



February 03, 2021

**REQUEST FOR PROPOSAL:
RP012-21**

The Gwinnett County Board of Commissioners are soliciting competitive sealed proposals from qualified consultants to **Provision of Transit Demand Professional Services on an Annual Contract**, with four (4) options to renew, for the Gwinnett County Department of Transportation.

Proposals must be returned in a sealed container marked on the **outside** with the proposal number and company name. Proposals will be received until **2:50pm local time on March 18, 2021** at the Gwinnett County Purchasing Office, 2nd Floor, 75 Langley Drive, Lawrenceville, Georgia 30046. Any proposal received after this date and time will not be accepted. Proposals will be publicly opened and only names of submitting firms will be read at 3:00pm. A list of firms submitting proposals will be available the following business day.

A Webex pre-proposal conference is scheduled for **10:00am on February 17, 2021**. To access, dial 1-408-418-9388, enter Access Code 179 432 4430. All bidders are strongly urged to attend.

Questions regarding proposals should be directed in writing to Lindsey Gravitt, Purchasing Associate II at 770.822.7833, Fax: 770.822.8735 or lindsey.gravitt@gwinnettcountry.com **no later than February 22, 2021 at 3:00pm**. Proposals are legal and binding upon the bidder when submitted. One unbound original and eight (8) copies should be submitted.

Contractor is advised that all Federal Department of Transportation grant funded projects currently require a 6.71% Disadvantaged Business Enterprise (DBE) participation in engineering and consulting services.

Successful consultant(s) will be required to meet insurance requirements. The insurance company should be authorized to do business in Georgia by the Georgia Insurance Department and must have an AM Best rating of A-5 or higher.

Gwinnett County does not discriminate based on disability in the admission or access to its programs or activities. Any requests for reasonable accommodations required by individuals to fully participate in any open meeting, program or activity of Gwinnett County Government should be directed to Susan Canon, Gwinnett County Justice and Administration Center, 770.822.8165.

The written proposal documents supersede any verbal or written prior communications between the parties.

Selection criteria are outlined in the request for proposal documents. Gwinnett County reserves the right to reject any or all proposals, to waive technicalities, and to make an award deemed in its best interest.

All companies submitting a proposal will be notified in writing of the award. We look forward to your proposal and appreciate your interest in Gwinnett County.

Sincerely,

**Lindsey Gravitt,
Purchasing Associate II**

The following pages **should** be returned with your proposal:

**Fire Information, Page 13
Code of Ethics Affidavit, Page 14
Contractor Affidavit, Page 15
Fee Schedule (separate sealed envelope), Pages 16-19
FTA Clauses, Page 52-66**

Contents

1. Invitation to Submit Proposals.....	3
2. Instructions to Consultants	6
Consultant Qualifications	6
Consultant Representation	6
Schedule.....	6
Basis of Project Short-Listing / Selection.....	6
Demand Services Contract for Professional Services.....	7
Explanation of Proposal Evaluation Criteria.....	7
3. Scope of Services.....	10
Description of Services	10
4. Forms	13
Firm Information.....	13
CODE OF ETHICS AFFIDAVIT	14
Fee Schedule.....	16
Proposal Fee Schedule – Task Order	16
Proposal Fee Schedule – Supplemental Staff	17
Proposal Fee Schedule – Base Award & Renewal Options.....	18
Certification of Non-Collusion	19
5. Insurance Requirements.....	20
6. Attachments.....	52
Attachment A: FTA Clauses.....	52
Other Federal Requirements:.....	61
Federal Certifications	64

1. Invitation to Submit Proposals

- A. Gwinnett County requests Proposals for Consultant Demand Professional Services for the Transit Division of the Gwinnett County Department of Transportation. This submission will help the Transit Division select a firm or multiple firms to provide demand service support for the Transit Division in implementing its Federal Transit Administration (FTA) and the State of Georgia funded capital projects and other transit programs. Required services may consist of transit planning services, architectural/engineering services for transit development projects, and special services. No minimum or maximum amount of work is guaranteed under this solicitation, and work will be procured on an “as-needed” basis.

Because the selected firm will perform grant-funded and non-grant funded work, the Federal Transit Administration (FTA) requires that competing firms be advised of anticipated grant-funded projects and the scope of services for these specific projects. The list of potential projects came from the Connect Gwinnett: Transit Plan, the Transit Review Committee Final Recommendations, and the Board of Commissioners Project Selection List for Referendum. In the Appendix, you will find the Final Referendum Project List. The Transit Division needs sufficient information to determine that your firm is adequately staffed and capable of providing “as-needed” professional services for each of the following service categories:

- Transit Planning Services (Scope of Services, Category A).
- Architectural & Engineering Services for Transit Development Projects (Scope of Services, Category B).
- Public Outreach Assistance, Marketing, and Planning (Scope of Services, Category C).
- Safety and Security Planning, Audit, and Implementation (Scope of Services, Category D).
- Fleet Audit and Maintenance Support Services (Scope of Services, Category E).

Firms may bid on as many individual categories as is applicable, and the County will award services based on the qualification by category. Firms must submit individual proposals for each category of interest. It is expected that there will be multiple awards for each category.

- B. Subconsultants will be permitted as part of the proposal but must be identified. Subconsultants’ resumes and project references should be provided. Gwinnett County will pay no work to the Consultant for the Consultant's work or by a Subconsultant if this work is not billed according to the hourly rates submitted as part of their proposal. For firms that have the capacity, it is expected that your proposal will include your already established DBE and non-DBE partnerships. However, we also highly encourage DBE firms to bid independently on their categories in which relevant and sufficient experience can be displayed. Subconsultants do not have to be exclusive.
- C. One (1) unbound original (designated as the original) and eight (8) bound copies of your proposal should be submitted. All copies of the proposal must be identical. **The Fee Schedule should be submitted in a separate sealed envelope. There should be no fees included in your technical proposal.** The full cost of proposal preparation is to be borne by the proposing firm. Proposals must be signed in ink by a company official that has the authorization to commit company resources.

- D. In accordance with the requirements of Federal Regulations 49 CFR 18 § 18.36(t) and 49 USC § 47107(a) 17, as amended, Federal Transit Administration Advisory Circular AC 150/5100-14E Change 1, **hourly rates will not be used as a criterion for evaluating proposals.**
- E. To provide these services, the proposal shall address the firm's capabilities and resources in the following areas:
- Available qualified human resources (emphasis on local office resources)
 - Organizational structure relating to service delivery
 - Local and company-wide experience (emphasis on similar transit scope of work)
 - Proven, well-developed processes and knowledge of Federal and State transit requirements
 - Knowledge of Gwinnett County and Gwinnett County Transit
 - Appropriate equipment and technology
 - Disadvantaged Business Enterprise Participation
- F. All questions concerning this RFP should be directed **in writing** to Lindsey Gravitt, Purchasing Associate II, Gwinnett County Purchasing Division, 75 Langley Drive, Lawrenceville, Georgia 30046. Phone: 770.822.7833 Fax: 770.822.8735 or lindsey.gravitt@gwinnettcounty.com. Where appropriate, transit responses to formal questions will also be in writing and will be distributed to all Consultants on our record as having received a copy of this RFP. In each case, the Transit Division will determine whether a response is appropriate or necessary.
- G. No organization is to discuss any aspect of this RFP with any Gwinnett County employee or any member of the Gwinnett Transit Advisory Board without the approval of the Purchasing Division's representative. This is to ensure that all prospective respondents have the same level of knowledge relative to the project, as well as making the additional data available to all proposers.
- H. Proposals submitted are not publicly available until after award by the Gwinnett County Board of Commissioners. All submissions and supporting materials, as well as correspondence relating to this RFP become the property of Gwinnett County when received. Any proprietary information contained in the proposal should be so indicated. Information submitted by a proposer in the proposal process shall be subject to disclosure after awarding in accordance with the Georgia Open Records Act. Entire proposals may not be deemed proprietary.
- I. All applicable State of Georgia and Federal Laws, City and County ordinances, licenses, and regulations of all agencies having jurisdiction shall apply to the Consultant and project throughout and incorporated here by reference. The Agreement with the selected Consultant, and all questions concerning the execution, validity or invalidity, capacity of the parties, and the performance of the Agreement, shall be interpreted in all respects in accordance with the Charter and Code of Gwinnett County and the laws of the State of Georgia.

- J. In the event that the County does also bid a Program Management Contract(s), successful bidders in the On-Demand may be asked to step aside from some or all On-Demand work. We encourage proposers to bid the On-Demand work still, even if they may be interested in the future potential Program Management work. It will not jeopardize an opportunity for firms interested in bidding both. The structure of the Program Management program is still under development, so the amount of On-Demand work a firm may have to give up if successfully awarded a Program Management Contract(s) is yet to be determined.

