the event the Contractor discontinues the manufacture and marketing of any size or type tire supplied pursuant to this Contract, the Contractor shall so notify TAPS and, upon written notice by either party to the other, this Contract and all related agreements between the parties shall be deemed terminated. This Contract is subject to all applicable present or future governmental regulations affecting production, delivery, sale, use or possession of the items purchased hereunder. TAPS shall
promptly notify the Contractor of any accident or claims resulting from an alleged tire failure. The Contractor agrees to be responsible and to defend TAPS and hold TAPS, and its officers, employees, agents, assigns, or volunteers, harmless for actions claims, damages, settlements, costs, expenses, including attorney's fees, that arise from defects or alleged defects in material or workmanship of any tire manufactured and/or furnished by the Contractor under this Contract and/or the negligent acts or omissions of the Contractor, its agents or employees.

SECTION 8. DEFAULT.

A. In the event TAPS should fail to make any payment required hereunder when due, fail to use or service tires furnished hereunder in accordance with the Contractor recommendations, fail to report a record of tire usage, or otherwise fail to substantially comply with any of the terms and conditions of this Contract, or in the event any voluntary or involuntary proceedings shall be filed against or by TAPS under any bankruptcy law or other law for the relief of debtors, or TAPS's credit shall in any manner become impaired, such event shall constitute a default by TAPS hereunder. Upon the occurrence of any such default, the Contractor shall give 30 days prior written notice to TAPS to cure any such matter. If TAPS fails to cure such matter within the 30 day period, Contractor may terminate this Contract. If Contractor terminates this Contract, TAPS shall have the option to either return to the Contractor unused tires hereunder, or purchase some or all of such tires and make payment therefore as of the date of termination on the basis of the rates then in effect. Upon the failure or refusal of TAPS to return said property, the Contractor may enter upon the premises of the Lessee and repossess said property with or without process of law. Termination of the Contract shall not relieve TAPS from its obligations to make all payments required hereunder or from liability for damages for breach of this Contract in accordance with the terms hereof.

B. If Contractor fails or refuses to perform any of the terms of this Contract, including poor services, work, or materials, TAPS may, by thirty (30) days written notice to Contractor, terminate this Contract in whole or in part, provided, however, that Contractor will have an opportunity to cure within such thirty (30) day period. In addition to any right to terminate, TAPS may enforce any remedy available at law or in equity in connection with such default, and Contractor shall be liable for any damages to TAPS resulting from Contractor's default. TAPS further reserves the right to immediately obtain such work, materials, tires, or services from other entities in the event of Contractor's default.

SECTION 9. SUSPENSION OR TERMINATION OF CONTRACT BY TAPS.

TAPS, at any time, may order Contractor to immediately stop work on this Contract, and/or by thirty (30) days prior written notice may terminate this Contract, with cause (as set forth in Section 9(B) above) or without cause, in whole or in part, at any time. Upon receipt of such notice, the Contractor shall immediately discontinue all services affected (unless the notice directs otherwise), and deliver to TAPS all data (including electronic data), drawings, specifications, reports, project deliverables, estimates, summaries, and such other
information and materials as may have been accumulated by the Contractor in performing this Contract whether completed or in process (unless otherwise directed by the notice).

A. If the termination or stop work order is due to the failure of the Contractor to fulfill any of its contractual obligations, TAPS may take over the Work and prosecute the same to completion by contract or otherwise. In such case, the Contractor shall be liable to TAPS for any damages allowed by law, and shall promptly pay any damages awarded to TAPS.

B. Should this Contract be terminated or work is stopped not due in any way to the fault of the Contractor, the Contractor shall only be entitled to compensation for services actually performed and materials actually supplied prior to notice of termination or to stop work and which are approved by TAPS and any applicable federal or state approving agency. No profit, overhead, or any other costs of any type are allowed after the date of such notice of termination or stop work order.

C. The rights and remedies of TAPS provided in this Section are in addition to any other rights and remedies provided by law or under this Contract and TAPS may pursue any and all such rights and remedies against Contractor as it deems appropriate.

**SECTION 10. SECURITY INTERESTS.**

For the purpose of securing payment of all sums that may be owed by TAPS to the Contractor, including but not limited to payment for mileage run and for any tires or tubes required to be purchased by TAPS by the Contract, TAPS hereby grants to the Contractor a security interest in and to any tires, tubes, or equipment furnished by the Contractor and which TAPS has or is deemed to have an interest, wherever the same may be, and in any proceeds from the sale or other disposition of said tires, tubes or equipment.

