

STATE OF OKLAHOMA
DEPARTMENT OF TRANSPORTATION
STATE PUBLIC TRANSIT REVOLVING FUND PROGRAM
STATE FISCAL 2020
PROJECT NO: STPTRF-9025(309), JOB PIECE NO. 26102(11),
CLEVELAND COUNTY
AGREEMENT NO. RF2020-03

This Agreement made and entered into by and between the Oklahoma Department of Transportation, hereinafter called the "**DEPARTMENT**", acting for and on behalf of the State of Oklahoma, the Governor's designee for the administration of the State Public Transit Revolving Fund and the **CITY OF NORMAN**, hereinafter referred to as the "**AGENCY**", for the purpose of providing financial assistance pursuant to the Public Transit Revolving Fund, Section 4031 of Title 69 of the Oklahoma Statutes, as amended, hereinafter referred to as the "**FUND**", and subject to the following terms and conditions. The above stated parties to this contract will hereinafter be referred to collectively, as the **PARTICIPANT** or **PARTICIPANTS**.

WITNESSETH:

WHEREAS, Section 4031 of Title 69 of the Oklahoma Statutes created a revolving fund for the DEPARTMENT designated as the "Public Transit Revolving Fund" for the purpose of establishing, expanding, improving and maintaining rural and urban public transportation services; and,

WHEREAS, \$5,750,000.00 has been allocated to the FUND for establishing, expanding, improving and maintaining rural and urban public mass transportation services; and,

WHEREAS, Ninety-five percent or \$5,462,500.00 of the aforementioned FUND is available to existing public mass transportation programs; and,

WHEREAS, Eligible entities shall be defined as those entities receiving federal financial assistance through the Federal Transit Administration's Block Grant for Urbanized Areas and Formula Grant Program for Areas Other Than Urbanized Areas, 49 U.S. C., Sections 1607a and 1614, respectively, and other public mass transportation programs provided by entities, municipalities, and community action programs which have submitted an audited financial statement showing total reported vehicle revenue mileage for the prior year to the **DEPARTMENT**; and,

WHEREAS, The DEPARTMENT has determined that the AGENCY is an eligible entity to participate in the aforementioned FUND; and,

WHEREAS, The **DEPARTMENT** desires to distribute said FUND to eligible existing public mass transportation providers. The **PARTICIPANTS** hereto agree as follows:

SECTION 1: PURPOSE OF AGREEMENT

The purpose of this Agreement is to state the terms, conditions and mutual understanding of the parties as to the manner in which the distribution of monies from the State Public Transit Revolving Fund is to be carried out.

SECTION 2: PROGRAM SCOPE

The funding allocated from the Public Transit Revolving Fund by the DEPARTMENT is budgeted for the purpose of establishing, expanding, improving and maintaining rural and urban public mass transportation service; available funds may also be used for local share or matching funds for the purpose of federal capital or operating grants. Prior to the allocation of funds from the Public Transit Revolving Fund, each eligible entity desiring monies from the Public Transit Revolving Fund shall provide to the Department, a proposed budget outlining the proposed use of the monies for the corresponding fiscal year. Any eligible entity not submitting a proposed budget shall be deemed to waive any claim to available funds from the Public Transit Revolving Fund for the corresponding fiscal year. All funds distributed among the eligible entities shall be audited to ensure compliance with applicable law and the latest available audited financial statement shall be provided to the DEPARTMENT.

Eligible entity receiving funds from the Public Transit Revolving Fund shall expend a minimum of fifty percent (50%) of their allocated funding for services for the Elderly and the Disabled. Available program funds shall not be subject to the Central Purchasing Act, Section 85.1 et seq. of Title 74 of the Oklahoma Statutes. However, any equipment purchased with available funds, shall be subject to the Central Purchasing Act added by Laws 1990, c. 250, § 3, operative July 1, 1990 as amended.

SECTION 3: TIME FOR PERFORMANCE

This Agreement shall be in effect for a period, which will commence on the date indicated that the DEPARTMENT has executed this Agreement and extend through June 30, 2020. It is understood and agreed upon between the parties hereto that the DEPARTMENT is subject to certain funding restrictions which prevent the DEPARTMENT from making a commitment that obligates the DEPARTMENT to pay any funds beyond the aforementioned Agreement period.