2. Instructions to Consultants

A. Consultant Qualifications

No proposal shall be accepted from, and no contract will be awarded to any person, firm, or corporation that is in arrears to Gwinnett County, upon debt or agreement that is a defaulter, as surety or otherwise, upon any obligation to Gwinnett County or that is deemed irresponsible or unreliable by Gwinnett County. If requested, the Consultant shall be required to submit satisfactory evidence that they have practical knowledge of the particular service proposed upon and that they have the necessary financial resources to provide the proposed service category called for as described in the “Instructions to Consultants.”

B. Consultant Representation

Proposals must be signed in ink by a company official that has the authorization to commit company resources and shall contain the firm’s full business address. The person(s) who will be responsible for the engineering work shall be a registered Professional Engineer in the State of Georgia. Appropriate professionals for other service categories, licensed in the State of Georgia, shall be responsible for those portions of the work as may be required by law.

C. Schedule

Issue date	February 3, 2021
Virtual Pre-proposal	February 17, 2021
Deadline for submitting questions	February 22, 2021 (3:00pm)
Proposal due date	March 18, 2021 (2:50pm)

D. Basis of Project Short-Listing / Selection

Gwinnett County will select the firm(s) that best demonstrates that they would add the most value toward achieving the key objectives for implementing GCDOT’s Transit Capital Improvement Plan and Referendum List.

Part I Technical Evaluation: Proposals will be evaluated based on their relative responsiveness to the criteria described below based on the point values as shown:

Firm Experience

25 points

Effective and substantive (relative to critical objectives) experience of the firm in the provision of similar services within the categories under consideration, with emphasis on local expertise.

Qualifications of Key Personnel

25 points

Qualifications, relevant experience, and availability of proposed key personnel, proposers must present sufficient and competent staff, the capacity to complete the work in a timely manner, and appropriate personnel assignments to administer projects. This section should include a brief description of the team organization and skillsets, including subconsultants, plus proposed organization charts.

Project Understanding and Unique Concepts or Innovative Ideas**30 points**

Description of Consultant's understanding and approach to projects in the categories under consideration, including innovative delivery methods and processes, demonstration of unique concepts or creative ideas to improve transit-accessibility and the customer experience, identification of issues, and resolution of conflicts.

Project Management/Quality Assurance**10 points**

Proven ability of the proposed staffing team to effectively manage multi-faceted studies and a variety of subconsultants. Proven ability to manage and supervise extensive complex studies, projects, and analyses. Description of the firm's quality assurance/quality control processes to ensure the accuracy and integrity of services in the timely delivery of projects while avoiding mistakes/obstacles. Identification of key personnel responsible for quality assurance.

DBE Participation**5 points****References****5 points**

Evaluation of proposer's references as to relevance, satisfaction with services, and comments on key personnel.

At the interview panel's discretion or as deemed in Gwinnett County's best interest, firms may be short-listed a second time in order to determine the final recommendations to the Board of Commissioners. At this time, if the interview panel or GCDOT deems it to be necessary, Gwinnett County may request further information, explanations, clarifications, presentations, interviews, or meetings. If interviews are required for selection, the evaluation will be performed based on point value shown below:

Optional Interview (if requested)**20 points****E. Demand Services Contract for Professional Services**

The Consultant will be expected to sign a Demand Services Contract for Professional Services developed by Gwinnett County (sample contract attached).

Successful Consultant(s) is required within ten (10) days of the Notice of Award to provide the following:

1. Certificate of Insurance as specified in the proposal.
2. Two (2) properly executed contract documents.

F. Explanation of Proposal Evaluation Criteria

The following items provide a brief explanation of what should be provided in your proposal:

1. Firm Identification

Give the full legal name of the firm, the firm's principal business office, and its satellite offices, if any, and indicate the location(s) from which these Demand Service professional services would be staged. Give information on the firm's history, business

activities, size, employees, officers, affiliates, subsidiaries, ownership, and corporate data, as applicable to the provision of that service. **Make sure the information listed on the firm information form is included in your response.**

2. Effective and substantive (relative to key objectives) experience of the firm in the provision of similar services within the categories under consideration, with emphasis on local government (metro Atlanta/Georgia) experience

Briefly describe experience in the past five (5) years, including experience of the firm in performing/providing professional services for State, County, and Municipal governments. (This information requested is in addition to the references requested in Item #6.) This information shall include:

- Client name and contact information, including address, phone number, email address (current).
- Description of specific work authorization or services rendered.
- Dates of services.
- Status/Outcome of services, including schedule, budget.

Indicate the extent of the firm's involvement, whether as lead, subconsultant, or partner. Firms may do a chart as a summary and/or full write-up on key relative projects. If full project write-ups are provided, provide not more than five (5) specific projects (preferably similar in scope and complexity to the service category for which you are submitting a proposal).

3. Relevant qualifications, experience, and availability of proposed key personnel in the categories under consideration, with emphasis on staff location (Atlanta metro area)

Provide a summary description of the qualifications and experience of the key staff members that may be involved in assignments. Break down capabilities by discipline (e.g., local number of employees per category). Include an organizational chart footnoting any specific information regarding key personnel. Describe qualifications and experience with similar Demand Service projects. Complete resumes may be attached to supplement this information.

4. Description of Consultants' understanding and approach to projects in the categories under consideration

Provide a description of the Consultant's understanding and approach to the delivery of services along with the identification of important issues/challenges and the resolution of conflicts that need to be addressed in a typical project or a service of that category. The description should address innovative delivery methods and processes, demonstrate knowledge and understanding of the appropriate development and regulations/requirements.

5. Description of the firm's quality assurance/quality control processes and technology

Describe the firm's in-house procedures for ensuring the accuracy and integrity of its services in the timely delivery of services while avoiding mistakes/obstacles. Include, in

particular, how issues such as schedule management, cost control, and overall quality assurance/quality control of deliverable items be addressed.

Describe the equipment, software, tools, and technology, if any, that would be used or proposed for each service category and indicate how these add value to the services. Indicate experience with results obtained from these on past projects. Control and understanding of both human and equipment error should be addressed.

6. References

Provide three (3) references, including identification of the client, contact name (current), and contact information including telephone number, email address, and specific project/services. All references should be verified for current contact information prior to submission. No more than one current Gwinnett County reference can be used. **Gwinnett County will make no more than two (2) email attempts.** If a reference does not respond to attempts at verification, the Consultant shall receive no points for that reference. It is the responsibility of the proposing Consultant to verify the contact information and availability of references prior to the submission of the proposal(s).

7. Description of the firm's knowledge of Gwinnett County Transit

Describe the firm's knowledge of Gwinnett County Transit, including knowledge of existing physical transit facilities, future planned capital projects, ongoing capital projects, the transit management structure, pending Federal and State grant applications, and past grant funding (past five years).

8. Fee Services

Hourly rates must be provided for all potential labor categories involved in the provision of professional services for the specific service categories for which the firm is qualifying. All overhead, profit, and direct charges such as but not limited to document reproduction, photographic work, photo reprographic service, postage and shipping, computer usage expenses, transportation (including mileage) must be rolled into the hourly rates. All subconsultant fees are to be billed at rates identified in the fee schedule.

Gwinnett County reserves the right to negotiate all hourly rates prior to award.

F. Term

The services to be performed under this Contract shall commence upon award. This Contract may be renewed on an annual basis for four (4) additional twelve-month terms. Renewal terms will begin on July 01 of each year or upon board approval. Gwinnett County requires pricing to remain firm for the duration of the initial term of the Contract. Failure to hold firm pricing for the initial term of the Contract will be sufficient cause for Gwinnett County to declare the proposal non-responsive.

3. Scope of Services

It is envisioned that the following services may be procured through the demand service contract process, when appropriate. The majority of the work will be by task order and be paid by a fully loaded hourly rate. However, on occasion, a full time encumbered may be requested, which should be priced on the supplemental staff page of the cost sheet.

Description of Services

Category A – Transit Planning Services

The Consultant shall perform transit planning services as requested by the Transit Division, which may include but is not limited to environmental assessments and related studies, FTA required elements such as Title VI planning or analysis or DBE plan development or support, service planning, and long range planning.

These studies normally include a number of activities which may include, but not be limited to design study to establish the framework and detailed work program, transit data collection and facility inventories, transit activity forecasts and demand/capacity analyses, facility requirement determination, compatible land-use planning in the vicinity of transit, transit development schedules and cost estimates, transit financial planning, participation in public information and community involvement programs and/or public hearings relating to transit development and planning projects, and any other items of similar nature as may be required.

This item could also include assistance with audits and reviews in preparation for Triennial and other FTA reviews, as well as programmatic reviews, updates, planning, and implementation for compliance items outside of the standard FTA review cycle to ensure all FTA program items are being satisfied on an ongoing basis.

Category B – Architectural/Engineering Services for Transit Development Projects

The Consultant shall perform transit architectural and engineering services for transit development projects, which may include architectural, civil engineering, structural engineering, mechanical engineering, and electrical engineering.