**SECTION 11. ASSIGNMENT.**

Neither party shall sell, transfer, sub-purchase or assign any of its rights or interest under this Contract, in whole or in part, to any other entity, without the prior written consent of the other party, which consent shall not be unreasonably withheld. In the event of any such sale, transfer, sub-purchase or assignment with consent, the party assigning the Contract shall remain fully bound by the terms hereof, including, but not limited to, the prompt payment for all mileages run, unless and until assignor is relieved of such obligations in writing by the other party.

**SECTION 13. PAYMENT.**

Payment to the Contractor shall be made in accordance with the provisions of the Contract subject to final approval by TAPS.
SECTION 14. PAYMENTS TO OTHERS BY CONTRACTOR.

The Contractor agrees that the Contractor shall indemnify and hold TAPS harmless for any lawful claims resulting from the failure of the Contractor to make prompt payments to all persons supplying the Contractor equipment, labor, tools, or material in connection with the work provided for in the Contract. In the event of such claims, TAPS may, in TAPS’s sole discretion, after providing written notice to the Contractor, withhold from any payment request or final payment the unpaid sum of money deemed sufficient to pay all appropriate claims and associated costs in connection with the Contract and make such payment, if TAPS determines it to be appropriate to do so.

SECTION 15. HOLD HARMLESS AND INDEMNITY.

Contractor shall indemnify and hold harmless TAPS and their officers, agents, and employees against any and all liability, losses, damages, claims, causes of action, suits of any nature, costs, and expenses, including reasonable attorney’s fees, resulting from or arising out of Contractor’s or its employees, agents, or subcontractors actions, activities, or omissions, negligent or otherwise, on or near TAPS’s property or the area where the work is performed or arising in any way out of or resulting from any of the work or items to be provided and/or purchased under this Contract, and this includes, without limitation, any fines or penalties, violations of federal, state, or local laws or regulations, personal injury, wrongful death, or property damage claims or suits. Contractor agrees to and shall protect, indemnify, and hold harmless all the parties referred to above from any and all demands for fees, claims, suits, actions, causes of action, settlement or judgments based on the alleged or actual infringement or violation of any copyright, trademark, patent, invention, article, arrangement, or other apparatus that may be used in the performance of this Contract.

SECTION 16. COMPLIANCE WITH LAWS, REGULATIONS, AND IMMIGRATION LAW.

Contractor agrees to and shall comply with all applicable federal, state, and local laws, ordinances, and regulations, including all applicable licensing requirements. Contractor further agrees that Contractor does not, and shall not during the performance of this Contract, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

SECTION 17. INDEPENDENT CONTRACTOR.

The relationship between Contractor and TAPS is a contractual relationship. It is not intended in any way to create a legal agency or employment relationship. Contractor shall, at all times, maintain its status as an independent contractor and both parties acknowledge that neither is an agent, partner or employee of the other for any purpose. Contractor shall be responsible for all required insurance, workers' compensation (regardless of number of employees) and unemployment insurance to be provided for all of its employees and subcontractors. Contractor will be responsible for all actions of any of its subcontractors, and that they are properly licensed.
SECTION 18. REPORTS, RECORDS, AND AUDIT.

Contractor agrees to maintain all books, records and other documents relating to this Contract for a period of five (5) years after the end of each fiscal year included in this Contract. TAPS, its authorized employees, agents, representatives, and/or state or federal auditors shall have full access to and the right to examine, copy, and/or audit any of such materials during the term of the Contract and during such retention period, upon prior written notice to Contractor.

SECTION 19. NONWAIVER.

Each party agrees that the waiver or failure to enforce or require performance of any term or condition of this Contract by the other party or the other party's waiver of any particular breach of this Contract extends to that instance only. Such waiver or failure is not and shall not be a waiver of any of the terms or conditions of this Contract or a waiver of any other breaches of the Contract by the other party and does not bar the non-breaching party from requiring the other party to comply with all the terms and conditions of the Contract and does not bar the non-breaching party from asserting any and all rights and/or remedies it has or might have against the other party under this Contract or by law.

SECTION 20. CHOICE OF LAW AND FORUM SELECTION.

This Contract shall be governed by, and construed in accordance with, the laws of the State of Texas, without application of Texas' conflict of law provisions, and any applicable federal laws. Venue for any litigation, suits, and claims arising from or connected with this Contract shall only be proper in the Grayson County Court, or in the Grayson County General District Court if the amount in controversy is within the jurisdictional limit of such court or the United States District Court for the areas served, if a federal question exists. All parties to this Contract voluntarily submit themselves to the jurisdiction and venue of such courts, regardless of the actual location of such parties. The provisions of this Contract shall not be construed in favor of or against either party, but shall be construed according to their fair meaning as if both parties jointly prepared this Contract.