SECTION 4: COMPENSATION

The DEPARTMENT agrees to distribute said monies to the AGENCY on the basis of three billings. The first billing of \$44,762.00 shall be payable on or after November 1, 2019. The second billing shall be for \$44,762.00, payable on or after February 15, 2020. The final payment shall be for \$44,761.00 and shall be due on or after June 1, 2020. The maximum amount of funds available to the AGENCY under this Agreement shall not exceed ONE HUNDRED THIRTY FOUR THOUSAND TWO HUNDRED EIGHTY FIVE DOLLARS (\$134,285.00). Unused funds at the end of the contract period will go back into the general Revolving fund to be redistributed the following fiscal year.

Compensation for services performed under this Agreement will be based on the number of vehicle revenue miles of service provided, using the AGENCY's actual audited vehicle revenue mileage records. A vehicle revenue mile shall be defined as a mile operated by vehicles available for public transportation services. Deadhead miles shall not be eligible for reimbursement and are defined as miles traveled while moving a revenue vehicle in other than revenue service. A revenue vehicle shall be defined as a vehicle used to provide public mass transportation services for which remuneration is normally required. The DEPARTMENT shall not be obligated to provide funding to the AGENCY beyond the limits of funds available in the FUND for the corresponding fiscal year.

The DEPARTMENT will make three payments to the AGENCY based upon properly prepared invoices supplied by the DEPARTMENT and executed by the AGENCY.

The mileage upon which payment is to be made shall be that mileage reported by the AGENCY to the United States Secretary of Transportation, as required by U.S.C., Section 1611, as amended, or as reported on the DEPARTMENT's approved data intake form for the previous year. Other eligible public mass transit services provided by entities, municipalities, and community action programs shall submit an audited financial statement showing total reported mileage for the prior year to the DEPARTMENT as described in the Program Scope section of this agreement. The DEPARTMENT, based on evidence provided by the applicant, shall determine if any entity meets the criteria of being a public transit program and therefore to take part in the FUND. The vehicle revenue miles for all eligible entities shall be added together to form a total. This total vehicle revenue mileage shall be divided into the total dollars available in the FUND to arrive at a per mile rate to be used to calculate the maximum amount of funds available to each eligible entity for the fiscal year.

SECTION 5: CHANGE MODIFICATIONS

No changes or alterations, modification or amendment of any term or condition of this Agreement shall be effective unless reduced to writing and executed with same formalities that are observed in the execution of this Agreement.

SECTION 6: GOVERNING LAWS AND REGULATIONS

This Contract shall be governed and implemented in accordance with the laws of the State of Oklahoma and the applicable rules, regulations, policies, and procedures of the Oklahoma Transportation Commission. Venue for any action to construe or have enforced any provision of this Contract shall be in the District Court of Oklahoma County, State of Oklahoma.

SECTION 7: DISPUTE RESOLUTION

The parties hereto have entered into this Contract in the State of Oklahoma and the laws of the State of Oklahoma shall apply. The parties agree to bargain in good faith in direct negotiation to achieve resolutions of any dispute and, if such efforts are unsuccessful, to retain a neutral mediation service to mediate the dispute prior to filing court action. Mediation shall be conducted in the Oklahoma City area and the costs of such mediation shall be borne equally by the parties. If mediation is not successful, venue for any action brought to enforce the terms of this Contract shall be Oklahoma County, State of Oklahoma. Each party shall bear any costs and attorney fees incurred by that party in such litigation.

SECTION 8: ACCESS TO RECORDS AND AUDIT REQUIREMENT

The AGENCY and its subcontractors shall maintain all books, documents, papers, accounting records, instructions receipts, vouchers, memoranda and other evidence pertaining to funding associated with this agreement and to make such materials available at its respective offices at all reasonable times, during the agreement period and for three (3) years from the date of final payment under the agreement. The AGENCY shall permit inspections by representatives of the Department, and if requested, to the State Auditor and Inspector, or any other authorized representatives of the state governments.

The AGENCY hereby certifies that all records shall be maintained in accordance with generally accepted accounting principles and shall conform to the standards set forth in the U.S. Department of Transportation 49 CFR Part 18, "*Uniform Administration Requirements for Grants and Cooperative Agreements to State and Local Government*", as amended.

SECTION 9: THIRD PARTY AGREEMENTS

Unless otherwise authorized in writing by the DEPARTMENT, the AGENCY shall not assign any portion of this Agreement by executing any subcontract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement.

SECTION 10: TERMINATION

The DEPARTMENT may terminate the project and cancel this Agreement by giving thirty (30) days written notice if the continuation of the program, in the DEPARTMENT's opinion, would not produce beneficial results commensurate with the further expenditure of funds.