These different engineering and architectural services normally include a number of activities which may include, but not be limited to:

- Conferring with the sponsor on project requirements, finances, schedules, etc.
- Planning, procuring, and/or preparing necessary surveys.
- Developing design schematics, sketches, and project recommendations.
- Preliminary layouts and cost estimates.
- Conducting and attending meetings and design conferences.
- Collecting engineering data and undertaking field investigations.
- Performing architectural, engineering, and special environmental studies, preparing reports and recommendations.
- Preparing detailed plans, specifications, and cost estimates.
- Printing and providing necessary copies of drawings and contract specifications.

- Providing consultation and advice to the Transit Division during all phases of construction.
- Representing the Transit Division at preconstruction conferences, inspecting work, and progress, including providing reports to the Transit Division on the same.
- Reviewing, analyzing, and approving laboratory and mill test reports of material and equipment.
- And any other items of similar nature as may be required.

Category C – Public Outreach Assistance/Marketing and/or Planning

Public outreach and engagement as needed. This engagement and outreach may include facilitating meetings, coordinating with GCDOT staff for website development, social media, etc., conducting surveys, collecting feedback, meeting logistics, etc. Tasks may be related to specific transit projects, plans and project implementation, general transit planning activities, or special events part of general transit outreach functions.

Category D – Safety and Security Planning, Audit, and Implementation

The Consultant will provide safety and security planning related to the development of safety and security related plans for FTA and other local, state, and federal governing bodies. This may include, audit functions of the implementation of safety and security policies by the third-party transit contractor, development of FTA, state, or local required plans.

This can include but not limited to:

- The development of safety and/or security plans.
- Direct safety and/or security consulting in relation to organization, procedures processes, training, and monitoring.
- Development and implementation of a tabletop, workshop, or other safety and security related exercises.

Category E – Fleet Audit and Maintenance Support Services

The Consultant will provide services related to fleet and maintenance support. The County annually completes either a partial or full audit of the fleet as part of the GCT contractor oversight program. Additionally, GCT, from time to time, may seek support in the areas of maintenance and fleet procurement, project management, and project oversight related to the fleet. This item could also include the planning for future fleet acquisitions or fleet transitions to alternative fuel technologies.

Category F – Administrative Services

The Consultant will provide general administrative support including word processing/formatting, text and graphics layout and manipulation, proofreading and editing documents, mail/e-mail list, photocopying and binding of documents and products, and other duties as assigned to support the Transit Division.

Graphics and Visual Renderings: The Consultant shall provide visual renderings and animations for transit planning projects and studies. The Consultant must have the capability

to provide photorealistic renderings for presentation purposes as needed. These may include creation of conceptual design views, sketch graphics, and 3D models for use by the GCDOT only.

Geographic Information Systems (GIS): Providing GIS support for projects, project evaluation, and studies identified by GCDOT. Tasks may include collecting the data needed from other agencies, creating cartographic maps, creating GIS layers as well as converting Computer Aided Design (CAD) drawings to GIS shapefiles and training of staff on future versions of ARCGIS, ARCEditor and ARCVIEW, etc.

Category G – Grants Management/General Support

The Consultant will provide support with discretionary grant applications. The work can include but not limited to research, narrative development, and visual elements for presentation. The Consultant may also be asked to perform transit grant management services as requested by the Transit Division, which may include assisting the Transit Division in the preparation of necessary applications/pre-applications for local, state and federal grants. This category may also include attendance of Gwinnett County Transit Advisory Board meetings to provide technical expertise and status reports about ongoing transit projects, as well as providing technical assistance and expertise to Transit Division staff on an as-needed basis. Any other items of a similar nature as may be required.

This item could also include assistance with audits and reviews in preparation for Triennial and other FTA reviews. As well as programmatic reviews, updates, planning and implementation for compliance items outside of the standard FTA review cycle to ensure all FTA program items are being satisfied on an ongoing basis.

4. Forms

(RETURN WITH TECHNICAL PROPOSAL)

Firm Information

Company Name _____

Legal Business Name

(If your company is an LLC, you must identify all principals to include addresses and phone numbers in your submittal)

Federal Tax ID

Address

Does your company currently have a location within Gwinnett County? Yes No

Representative Signature _____

Printed Name _____

Telephone Number _____

Fax Number _____

E-mail address



Bid # & Description: RP012-21, Provision of Transit Demand Professional Services on an Annual Contract, p.14

CODE OF ETHICS AFFIDAVIT

(THIS FORM SHOULD BE FULLY COMPLETED AND RETURNED WITH YOUR SUBMITTAL AND WILL BE REQUIRED PRIOR TO EVALUATION)

In accordance with Section 54-33 of the Gwinnett County Code of Ordinances, the undersigned bidder/proposer makes the following full and complete disclosure under oath, to the best of his/her knowledge, of the name(s) of all elected officials whom it employs or who have a direct or indirect pecuniary interest in or with the bidder/proposer, its affiliates or its subcontractors:

1.		(Company Submitting Bid/Proposal)
2.	(Please check <input checked="" type="checkbox"/> one box below)	
	<input type="checkbox"/> No information to disclose <i>(complete only section 4 below)</i>	
	<input type="checkbox"/> Disclosed information below <i>(complete section 3 & section 4 below)</i>	
3.	(if additional space is required, please attach list)	
	Gwinnett County Elected Official Name	Gwinnett County Elected Official Name
	Gwinnett County Elected Official Name	Gwinnett County Elected Official Name
4.	Sworn to and subscribed before me this	
BY:		_____ day of _____, 20__
	Authorized Officer or Agent Signature	
	Printed Name of Authorized Officer or Agent	Notary Public
	Title of Authorized Officer or Agent of Contractor	(seal)

Note: See Gwinnett County Code of Ethics Ordinance E02011, Sec. 54-33. The ordinance will be available to view in its entirety at www.gwinnettcounty.com



Solicitation Name & No. RP012-21, Provision of Transit Demand Professional Services on an Annual Contract, p.15

**CONTRACTOR AFFIDAVIT AND AGREEMENT
(THIS FORM SHOULD BE FULLY COMPLETED AND RETURNED WITH YOUR SUBMITTAL)**

By executing this affidavit, the undersigned Contractor verifies its compliance with the Illegal Immigration Reform Enhancements for 2013, stating affirmatively that the individual, firm, or corporation which is contracting with the Gwinnett County Board of Commissioners has registered with and is participating in a federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security] to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act, in accordance with the applicability provisions and deadlines established therein.

The undersigned further agrees that, should it employ or contract with any Subcontractor(s) in connection with the physical performance of services or the performance of labor pursuant to this Contract with the Gwinnett County Board of Commissioners, the Contractor will secure from such Subcontractor(s) similar verification of compliance with the Illegal Immigration Reform and Enforcement Act on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or a substantially similar form. The Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the Gwinnett County Board of Commissioners at the time the Subcontractor(s) is retained to perform such service.

E-Verify * User Identification Number Date Registered

Legal Company Name

Street Address

City/State/Zip Code

BY: _____ Date
Authorized Officer or Agent
(Contractor Signature)

Title of Authorized Officer or Agent of Contractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN
BEFORE ME ON THE
____ DAY OF _____, 20__

Notary Public
My Commission Expires:

For Gwinnett County Use Only:
Document ID # _____
Issue Date: _____
Initials: _____

* As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is "E-Verify" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

Fee Schedule
(RETURN ALL COST PAGES IN THE SAME SEPARATE SEALED ENVELOPE)

Proposal Fee Schedule – Task Order

Professional fees provided are for hourly billable rates.

Billing Category	Hourly Rate
Principal	\$ _____
Project Manager	\$ _____
Environmentalist	\$ _____
Planner Principal	\$ _____
Senior Planner	\$ _____
Senior Engineer	\$ _____
Senior Architect	\$ _____
Engineer Senior	\$ _____
Engineer	\$ _____
Engineer Associate	\$ _____
Planner	\$ _____
Architect	\$ _____
Senior CADD/Design Technician	\$ _____
CADD/Design Technician	\$ _____
Administrative Assistant I	\$ _____
Administrative Assistant II	\$ _____
Public Outreach Coordinator	\$ _____
Public Outreach Specialist	\$ _____

Other (specify titles):

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Use additional sheets if necessary.

Company Name _____

(RETURN ALL COST PAGES IN THE SAME SEPARATE SEALED ENVELOPE)

Proposal Fee Schedule – Supplemental Staff

Professional fees provided are for hourly billable rates.

Billing Category	Hourly Rate
Project Manager	\$ _____
Environmentalist	\$ _____
Planner Principal	\$ _____
Senior Planner	\$ _____
Senior Engineer	\$ _____
Engineer Senior	\$ _____
Engineer	\$ _____
Engineer Associate	\$ _____
Planner	\$ _____
Architect	\$ _____
Public Outreach Coordinator	\$ _____
Public Outreach Specialist	\$ _____

Other (specify titles):

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Use additional sheets if necessary.