SECTION 21. SEVERABILITY.

If any provision of this Contract, or the application of any provision hereof to a particular entity or circumstance, shall be held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Contract shall not be affected and all other terms and conditions of this Contract shall be valid and enforceable to the fullest extent permitted by law.

SECTION 22. NONDISCRIMINATION.

A. During the performance of this Contract, Contractor agrees as follows:
i. Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

ii. Contractor in all solicitations or advertisements for employees placed by or on behalf of Contractor will state that Contractor is an equal opportunity employer.

iii. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

B. Contractor will include the provisions of the foregoing Section A (i, ii, and iii) in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

SECTION 23. DRUG-FREE WORKPLACE.

A. During the performance of this Contract, Contractor agrees to (i) provide a drug-free workplace for Contractor’s employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

B. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

SECTION 24. FAITH BASED ORGANIZATIONS.

Pursuant to State or Federal codes, be advised that TAPS does not discriminate against faith-based organizations.

SECTION 25. CONTRACTUAL DISPUTES.
Contractual claims, whether for money or for other relief, shall be submitted, in writing, no later than sixty (60) days after the final payment or termination of the Contract or notice from TAPS to the Contractor that TAPS disputes the amount of Contractor's request for final payment. However, written notice of the Contractor's intention to file such claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Such notice is a condition precedent to the assertion of any such claim by the Contractor. A written decision upon any such claims will be made by TAPS's Executive Director or TAPS Executive Director's designee within thirty (30) days after submittal of the claim and any practically available additional supporting evidence required by TAPS’s Executive Director. The Contractor may not institute legal action prior to receipt of TAPS’s decision on the claim unless TAPS’s Executive Director fails to render such decision within 120 days from submittal of Contractor’s claim. The decision of TAPS's Executive Director shall be final and conclusive unless the Contractor within six (6) months of the date of the final decision on a claim or from expiration of the 120 day time limit, whichever occurs first, initiates legal action. Failure of TAPS to render a decision within said 120 days shall not result in the Contractor being awarded the relief claimed nor shall it result in any other relief or penalty. The sole result of TAPS's failure to render a decision within said 120 days shall be Contractor's right to immediately institute legal action. No administrative appeals procedure pursuant to has been established for contractual claims under this Contract.

SECTION 26. SUCCESSORS AND ASSIGNS.

The terms, conditions, provisions, and undertakings of this Contract shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

SECTION 27. HEADINGS.

The captions and headings in this Contract are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of this Contract.

SECTION 28. COUNTERPART COPIES.

This Contract may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

SECTION 29. AUTHORITY TO SIGN.

The persons who have executed this Contract represent and warrant that they are duly authorized to execute this Contract on behalf of the party for whom they are signing.

SECTION 30. NOTICES.

All notices must be given in writing and shall be validly given if sent by certified mail, return receipt requested, or by a nationally recognized overnight courier, with a receipt, addressed
as follows (or any other address that the party to be notified may have designated to the sender by like notice):

To TAPS: Texoma Area Para Transit System  
3400 Texoma Parkway  
Sherman, Texas 75090  
Facsimile: (903) 893-4766

If to Contractor: __________________________  
__________________________  
Facsimile: __________________________

Notices shall be deemed to be effective one day after sending if sent by overnight courier or three (3) days after sending it by certified mail, return receipt requested.

SECTION 31. PROTECTING PERSONS AND PROPERTY.

The Contractor expressly undertakes, both directly and through its subcontractors, to take every reasonable precaution at all times for the protection of all persons and property at the location of the Work or in the vicinity of the Work or that may be affected by the Contractor’s operation in connection with the Work. The Contractor will maintain adequate protection of all Contractor’s Work to prevent damage to it and shall protect TAPS’s property from any injury or loss arising in connection with Contractor’s performance of this Contract and to protect the property where the Work is being done and adjacent property to prevent any damage to it or loss of use and enjoyment by its owners. Contractor agrees to be responsible for the entire Work and will be liable for all damages to the Work, including, but not limited to, damages to any property of TAPS or to any property at the location of the Work or in the vicinity or adjacent to the Work. All damage with respect to the Work caused by vandalism, weather, or any other cause, other than resulting from the sole negligence of TAPS, shall be the responsibility of the Contractor. Furthermore, any damage to concrete curbs, gutters, sidewalks, or any existing facility, whether owned by TAPS or others that may occur during the Work shall be repaired or replaced by the Contractor, at Contractor’s sole expense, as directed by and to the satisfaction of TAPS.

SECTION 32. WARRANTY OF MATERIAL AND WORKMANSHIP.