The DEPARTMENT may, by written notice to the AGENCY, terminate this Agreement for any of the following reasons:

1. The AGENCY discontinues providing transportation services as outlined within their proposal. The AGENCY takes any action pertaining to this Agreement without the approval of the DEPARTMENT and which, under the conditions established by this Agreement, would have required the approval of the DEPARTMENT.
2. The DEPARTMENT determines that the AGENCY is not utilizing available funds as outlined in Section 4031 of Title 69 of the Oklahoma Statutes.
3. The commencement, execution, or timely completion by the AGENCY is, for any reason, rendered improbably, impossible, or illegal.
4. The AGENCY shall be in default under any prevision of this Agreement.
5. By mutual agreement and consent of the PARTICIPANTS hereto this Agreement may be terminated.

6. Termination of the FUND will result in immediate expiration of this Agreement.

SECTION 11: COVENANT AGAINST CONTINGENT FEES

The AGENCY warrants that it has not employed or retained any company or person specifically to solicit or secure this Agreement, and that it has not paid or agreed to pay any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the DEPARTMENT shall have the right to annul this Agreement without liability.

SECTION 12: EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this Agreement, the AGENCY shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. The AGENCY shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, age or national origin. Such actions shall include, but not be limited to, the following: employment; upgrading, demotion or transfer; recruitment or advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The AGENCY further agrees to insert similar provisions in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

SECTION 13: TITLE VI – CIVIL RIGHT ACT OF 1964

The AGENCY shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964 (P.L. 88-352), the Regulations of the Department of Transportation issued thereunder (CFR Title 49, Subtitle A, Part 21 as amended), and the assurances by the CONTRACTOR pursuant thereto.

SECTION 14: HOLD HARMLESS CLAUSE

The AGENCY shall hold harmless the DEPARTMENT from all claims and liability due to its negligent acts or omissions or the negligent acts or omissions of its subcontractors, agents or employee under this Agreement, including but not limited to negligent injury or damage to persons or property and the interference with the contract rights of others.

SECTION 15: PRIOR UNDERSTANDING

This Agreement incorporates and reduces to writing all prior understandings, promises, agreements, commitments, covenants, or conditions, and constitutes the full and complete understanding and contractual relationship of the PARTICIPANTS.

SECTION 16: SERVICES TO THE ELDERLY AND THE DISABLED

By executing this Agreement, the AGENCY does hereby certify that, at a minimum, fifty percent (50%) of the funding provided by this agreement shall be spend for services for the elderly and the Disabled.

SECTION 17: INSURANCE

The AGENCY shall obtain and maintain for the duration of the Agreement from a licensed carrier duly authorized to offer policies of liability insurance and to do business in the State of Oklahoma, an insurance policy in the face amount of not less than one million dollars (\$1,000,000). Said insurance policy is to protect the AGENCY against claims and suits in law or equity, alleging negligence on the part of said AGENCY, his agents or employees and demands for compensation for damages to either persons or property.

The AGENCY shall further obtain in amounts as specified by law, Worker's Compensation Insurance for all persons employed by the AGENCY, said policy to be obtained from a company authorized to provide such insurance in the State of Oklahoma.

The AGENCY shall provide the DEPARTMENT, for the inclusion in the agreement file, copies of certificates of insurance evidencing coverage as to both workers' compensation and liability, said copies to be furnished to the DEPARTMENT within five (5) working days of execution of this Agreement.

SECTION 18: GOVERNING LAW AND REGULATIONS

This Agreement shall be governed and construed in accordance with the laws of the State of Oklahoma and the applicable rules, regulation, policies and procedures of the Oklahoma Transportation Commission.

SECTION 19: HEADINGS

Article headings used in this Agreement are inserted for convenience of reference only and shall not be deemed a part of this Agreement for any purpose.

SECTION 20: BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the DEPARTMENT and the AGENCY and shall be binding upon their successors and subject to the limitation of Oklahoma Law.

SECTION 21: SEVERABILITY

This agreement shall be construed in conformation with the Constitution and Laws of the State of Oklahoma. The provisions of this agreement shall be considered as several. In the event that any provision of the agreement is determined by a court of competent jurisdiction, to be contrary to the Constitution of Law of the State of Oklahoma, such finding shall not invalidate the remaining provisions of this agreement if the same shall permit completion of work set forth in this contract. Venue for any action to construe or have

enforced any provision of this agreement shall be in District Court of Oklahoma County, State of Oklahoma.