Company Name _____

(RETURN ALL COST PAGES IN THE SAME SEPARATE SEALED ENVELOPE)

Proposal Fee Schedule – Base Award & Renewal Options

Please confirm the job positions in your organization that would be working on transit work to the titles named above. If necessary, please specify any additional job titles that need to be referenced and give their rates in the "Other" portion. The new demand service contract will ONLY pay on hourly rates submitted as part of this proposal, and for eligible direct expenses. All subconsultant fees are to be billed at rates identified in the above fee schedule.

Gwinnett County requires pricing to remain firm in the first year of the Contract. Failure to hold firm pricing for the initial term of the Contract will be sufficient cause for Gwinnett County to declare the proposal non-responsive. This Contract may be renewed for four (4) additional one (1) year options to renew provided fees are firm or include a pre-approved increase, service is satisfactory, and both parties are willing to renew, and renewal is approved by the Gwinnett County Board of Commissioners. If a percentage increase is a part of this proposal for any future year, please note in the space provided, together with a justification. Renewal rates will be evaluated annually to compare to actual inflation experienced and will thereby remain subject to negotiation.

The base award term will be from the Notice to Proceed (NTP) until June 30, 2022. All other Contract years will run from July 1 to June 30.

1st year renewal _____% increase/decrease (circle one) Justification _____

2nd year renewal _____% increase/decrease (circle one) Justification _____

3rd year renewal _____% increase/decrease (circle one) Justification _____

4th year renewal _____% increase/decrease (circle one) Justification _____

Company Name _____

(RETURN ALL COST PAGES IN THE SAME SEPARATE SEALED ENVELOPE)

Fee Schedule Continued

Certification of Non-Collusion

Certification of Non-Collusion in Proposal Preparation _____

Signature

In compliance with the attached specifications, the undersigned offers and agrees, if this proposal is accepted by the Board of Commissioners within one hundred twenty (120) days of the date of proposal opening, to furnish any or all of the items upon which prices are quoted, at a price set opposite each item, delivered to the designated point(s) within the time specified in the fee schedule.

Company Name _____

Address _____

Authorized Representative _____

Print Authorized Representative Name _____

Telephone Number _____ Facsimile _____

Remittance Address if Different _____

5. Insurance Requirements

PROFESSIONAL SERVICES INSURANCE REQUIREMENTS

(For projects less than \$5,000,000)

1. Statutory Workers' Compensation Insurance
 - (a) Employers Liability:
 - ✓ Bodily Injury by Accident - \$100,000 each accident
 - ✓ Bodily Injury by Disease - \$500,000 policy limit
 - ✓ Bodily Injury by Disease - \$100,000 each employee
2. Commercial General Liability Insurance
 - (a) \$1,000,000 limit of liability per occurrence for bodily injury and property damage
 - (b) The following additional coverage must apply:
 - ✓ 1986 (or later) ISO Commercial General Liability Form
 - ✓ Dedicated Limits per Project Site or Location (CG 25 03 or CG 25 04)
 - ✓ Additional Insured Endorsement (Form B CG 20 10 with a modification for completed operations or a separate endorsement covering Completed Operations)
 - ✓ Blanket Contractual Liability
 - ✓ Broad Form Property Damage
 - ✓ Severability of Interest
 - ✓ Underground, explosion, and collapse coverage
 - ✓ Personal Injury (deleting both contractual and employee exclusions)
 - ✓ Incidental Medical Malpractice
 - ✓ Hostile Fire Pollution Wording
3. Auto Liability Insurance
 - (a) \$500,000 limit of liability per occurrence for bodily injury and property damage
 - (b) Comprehensive form covering all owned, no owned, leased, hired, and borrowed vehicles
 - (c) Additional Insured Endorsement
 - (d) Contractual Liability
4. Professional Liability Insurance - \$1,000,000 (project-specific for the Gwinnett County project) limit of liability per claim/aggregate or a limit of \$1,000,000 per occurrence and \$2,000,000 aggregate.
 - ✓ Insurance companies must be authorized to do business in the State of Georgia
 - ✓ Dedicated Limits per Project Site or Location (CG 25 03 or CG 25 04 or some other form)
5. Gwinnett County Board of Commissioners (and any applicable authority) should be shown as an additional insured on General Liability and Auto Liability policies.
6. The cancellation should provide a 10-day notice for nonpayment and 30-day notice of cancellation.
7. Certificate Holder should read:
 - Gwinnett County Board of Commissioners
 - 75 Langley Drive
 - Lawrenceville, GA 30046-6935
8. Insurance company, except workers' compensation carrier, must have an AM Best Rating of A-5 or higher. Certain workers' comp funds may be acceptable by the approval of the Insurance Unit. European markets, including those based in London and domestic surplus lines markets that operate on a non-admitted basis, are exempt from this requirement provided that the Contractor's

- broker/agent can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the AM Best's rating of A-5 or better.
9. Insurance company should be licensed to do business by the Georgia Department of Insurance.
*See above note regarding Professional Liability
 10. Certificates of Insurance, and any subsequent renewals, must reference specific bid/contract by project name and project/bid number.
 11. The Contractor shall agree to provide complete certified copies of current insurance policy(s) or a certified letter from the insurance company(s) if requested by the County to verify the compliance with these insurance requirements.
 12. All insurance coverages required to be provided by the Contractor will be primary over any insurance program carried by the County.
 13. Contractor shall incorporate a copy of the insurance requirements as herein provided in each and every Subcontract with each and every Subcontractor in any tier, and shall require each and every Subcontractor of any tier to comply with all such requirements. The Contractor agrees that if for any reason, Subcontractor fails to procure and maintain insurance as required, all such required insurance shall be procured and maintained by Contractor at Contractor's expense.
 14. No Contractor or Subcontractor shall commence any work of any kind under this Contract until all insurance requirements contained in this Contract have been complied with and until evidence of such compliance satisfactory to Gwinnett County as to form and content has been filed with Gwinnett County. **The Acord Certificate of Insurance or a pre-approved substitute is the required form in all cases where reference is made to a Certificate of Insurance or an approved substitute.**
 15. The Contractor shall agree to waive all rights of subrogation against the County, the Board of Commissioners, its officers, officials, employees, and volunteers from losses arising from work performed by the Contractor for the County.
 16. Special Form Contractors' Equipment and Contents Insurance covering owned, used, and leased equipment, tools, supplies, and contents required to perform the services called for in the Contract. The coverage must be on a replacement cost basis. The County will be included as a loss payee in this coverage for County owned equipment, tools, supplies, and contents.
 17. The Contractor shall make available to the County, through its records or records of their insurer, information regarding a specific claim related to any County project. Any loss run information available from the Contractor or their insurer relating to a County project will be made available to the County upon their request.
 18. Compliance by the Contractor and all Subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all Subcontractors of their liability provisions of the Contract.
 19. The Contractor and all Subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, and any other laws that may apply to this Contract.
 20. The Contractor shall, at a minimum, apply risk management practices accepted by the Contractors' industry.

GENERAL CONDITIONS
TO CONSULTANT AGREEMENT
TABLE OF CONTENTS

Article

- 1 Definition
- 2 Contract Documents
- 3 Changes and Extra Work
- 4 Personnel and Equipment
- 5 Accuracy of Work
- 6 Findings Confidential
- 7 Consultant to Cooperate with Other Consultants
- 8 Indemnification
- 9 Covenant Against Contingent Fees
- 10 Insurance
- 11 Prohibited Interests
- 12 Subcontracting
- 13 Assignability
- 14 Equal Employment Opportunity
- 15 Anti-Kickback Clause
- 16 Audits and Inspectors
- 17 Ownership, Publication, Reproduction and Use
- 18 Verbal Agreement or Conversation
- 19 Independent Contractor
- 20 Notices

1. DEFINITIONS

Wherever used in this Agreement, whether in the singular or in the plural, the following terms shall have the following meanings:

- 1.1 COUNTY – means Gwinnett COUNTY, Georgia, a political subdivision of the State of Georgia.
- 1.2 Supplemental Agreement – means a written order to CONSULTANT signed by COUNTY and accepted by CONSULTANT, effecting an addition, deletion, or revision in the Work, or an adjustment in the Agreement Price or the Contract Time, issued after execution of this Agreement.
- 1.3 Contract – means the Agreement Documents specifically identified and incorporated herein by reference in Section 2, CONTRACT DOCUMENTS.
- 1.4 Agreement Execution – means the date on which the CONSULTANT executes and enters into an Agreement with COUNTY to perform the Work.
- 1.5 Agreement Price – means the total monies, adjusted in accordance with any provision herein, payable to the CONSULTANT under this Agreement.
- 1.6 Contract Time – means the period of time stated in this Agreement for the completion of the Work.
- 1.7 CONSULTANT – means the party or parties Contracting directly with the COUNTY to perform Work pursuant to this Agreement.
- 1.8 DEPARTMENT – means the Director or designee of requesting department(s) named in this solicitation.
- 1.9 Drawings – means collectively, all the drawings, receipt of which is acknowledged by COUNTY, listed in this Agreement, and also such supplementary drawings as the CONSULTANT may issue from time to time in order to clarify or explain such drawing or to show details which are not shown thereon.
- 1.10 Specifications – means the written technical provisions, including all appendices thereto, both general and specific, which form a part of the Agreement Documents.
- 1.11 Subcontractor – means any person, firm, partnership, joint venture, company, corporation, or entity having a Contractual Agreement with CONSULTANT or with any of its Subcontractors at any tier to provide a part of the Work called for by this Agreement.
- 1.12 Work – means any and all obligations, duties, and responsibilities, including furnishing equipment, engineering, design, craft, labor, and any other services or things necessary to the successful completion of the project, assigned to or undertaken by CONSULTANT under this Agreement.