The Contractor warrants that, unless otherwise specified, all tires, material, and equipment used in the Work under this Contract shall be new, in first class condition, and in accordance with this Contract. The Contractor further warrants that all workmanship shall be of the highest quality in accordance with the Contract and shall be performed by persons qualified in their respective trades. This warranty of material and workmanship is separate and independent from and in addition to any of the Contractor’s other guarantees or obligations under this Contract, or that may arise by law. Contractor agrees that Contractor shall repair or replace, at Contractor’s sole expense, and to the satisfaction of
TAPS, any work, material, equipment, or part of the Work that is found by TAPS to be defective or not in accordance with the terms of this Contract.

**SECTION 33. JOBSITE APPEARANCE.**

The Contractor expressly undertakes, either directly or through its subcontractor(s), to clean up frequently all refuse, rubbish, scrap material, and debris caused by its operations, to the end that at all times the jobsite shall present a neat, orderly, and workmanlike appearance. No such refuse, rubbish, scrap material, and debris shall be left within the completed Work nor buried on site, but shall be properly protected and removed from the site and properly disposed of in a licensed landfill or otherwise as required by law or otherwise required by the Contract.

**SECTION 34. FINAL CLEANING.**

The Contractor expressly undertakes, either directly or through its subcontractor(s), before final payment, to remove all surplus material, false work, temporary structures, and debris of every nature resulting from its operations and to put the site in a neat, orderly condition. If Contractor fails to clean up at the completion of the Project, TAPS may do so and charge all the costs thereof to the Contractor.

**SECTION 35. PROTECTION ON SITE.**

The Contractor expressly undertakes, both directly and through its subcontractor, to take every reasonable precaution at all times for the protection of all persons and property which may come on the jobsite or be affected by the Contractor’s operation in connection with the Work.

**SECTION 36. SAFETY AND HEALTH PRECAUTIONS.**

The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety and health precautions and programs in connection with the Work, including but not limited to provision of appropriate sanitation facilities, if applicable.

**SECTION 37. PROTECTING THE PUBLIC.**

The Contractor shall in all cases protect the public and the Work, during its execution, by posting and maintaining, at its expense, appropriate signs, barricades, barriers, lights, flagmen, and other safety devices.

**SECTION 38. PROTECTING THE WORK AND ADJACENT PROPERTY.**

The Contractor shall continuously maintain adequate protection of all its work from damage and shall protect TAPS’s property and the property where the Work is being done from injury or loss arising in connection with this Contract. The Contractor shall adequately protect adjacent property to prevent any damage to it or its loss of use. Contractor shall provide and maintain all passageways, guard fences, lights, and other facilities for
protection required by any public authority, local conditions, any of the Contract Documents, or erected for the fulfillment of its obligations for the protection of persons and property.

SECTION 39. EMERGENCIES.

In an emergency affecting the safety or life of persons or of the Work, or of the adjoining property, the Contractor, without special instruction or authorization from TAPS’s project manager, City Engineer, Building Code Official, or Fire Official, shall act, at Contractor's discretion, to prevent such threatened loss or injury. Also, should Contractor, to prevent threatened loss or injury, be instructed or authorized to act by TAPS’s project manager, City Engineer, Building Code Official, Fire Official, or other responsible official, Contractor shall so act immediately, without appeal.

SECTION 40. DAMAGE TO THE WORK.

The Contractor shall have charge of and be solely responsible for the entire Work and be liable for all damages to the Work including, but not limited to any property at or in the vicinity of the Work, until Contractor completes the Work and it is approved and accepted by TAPS.

SECTION 41. DAMAGE TO OTHER WORK OR UTILITIES.

The Contractor shall take into account all other work which shall be done by other parties on the jobsite, either now known or which may become necessary during the progress of the Work, and shall be responsible for any damage done to the other work. Should any utilities require adjustment during the Work, it shall be the Contractor's responsibility to have such utilities relocated as a part of the Work and to contact and cooperate with the respective Utility Company in performance of such operations. The respective Utility Company shall be given a minimum of forty-eight (48) hours notice prior to the adjustment. Damages that may occur to the utilities during the Work shall be the sole responsibility of the Contractor.

SECTION 42. WEATHER DAMAGE OR DELAY.

Damage to the Work or any delays caused by the weather shall be the responsibility of the Contractor.

SECTION 43. DAMAGE TO EXISTING STRUCTURES.

Damage caused by Contractor or its subcontractors to concrete curbs, gutters, sidewalks, or any existing facility, structure, or building that may occur during the Work shall be repaired or replaced by the Contractor, at its sole expense, as directed by and to the satisfaction of TAPS.