SECTION 22: NOTICE

All notices, demands requests or other communications which may be or are required to be given, served or sent by either party to the other pursuant to this Agreement shall be in writing and shall be deemed to have been properly given or sent:

If intended for the DEPARTMENT, by mailing by first class mail, by registered or certified mail, with postage prepaid, addressed to:

Office of Mobility & Public Transit
Department of Transportation
200 N.E. 21st Street Room, D-1
Oklahoma City, OK 73105-3204

If intended for the AGENCY, by mailing by first class mail, by registered or certified mail, with postage prepaid, addressed to:

City of Norman
P.O. Box 370
Norman, OK 73070

EXECUTION OF AGREEMENT

IN WITNESS HEREOF, the CONTRACTOR has executed this Agreement on the _____ day of _____, 2019; and the DEPARTMENT has executed this Agreement on the _____ day of _____, 2019.

FOR THE AGENCY

City of Norman

Breea Clark, Mayor Date_____
Federal Tax I. D. Number

APPROVED AS TO FORM

ATTEST: _____
Brenda Hall, City Clerk Date_____
Kristina L Bell, Assistant City Attorney DateState of: OKLAHOMA) ss:
County of: CLEVELAND)

Subscribed and sworn to before me this _____ day of _____, 2019

Notary Public_____
Commission Expiration Date

AFFIX SEAL

Commission Number**FOR THE DEPARTMENT**

STATE OF OKLAHOMA DEPARTMENT OF TRANSPORTATION

REVIEWED AND RECOMMENDED
FOR APPROVAL

APPROVED AS TO FORM

Ernestine Mbroh, Manager Date
Office of Mobility & Public Transit_____
David Miley Date
Assistant General Counsel_____
Dawn Sullivan, Deputy Director Date



**State of Oklahoma
Department of Central Services
Central Purchasing Division**

**Certification for Competitive
Bid and/or Contract
(Non-Collusion Certification)**

A certification shall be included with any competitive bid and/or contract submitted to the State for goods or services.

Solicitation or Purchase Order #: _____

Supplier Legal Name: City of Norman

SECTION I [74 O.S. Section 85.22]:

A. For purposes of competitive bid,

1. I am the duly authorized agent of the above named bidder submitting the competitive bid herewith, for the purpose of certifying the facts pertaining to the existence of collusion among bidders and between bidders and state officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract pursuant to said bid;
2. I am fully aware of the facts and circumstances surrounding the making of the bid to which this statement is attached and have been personally and directly involved in the proceedings leading to the submission of such bid; and
3. Neither the bidder nor anyone subject to the bidder's direction or control has been a party:
 - a. to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding,
 - b. to any collusion with any state official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract, nor
 - c. in any discussions between bidders and any state official concerning exchange of money or other thing of value for special consideration in the letting of a contract.

B. I certify, if awarded the contract, whether competitively bid or not, neither the contractor nor anyone subject to the contractor's direction or control has paid, given or donated or agreed to pay, give or donate to any officer or employee of the State of Oklahoma any money or other thing of value, either directly or indirectly, in procuring this contract herein.

SECTION II [74 O.S. Section 85.42]:

For the purpose of a contract for services, the supplier also certifies that no person who has been involved in any manner in the development of this contract while employed by the State of Oklahoma shall be employed by the supplier to fulfill any of the services provided for under said contract.

☐ the competitive bid attached herewith and contract, if awarded to said supplier;

OR

☒ the contract attached herewith, which was not competitively bid and awarded by the agency pursuant to applicable Oklahoma statutes.

Supplier Authorized Signature

Breea Clark
Printed Name

(405) 366-5402
Phone Number

Fax Number

Certified This Date

Mayor
Title

mayor@NormanOK.gov
Email

STATE OF: OKLAHOMA)
COUNTY OF: CLEVELAND) SS:
Print County

I, Breea Clark, of lawful age, and having been first duly sworn, on oath states:

1. That I am the agent authorized by the AGENCY to submit the attached Agreement to the State of Oklahoma. I am fully aware of the facts and circumstances surrounding the making of the Agreement to which this statement is attached and have been personally and directly involved in the procurement of this Agreement.
2. That the AGENCY has registered and fully participates in the Status Verification System, as required by Title 25 O.S. Section 131 3(B)(1), to verify the work eligibility status of all new employees of the AGENCY.

FURTHER AFFIANT SAITH NOT.

AFFIANT

Subscribed and sworn before me this _____ day of _____, 2019

Notary Public

Commission Expiration Date

AFFIX SEAL

Commission Number