1.13 Liaison – Representative of the COUNTY, who shall act as Liaison between the COUNTY and the CONSULTANT for all matters pertaining to this Agreement, including review of CONSULTANT's plans and work.

2. CONTRACT DOCUMENTS

2.1 List of Documents

The Agreement, any required bonds, the General Conditions, the Appendices, the Detailed Scope of Work, the Specifications, the Drawings, the Exhibits, and all Supplemental Agreements shall constitute the Agreement Documents.

2.2 Conflict and Precedence

2.2.1 The Agreement Documents are complementary, and what is called for by one is as binding as if called for by all. In the event there are any conflicting provisions or requirements in the component parts of this Agreement, the several Agreement Documents shall take precedence in the following order:

1. Supplemental Agreements
2. Agreement
3. General Conditions
4. Detailed Scope of Work
5. Specifications
6. Drawings

3 CHANGES AND EXTRA WORK

The COUNTY may, at any time, request changes in the work to be performed hereunder. All such changes, including any increase or decrease in the amount of the CONSULTANT's compensation, which are mutually agreed upon by and between the COUNTY and the CONSULTANT, shall be incorporated in written Supplemental Agreements to the Agreement.

4 PERSONNEL AND EQUIPMENT

The CONSULTANT represents that it has secured or will secure, at its own expense, all personnel necessary to complete this Agreement, none of whom shall be employees of, or have any contractual relationship with, the COUNTY. Primary liaison with the COUNTY will be through its designee. All of the services required hereunder will be performed by the CONSULTANT under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under law to perform such services.

The CONSULTANT shall employ only persons duly registered in the appropriate category in responsible charge of supervision and design of the work.

The CONSULTANT shall endorse all reports, contract plans, and survey data. Such endorsements shall be made by a person duly registered in the appropriate category by

the Georgia State Board of Registration, being in the full employ of the CONSULTANT and responsible for the work prescribed by this Agreement.

5 ACCURACY OF WORK

The CONSULTANT shall be responsible for the accuracy of the work and shall promptly correct errors and omissions in its plans and specifications without additional compensation.

Acceptance of the work by the COUNTY will not relieve the CONSULTANT of the responsibility for subsequent correction of any errors and the clarification of any ambiguities.

6 FINDINGS CONFIDENTIAL

The CONSULTANT agrees that its conclusions and any reports are for the confidential information of the COUNTY and that it will not disclose its conclusions in whole or in part to any persons whatsoever, other than to submit its written documentation to the COUNTY, and will only discuss the same with it or its authorized representatives. Upon completion of this Agreement term, all documents, reports, maps, data, and studies prepared by the CONSULTANT pursuant thereto shall become the property of the COUNTY and be delivered to DEPARTMENT.

Articles, papers, bulletins, reports, or other materials reporting the plans, progress, analyses, or results and findings of the work conducted under this Agreement shall not be presented publicly or published without prior approval in writing of the COUNTY.

It is further agreed that if any information concerning the PROJECT, its conduct, results, or data gathered or processed should be released by the CONSULTANT without prior approval from the COUNTY, the release of same shall constitute grounds for termination of this Agreement without indemnity to the CONSULTANT, but should any such information be released by the COUNTY or by the CONSULTANT with such prior written approval, the same shall be regarded as public information and no longer subject to the restrictions of this Agreement.

7 CONSULTANTS TO COOPERATE WITH OTHER CONSULTANTS

If the COUNTY undertakes or awards other contracts for additional related work, the CONSULTANT shall fully cooperate with such other Consultants and the COUNTY employees or appointed committee(s), and carefully fit its own work to such additional work as may be directed by the COUNTY. The CONSULTANT shall not commit or permit any act which will interfere with the performance of work by any other CONSULTANT or by COUNTY employees.

8 INDEMNIFICATION

CONSULTANT agrees to protect, defend, indemnify, and hold harmless the COUNTY, its commissioners, officers, agents, and employees from and against any and all liability, damages, claims, suits, liens, and judgments, for whatever nature, including claims for

contribution and/or indemnification, for injuries to or death of any person or persons, or damage to the property or other rights of any person or persons to the extent arising out of and attributed to the negligent errors, acts, or omissions of the CONSULTANT. CONSULTANT's obligation to protect, defend, indemnify, and hold harmless, as set forth hereinabove, shall include any matter arising out of any patent, trademark, copyright, or service mark, or any actual or alleged unfair competition disparagement of product or service, or other business tort of any type whatsoever, or any actual or alleged violation of trade regulations.

CONSULTANT further agrees to protect, defend, indemnify, and hold harmless the COUNTY, its commissioners, officers, agents, and employees from and against any and all claims or liability for compensation under the Worker's Compensation Act arising out of injuries sustained by any employee of the CONSULTANT.

9 COVENANT AGAINST CONTINGENT FEES

The CONSULTANT warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an Agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business and that the CONSULTANT has not received any non-COUNTY fee related to this Agreement without the prior written consent of the COUNTY. For breach or violation of this warranty, the COUNTY shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement Price of consideration the full amount of such commission, percentage, brokerage, or contingent fee.

10 INSURANCE

The CONSULTANT shall, at all times that this Agreement is in effect, cause to be maintained in force and effect an insurance policy(s) that will ensure and indemnify both COUNTY and CONSULTANT against liability or financial loss resulting from injuries occurring to persons or property or occurring as a result of any negligent error, act, or omission of the CONSULTANT during the term of this Agreement.

The CONSULTANT shall provide, at all times, that this Agreement is in effect, Worker's Compensation insurance in accordance with the laws of the State of Georgia.

The CONSULTANT shall provide, at all times, that this Agreement is in effect, Professional Liability Insurance with a limit of not less than that shown in the attached pages titled Professional Service Insurance Requirements (pg. 21 & 22 of RFP document).

Additionally, CONSULTANT shall provide, at all times, that this Agreement is in effect, automobile liability insurance with a limit of not less than that shown in the attached Appendix A.

The policies shall be written by a responsible company(s), to be approved by the COUNTY, and shall be non-cancellable except on thirty (30) days' written notice to the COUNTY.

Such policies shall name the COUNTY as co-assured, except for worker's compensation and professional liability policies, and a copy of such policy or a certificate of insurance shall be filed with the Director at the time of the execution of this Agreement.

11 PROHIBITED INTERESTS

1.1 Conflict of Interest: The CONSULTANT agrees that it presently has no interest and shall acquire no interest, direct or indirect, that would conflict in any manner or degree with the performance of its services hereunder. The CONSULTANT further agrees that, in the performance of the Agreement, no person having any such interest shall be employed.

1.2 Interest of Public Officials: No member, officer, or employee of the COUNTY during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

12 SUBCONTRACTING

The CONSULTANT shall not Subcontract any part of the work covered by this Agreement or permit Subcontracted work to be further Subcontracted without the COUNTY's prior written approval of the Subcontractor. The COUNTY will not approve any Subcontractor for work covered by this Agreement that has not been recommended for approval by the Department Director.

All Subcontracts in the amount of \$10,000 or more shall include the provisions set forth in this Agreement.

13 ASSIGNABILITY

The CONSULTANT shall not assign or transfer, whether by an assignment or novation, any of its rights, obligations, benefits, liabilities, or other interest under this Agreement without the written consent of the COUNTY.

14 EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Agreement, the CONSULTANT agrees as follows: (1) the CONSULTANT will not discriminate against any employee or applicant for employment because of race, creed, color, sex, or national origin; (2) the CONSULTANT will, in all solicitations or advertisements for employees placed by qualified applicants, receive consideration for employment without regard to race, creed, color, sex or national origin; (3) the CONSULTANT will cause the foregoing provisions to be inserted in all Subcontracts for any work covered by the Agreement so that such provision will be binding upon each Subcontractor, provided that the foregoing provision shall not apply to Contracts or Subcontracts for standard commercial supplies of raw materials.