SECTION 44. REPURCHASE BY CONTRACTOR.
The acceptance by the Contractor of the final payment for any requested work shall be and does operate as a repurchase by the Contractor of all claims by the Contractor against TAPS and of all other liability of TAPS to the Contractor, including liability for all things done or furnished in connection with the Work or the Contract.

SECTION 45. ADDITIONAL WARRANTY.

The Contractor hereby warrants and guarantees that all of the Work, including, but not limited to, all materials, services, workmanship, and equipment, shall be free from any defects, deficiencies, inferior materials or equipment, and that the workmanship shall be of the highest quality in Virginia for the type of Work performed or items supplied, and that all materials and equipment are new unless otherwise specifically noted in the Contract. Such warranty shall be for a period of five (5) year(s) from the date of the Contractor's final and proper completion of the Work and acceptance of such Work by TAPS.

SECTION 46. DEFECTIVE WORK.

The Contractor agrees it shall repair or replace, at Contractor's sole expense, and to the satisfaction of TAPS, any work, material, equipment, purchased tires, or part that is found, by TAPS, to be defective and/or not in accordance with the Contract.

SECTION 47. CORRECTION OF DEFECTS.

If the Contractor, after notice, fails to proceed promptly to correct any defects or defective Work, TAPS may have the defects or defective Work corrected by TAPS or another entity and the Contractor shall be liable for all costs and expenses incurred in doing so.

SECTION 48. CONTRACT SUBJECT TO FUNDING.

This Contract is or may be subject to funding and/or appropriations from federal, state and/or local governments and/or agencies and/or from the City of Sherman or the City of Denison. If any such funding is not provided, withdrawn, or otherwise not made available for this Contract, the Contractor agrees that TAPS may terminate this Contract on seven (7) days written notice to Contractor, without any penalty or damages being incurred by TAPS. Contractor further agrees to comply with any applicable requirements of any grants and/or agreements providing for such funding.

SECTION 49. RISK OF LOSS.

The Contractor shall bear the risk of loss as to any tires or other items or any part thereof including any damages or loss from any cause of any type, loss, theft, mutilation, vandalism, or other damage, including those caused by acts of God, prior to the delivery to and acceptance by TAPS.
SECTION 50. OWNERSHIP OF MATERIAL AND WORK.

All materials and work covered by payments shall become the property of TAPS other than purchased tires or equipment provided by the Contractor. This provision shall not relieve the Contractor from the responsibility for all material and to maintain all completed Work and to repair all damaged Work. The Contractor shall not deem a payment as a waiver to complete the terms of the Contract or shift the risk of loss from the Contractor to TAPS. The Contractor warrants that it has good title to all materials, equipment, and supplies which it uses in the Work or for which it accepts payment in whole or in part.

SECTION 51. RECOVERY OF FUNDS PAID FOR UNAUTHORIZED OR UNAPPROVED WORK.

Contractor shall repay to TAPS any funds Contractor may have received for any purchase of tires, work, services, and/or materials Contractor provided and/or performed for this Project if any such items were not properly authorized or approved by TAPS, FTA, and any other approving local, state, or federal agency, and/or for any funds TAPS may have had to repay to the FTA and/or any state or federal agency due the actions and/or omissions of the Contractor including, but not limited to, any reporting or record keeping requirements.

SECTION 52. INCORPORATION OF FTA, STATE, AND/OR LOCAL TERMS.

The terms and provisions contained in this Contract include certain standard terms and conditions required by the FTA, TxDOT, other federal agencies, state agencies, and/or local entities, whether or not expressly set forth in the RFP and/or in the Contract provisions. All contractual provisions required by the FTA, TxDOT, federal agencies, state agencies, and/or local entities, involved in this Project are hereby incorporated by reference to the extent applicable to this Contract. Anything to the contrary notwithstanding, all applicable FTA, TxDOT, federal, state, and local mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract with the order of precedence being in that order unless otherwise required by law. The Contractor agrees to and shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause TAPS to be in violation of any federal, state, and/or local terms and conditions.

SECTION 53. ENTIRE AGREEMENT.

This Contract, including any attachments, exhibits, and referenced documents, constitutes the complete understanding between the parties. This Contract may be modified only by written agreement properly executed by the parties.

SIGNATURE PAGE TO FOLLOW
IN WITNESS WHEREOF, the parties hereto have signed this Contract by their authorized representatives.

(Full Legal Name of Contractor)

By__________________________________

______________________________
Printed Name and Title

Date ______________________________

TEXOMA AREA PARATRANSIT SYSTEM

By__________________________________

Brad Underwood, Executive Director

Date ______________________________
24. Adjourn