15 ANTI-KICKBACK CLAUSE

Salaries of architects, drafters, technical engineers and engineers, and technicians performing work under this Agreement shall be paid unconditionally and not less often

than once a month without deduction or rebate on any account except only such payroll deductions as are mandatory by law. The CONSULTANT hereby promises to comply with all applicable "Anti-kickback" laws and shall insert appropriate provisions in all Subcontracts covering work under this Agreement.

16 AUDITS AND INSPECTORS

At any time during normal business hours and as often as the COUNTY may deem necessary, the CONSULTANT shall make available to the COUNTY and/or representatives of the COUNTY Department of Internal Audit for examination all of its records with respect to all matters covered by this Agreement. It shall also permit the COUNTY and/or representatives of the Department of Internal Audit to audit, examine and make copies, excerpts, or transcripts from such records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

The CONSULTANT shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred on the Project and used in support of its proposal and shall make such material available at all reasonable times during the period of the Agreement, and for three years from the date of final payment under the Agreement, for inspection by the COUNTY or any reviewing agencies, and copies thereof shall be furnished upon request. The CONSULTANT agrees that the provisions of this Article shall be included in any Agreements it may make with any Subcontractor, assignee, or transferee.

17 OWNERSHIP, PUBLICATION, REPRODUCTION, AND USE

All documents and materials prepared pursuant to this Agreement are the property of the COUNTY. The COUNTY shall have the unrestricted authority to publish, disclose, distribute, and otherwise use, in whole or in part, any reports, data, maps, or other materials prepared under this Agreement without according credit of authorship. The COUNTY shall hold harmless and indemnify the CONSULTANT against all claims arising out of such use of documents and materials without the CONSULTANT's knowledge and consent.

18 VERBAL AGREEMENT OR CONVERSATION

No verbal agreement or conversation with any officer, agent, or employee of the COUNTY, either before, during, or after the execution of this Agreement, shall affect or modify any of the terms or obligations herein contained, nor shall such verbal agreement or conversation entitle the CONSULTANT to any additional payment whatsoever under the terms for this Agreement. All changes to this Agreement shall be in writing and appended hereto as prescribed in Article 3 above.

19 INDEPENDENT CONTRACTOR

The CONSULTANT shall perform the services under this Agreement as an independent Contractor, and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Agreement shall be interpreted or construed to constitute the CONSULTANT or any of its agents or employees to be the agent, employee, or representative of the COUNTY.

20 NOTICES

All notices shall be in writing and delivered in person or transmitted by certified mail, postage prepaid.

SPECIAL PROVISIONS
TO CONSULTANT AGREEMENT

Article

- 1 Scope of Services
- 2 Period of Services
- 3 Compensation for Consultant Services
- 4 Subconsulting
- 5 Change of Address

1 SCOPE OF SERVICES

- 1.1 The CONSULTANT, **upon written authorization to proceed from the DEPARTMENT**, agrees to perform such services as described in the proposal. The scope of each work authorization shall be determined by the DEPARTMENT with assistance from the CONSULTANT.
- 1.2 Each specific work authorization to be performed under this Agreement shall be specifically defined, and its cost presented as a **not-to-exceed total**. The specific work task to be performed shall be set forth in the letter of work authorization. **The not-to-exceed fee amount will be determined in accordance with the fee schedule.**

2 PERIOD OF SERVICES

- 2.1 **The completion schedule for each phase or work task of the project shall be mutually agreed to by the DEPARTMENT and the CONSULTANT prior to written authorization to proceed.** The CONSULTANT shall recognize that time is of the essence.
- 2.2 The effective date of this Agreement shall be the date said Agreement is signed by the Chairman of the Gwinnett County Board of Commissioners. The term of this Agreement shall be from the notice to proceed (NTP) until December 31, 2020, at which time it **shall terminate with no further obligation of the COUNTY unless renewed as provided herein.**

3 COMPENSATION FOR CONSULTANT SERVICES

- 3.1 For each specific work authorized under Section I above, the DEPARTMENT shall pay the CONSULTANT on the basis of actual time worked on the project, times the hourly rates for the particular categories of personnel working on the project, plus the cost of any direct expenses incurred during the project. Said direct expenses shall be subject to verification of legitimacy and eligibility for reimbursement. Each invoice shall be accompanied by a letter progress report, which outlines the work accomplished during the billing period and any problems that may be inhibiting the PROJECT execution.

The CONSULTANT shall not perform work on any phase or task of the project that will result in costs that will exceed the estimated budget specified for such work authorization **without the written consent of the DEPARTMENT.**

- 3.2 All invoices submitted by the CONSULTANT shall be detailed to reflect hours per task by personnel category at the billing rates as referenced in the Proposal Schedule attached hereto and made a part hereof by reference. All invoices shall also contain receipts or other evidence of all direct expenses being billed. **There shall be no lump sum billing for any work performed.**
- 3.3 There will be **no payments for overtime billing.** Overtime may be performed at the discretion of the CONSULTANT, but the premium time portion of the **overtime will not be billed.**
- 3.4 The CONSULTANT shall bill for its services on a monthly basis for work completed in accordance with Section 3.1 for each work authorization. Requests for payment shall be submitted in the form required by the DEPARTMENT. Invoices for payment shall be submitted by the fifth (5) calendar day of each month to facilitate processing for payment in that same month. Invoices received after the fifth (5) calendar day of the month may not be paid until the twenty-fifth (25) of the following month. If the DEPARTMENT objects to all or any portion of an invoice, the DEPARTMENT shall so notify the CONSULTANT within thirty (30) working days after receipt of the invoice, identify the cause of disagreement, and pay when due that portion of the invoice, if any, not in dispute. Payment will be made in the amount of sums earned less previous partial payments. For the purposes of this Section 3.4, "working day" shall mean any day other than Saturday, Sunday, any legal holiday, or any day where the DEPARTMENT may be closed to business for the public due to an emergency.
- 3.5 Final Payment: Upon completion by the CONSULTANT of the work, including the receipt of any final written submission of the CONSULTANT and the approval thereof by the authorized DEPARTMENT representative, the DEPARTMENT will pay the CONSULTANT all amounts earned. The COUNTY incurs no obligation to pay the Consultant for 100 percent of the not-to-exceed amount. **Payment will only be made for the amounts earned.** The DEPARTMENT will notify the CONSULTANT when final payment is made. The CONSULTANT agrees that acceptance of final payment shall be in full and final settlement of all claims arising against the COUNTY for work done, materials furnished, costs incurred, or otherwise arising out of this Agreement and shall release the COUNTY from any and all further claims of whatever nature, whether known or unknown for and on account of said Agreement, and for any and all work done, and labor and materials furnished, in connection with same.

4 SUBCONSULTING

- 4.1 The CONSULTANT shall not subcontract any part of the work covered by this Agreement or permit subcontracted work to be further subcontracted without the DEPARTMENT's prior written approval. **The work of subconsultants will be itemized and billed at the specified rates.**

5 CHANGE OF ADDRESS AND PERSONNEL

5.1 Each party to this AGREEMENT within thirty (30) days after the effective date of any change of address shall provide written notice of such change of address to the other party.

5.2.1 **No changes or substitutions shall be permitted in the CONSULTANT's key personnel as set forth herein without the prior written approval of the DEPARTMENT.** Failure to obtain prior written approval of the DEPARTMENT may result in CONSULTANT being found in default of this AGREEMENT.

6.0 CIVIL RIGHTS ACT OF 1964, TITLE VI – CONTRACTOR CONTRACTUAL REQUIREMENTS

During the performance of this Contract, the CONSULTANT, for itself, its assignees and successors in interest (hereinafter referred to as the "CONSULTANT") agrees as follows:

6.1 **Compliance with Regulations.** The CONSULTANT shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

6.2 **Nondiscrimination.** The CONSULTANT, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of Subcontractors, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

6.3 **Solicitations for Subcontracts, Including Procurements of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a Subcontract, including procurements of materials or leases of equipment, each potential Subcontractor or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

6.4 **Information and Reports.** The CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the sponsor or the FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

6.5 **Sanctions for Noncompliance.** In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this Contract, the sponsor shall impose such Contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:

- a. Withholding of payments to the CONSULTANT under the Contract until the CONSULTANT complies, and/or
- b. Cancellation, termination, or suspension of the Contract, in whole or in part.

6.6 **Incorporation of Provisions.** The CONSULTANT shall include the provisions of paragraphs 1 through 5 in every Subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any Subcontract or procurement as the sponsor, or the FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the CONSULTANT may request the Sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

8. DISADVANTAGED BUSINESS ENTERPRISES

Contract Assurance (§26.13) - The CONSULTANT or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the recipient deems appropriate.

Prompt Payment (§26.29) - The prime CONSULTANT agrees to pay each Subcontractor under this prime Contract for satisfactory performance of its Contract no later than ten (10) days from the receipt of each payment the prime CONSULTANT receives from the County. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Gwinnett County Board of Commissioners. This clause applies to both DBE and non-DBE Subcontractors. The County incorporates by reference, the Official Code of Georgia 13-11-3 through 13-11-6 concerning payments to Contractors and Subcontractors.

9. LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

(1) No Federal appropriated funds shall be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.

(2) If any funds other than Federally 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 any Federal grant, the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

10 ACCESS TO RECORDS AND REPORTS

The CONSULTANT shall maintain an acceptable cost accounting system. The CONSULTANT agrees to provide the Sponsor, the Federal Transit Administration, and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the CONSULTANT which are directly pertinent to the specific Contract for the purpose of making audit, examination, excerpts, and transcriptions. The CONSULTANT agrees to maintain all books, records, and reports required under this Contract for a period of not less than three years after final payment is made, and all pending matters are closed.

11. RIGHTS TO INVENTIONS

All rights to inventions and materials generated under this Contract are subject to regulations issued by the FTA and the Sponsor of the Federal grant under which this Contract is executed.

12. TRADE RESTRICTION CLAUSE

The CONSULTANT or Subcontractor, by submission of an offer and/or execution of a Contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a CONSULTANT or Subcontractor who is unable to certify to the above. If the CONSULTANT knowingly procures or Subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Transit Administration may direct through the Sponsor cancellation of the Contract at no cost to the Government.

Further, the CONSULTANT agrees that, if awarded a Contract resulting from this solicitation, it will incorporate this provision for certification without modification in each Contract and in all lower tier Subcontracts. The CONSULTANT may rely on the certification of a prospective Subcontractor unless it has knowledge that the certification is erroneous.

The CONSULTANT shall provide immediate written notice to the sponsor if the CONSULTANT learns that its certification or that of a Subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The

Subcontractor agrees to provide written notice to the CONSULTANT if, at any time, it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the CONSULTANT or Subcontractor knowingly rendered an erroneous certification, the Federal Transit Administration may direct through the Sponsor cancellation of the Contract or Subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a CONSULTANT is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America, and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

13. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

The bidder/offeror certifies, by submission of this proposal or acceptance of this Contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the bidder/offeror/contractor or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this solicitation/proposal.

SAMPLE**RP012-21: Provision of Transit Demand Professional Services on an Annual Contract
ANNUAL CONSULTANT DEMAND
PROFESSIONAL SERVICES AGREEMENT**

This **AGREEMENT** made and entered into this _____ day of _____, 21__ by and between Gwinnett County, Georgia (Party of the First Part, hereinafter called the "Owner"), and, (Party of the Second Part, hereinafter called the "CONSULTANT").

NOW, THEREFORE, for and in consideration of the mutual promises and obligations contained herein and under the conditions hereinafter set forth, the parties do hereby agree as follows:

1. TERM:

This Contract shall commence _____ or execution of the Contract, whichever is later, for a period from the notice to proceed to December 31, 2021, with four options to renew for an additional one-year period.

2. ATTACHMENTS:

Copies of the CONSULTANT's proposal, including all drawings, specifications, price lists, Instructions to Bidders, General Conditions, Special Provisions, and Detailed Specifications submitted to the Owner during the Bid process (hereinafter collectively referred to as the "Bid") are attached hereto (Exhibit A) and are specifically incorporated herein by reference. In the event of a conflict between the Owner's Contract documents and the Bid, the Owner's Contract documents shall control.

3. PERFORMANCE:

CONSULTANT agrees to furnish all skill and labor of every description necessary to carry out and complete in good, firm and substantial, skillful manner, the work specified, in strict conformity with the Bid.

4. PRICE:

As full compensation for this Contract's performance, the Owner shall pay the CONSULTANT for the actual quantity of work performed. Bid amount shown on Exhibit A is the total obligation of the County pursuant to OCGA section 36-60-13 (a) (3). The fees for the work to be performed under this Agreement shall be charged to the Owner in accordance with the rate schedule referenced in the Bid (Exhibit A), and for direct expenses incurred by CONSULTANT during the prosecution of work. The Owner agrees to pay the CONSULTANT following receipt by the Owner of a detailed invoice, reflecting the actual work performed by the CONSULTANT, and any direct expenses incurred by CONSULTANT while performing said work.

5. INSURANCE CERTIFICATES/NOTICE REQUIREMENTS:

CONSULTANT shall maintain all insurance certificates as provided in the proposal specifications. Owner shall be named as additional insured and shall further be named a "Loss Payee" on said insurance policies. Upon cancellation of said insurance policies, CONSULTANT or its agent(s) shall provide written notice to Owner within 30 days upon Owner to its agent(s)'s knowledge or receipt of any such notice of cancellation.

6. INDEMNIFICATION AND HOLD HARMLESS:

CONSULTANT agrees to protect, defend, indemnify, and hold harmless the COUNTY, its commissioners, officers, agents, and employees from and against any and all liability, damages, claims, suits, liens, and judgments, for whatever nature, including claims for contribution and/or indemnification, for injuries to or death of any person or persons, or damage to the property or other rights of any person or persons to the extent arising out of and attributed to the negligent errors, acts, or omissions of the CONSULTANT. CONSULTANT's obligation to protect, defend, indemnify, and hold harmless, as set forth hereinabove, shall include any matter arising out of any patent, trademark, copyright, or service mark, or any actual or alleged unfair competition disparagement of product or service, or other business tort of any type whatsoever, or any actual or alleged violation of trade regulations.

CONSULTANT further agrees to protect, defend, indemnify, and hold harmless the COUNTY, its commissioners, officers, agents, and employees from and against any and all claims or liability for compensation under the Worker's Compensation Act arising out of injuries sustained by any employee of the CONSULTANT.

7. TERMINATION FOR CAUSE:

The Owner may terminate this Agreement for cause upon ten (10) days prior written notice to the CONSULTANT of the CONSULTANT's default in the performance of any term of this Agreement. Such termination shall be without prejudice to any of the Owner's rights or remedies provided by law.

Upon receipt of such notice, services shall be immediately discontinued (unless the notice directs otherwise), and all materials may have been accumulated in performing this Contract, whether completed or in progress, delivered to the Owner.

If the termination is due to failure to fulfill the CONSULTANT's obligations, the Owner may take over the work and prosecute the same to completion by Contract or otherwise. In such case, the CONSULTANT shall be liable to the Owner for any additional cost occasioned to the Owner thereby.

If, after notice of termination for failure to fulfill Contract obligations, it is determined that the CONSULTANT had not so failed, the termination shall be deemed to have been affected for the convenience of the Owner. In such an event, the Contract price adjustment shall be made as provided in Section 8 of this Agreement.

8. TERMINATION FOR CONVENIENCE:

The Owner may terminate this Agreement for its convenience at any time by written notice to the CONSULTANT. In the event of the Owner's termination of this Agreement for convenience, the CONSULTANT will be paid for those services actually performed. Partially completed performance of the Agreement will be compensated based upon a signed statement of completion to be submitted by the CONSULTANT, who shall itemize each element of performance. No amount shall be allowed for anticipated profit on unperformed services.

9. AGREEMENT NOT TO DISCRIMINATE:

During the performance of this Contract, the CONSULTANT will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, or disability, which does not preclude the applicant or employee from performing the essential

functions of the position. The CONSULTANT will also, in all solicitations or advertisements for employees placed by qualified applicants, consider the same without regard to race, creed, color, sex, national origin, age, or disability, which does not preclude the applicant from performing the essential functions of the job. The CONSULTANT will cause the foregoing provisions to be inserted in all Subcontracts for any work covered by this Contract so that such provision will be binding upon each Subcontractor, providing that the foregoing provisions shall not apply to Contracts or Subcontractors for standard commercial supplies of raw materials.

10. ASSIGNMENT:

The CONSULTANT shall not sublet, assign, transfer, pledge, convey, sell or otherwise dispose of the whole or any part of this Contract or his right, title, or interest therein to any person, firm, or corporation without the previous consent of the Owner in writing.

11. WAIVER:

A waiver by either party of any breach of any provision, term, covenant, or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same or any other provision, term, covenant, or condition.

12. SEVERABILITY:

The parties agree that each of the provisions included in this Agreement is separate, distinct, and severable from the other and remaining provisions of this Agreement and that the invalidity of any agreement provision shall not affect the validity of any other provision or provisions of this Agreement.

13. GOVERNING LAW:

The parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of Georgia. This Agreement has been signed in Gwinnett County, Georgia.

14. MERGER CLAUSE:

The parties agree that the terms of this Agreement include the entire agreement between the parties, and as such, shall exclusively bind the parties. No other representations, either oral or written, may be used to contradict the terms of this Agreement.

(Signatures Next Page)

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized agents, have caused this **AGREEMENT** to be signed, sealed, and delivered.

Gwinnett County Board of Commissioners
Gwinnett County, Georgia

Nicole L. Hendrickson, Chairwomen
Gwinnett County Board of Commissioners

ATTEST:

Print Name
County Clerk/ Deputy County Clerk
Board of Commissioners

CONSULTANT

ATTEST:

CONSULTANT: _____

Signature

BY: _____
Signature

Print Name
Corporate Secretary
(Seal)

Print Name and Title

APPROVED AS TO FORM:

Signature

County Attorney

FAILURE TO RETURN THIS PAGE MAY RESULT IN REMOVAL OF YOUR COMPANY FROM COMMODITY LISTING.

RP012-21

Buyer Initials:

IF YOU DESIRE TO SUBMIT A "NO BID" IN RESPONSE TO THIS PACKAGE, PLEASE INDICATE BY CHECKING ONE OR MORE OF THE REASONS LISTED BELOW AND EXPLAIN.

- Do not offer this product or service; remove us from your bidder's list for this item only.
- Specifications too "tight"; geared toward one brand or manufacturer only.
- Specifications are unclear.
- Unable to meet specifications
- Unable to meet bond requirements
- Unable to meet insurance requirements
- Our schedule would not permit us to perform.
- Insufficient time to respond.
- Other

COMPANY NAME _____

AUTHORIZED REPRESENTATIVE _____

SIGNATURE

GWINNETT COUNTY
DEPARTMENT OF FINANCIAL SERVICES – PURCHASING DIVISION
GENERAL INSTRUCTIONS FOR PROPOSERS, TERMS, AND CONDITIONS

I. PREPARATION OF PROPOSALS

- A. Each proposer shall examine the drawings, specifications, schedule, and all instructions. Failure to do so will be at the proposer's risk.
- B. Each proposer shall furnish all information required by the proposal form or document. Each proposer shall sign the proposal and print or type his or her name on the schedule. The person signing the proposal must initial erasures or other changes. An authorized agent of the company must sign proposals.
- C. With the exception of solicitations for the sale of real property, individuals, firms, and businesses seeking an award of a Gwinnett County Contract may not initiate or continue any verbal or written communications regarding a solicitation with any County officer, elected official, employee, or other County representative other than the Purchasing Associate named in the solicitation between the date of the issuance of the solicitation and the date of the final Contract award by the Board of Commissioners. The Purchasing Director will review violations. If determined that such communication has compromised the competitive process, the offer submitted by the individual, firm, or business may be disqualified from consideration for award. Solicitations for the sale of real property may allow for verbal or written communications with the appropriate Gwinnett County representative.
- D. Sample Contracts (if pertinent) are attached. These do NOT have to be filled out with the bid/proposal submittal but are contained for informational purposes only. If awarded, the successful proposer(s) will be required to complete them prior to Contract execution.
- E. Effective, July 1, 2013, and in accordance with the Georgia Illegal Immigration Reform Enhancements for 2013, an original signed, notarized, and fully completed Contractor Affidavit and Agreement should be included with your bid/proposal submittal if the solicitation is for the physical performance of services for all labor or service Contract(s) that exceed \$2,499.99 (except for services performed by an individual who is licensed pursuant to Title 26, Title 43, or the State Bar of Georgia). Failure to provide the Contractor Affidavit and Agreement with your bid/proposal submittal may result in bid/proposal being deemed non-responsive and automatic rejection.

II. DELIVERY

- A. Each proposer should state time of proposed delivery of goods or services.
- B. Words such as "immediate," "as soon as possible," etc. shall not be used. The known earliest date or the minimum number of calendar days required after receipt of order (delivery A.R.O.) shall be stated (if calendar days are used, include Saturday, Sunday, and holidays in the number).

III. EXPLANATION TO PROPOSERS

Any explanation desired by a proposer regarding the meaning or interpretation of the request for proposals, drawings, specifications, etc. must be requested by the question cutoff deadline stated in the solicitation in order for a reply to reach all proposers before the close of the proposal. Any information given to a prospective proposer concerning a request for proposal will be furnished to all prospective proposers as an addendum to the invitation if such information is necessary or if the lack of such information would be prejudicial to uninformed proposers. The written proposal document supersedes any verbal or written communication between the parties. Receipt of addenda should be acknowledged in the proposal. **It is the proposer's responsibility to ensure that they have all applicable addenda prior to proposal submittal.** This may be accomplished via contact with the assigned Procurement Agent prior to proposal submittal.

IV. SUBMISSION OF PROPOSALS

- A. Proposals shall be enclosed in a sealed package, addressed to the Gwinnett County Purchasing Office with the name and address of the proposer, the date and hour of opening, and the request for proposal number on the face of the package. Telegraphic/faxed proposals will not be considered. Any addenda should be enclosed in the sealed envelopes as well.
- B. ADD/DEDUCT: Add or deduct amounts indicated on the outside of the envelope are allowed and will be applied to the lump sum amount. Amount shall be clearly stated and should be initialed by an authorized company representative.
- C. Samples of items, when required, must be submitted within the time specified and, unless otherwise specified by the County, at no expense to the County. Unless otherwise specified, samples will be returned at the proposer's request and expense if testing does not destroy items.
- D. Items offered must meet required specifications and must be of a quality that will adequately serve the use and purpose for which intended.
- E. Full identifications of each item proposed, including brand name, model, catalog number, etc. must be furnished to identify exactly what the proposer is offering. Manufacturer's literature may be furnished.
- F. The proposer must certify that items to be furnished are new and that the quality has not deteriorated so as to impair its usefulness.
- G. Unsigned proposals will not be considered except in cases where proposal is enclosed with other documents that have been signed. The County will determine this.
- H. Gwinnett County is exempt from federal excise tax and Georgia sales tax with regard to goods and services purchased directly by Gwinnett County. Suppliers and Contractors are responsible for federal excise tax and sales tax, including taxes for materials incorporated

in County construction projects. Suppliers and Contractors should contact the State of Georgia Sales Tax Division for additional information.

- I. Information submitted by a proposer in the proposal process shall be subject to disclosure after proposal award in accordance with the Georgia Open Records Act.

V. WITHDRAWAL OF PROPOSAL DUE TO ERRORS

No proposer who is permitted to withdraw a proposal shall, for compensation, supply any material or labor or perform any Subcontract or other work agreement for the person or firm to whom the Contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn proposal was submitted.

To withdraw a proposal after proposal opening, the supplier has up to forty-eight (48) hours to notify the Gwinnett County Purchasing Office of an obvious clerical error made in calculation of proposal. Withdrawal of bid bond, for this reason, must be done in writing. Suppliers who fail to request withdrawal of proposal by the required forty-eight (48) hours shall automatically forfeit bid bond. Bid bonds may not be withdrawn otherwise.

Proposal withdrawal is not automatically granted and will be allowed solely at Gwinnett County's discretion.

VI. TESTING AND INSPECTION

Since tests may require several days for completion, the County reserves the right to use a portion of any supplies before the results of the tests are determined. Cost of inspections and tests of any item that fails to meet the specifications shall be borne by the proposer.

VII. F.O.B. POINT

Unless otherwise stated in the request for proposal and any resulting contract, or unless qualified by the proposer, items shall be shipped F.O.B. Destination. The seller shall retain title for the risk of transportation, including the filing for loss or damages. The invoice covering the items is not payable until items are delivered, and the Contract of carriage has been completed. Unless the F.O.B. clause states otherwise, the seller assumes transportation and related charges either by payment or allowance.

VIII. PATENT INDEMNITY

The Contractor guarantees to hold the County, its agents, officers, or employees harmless from liability of any nature or kind for use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, articles or appliances furnished or used in the performance of the Contract, for which the Contractor is not the patentee, assignee, or licensee.

**IX. BID BONDS AND PAYMENT AND PERFORMANCE BONDS
(IF REQUIRED, FORMS WILL BE PROVIDED IN THIS DOCUMENT)**

A five percent (5%) bid bond, a one hundred percent (100%) performance bond, and a one hundred percent (100%) payment bond must be furnished to Gwinnett County for any proposal as required in the proposal package or document. **Failure to submit a bid bond with the proper rating will result in the proposal being deemed non-responsive.** Bonding company must be authorized to do business in Georgia by the Georgia Insurance Commission, listed in the Department of the Treasury's publication of companies holding certificates of authority as acceptable surety on Federal bonds and as acceptable reinsuring companies, and have an AM Best rating as stated in the insurance requirement of the solicitation. **The bid bond, payment bond, and performance bond must have the proper an AM Best rating as stated in the proposal when required in the proposal package or document.**

X. DISCOUNTS

- A. Time payment discounts will be considered in arriving at net prices and in award of the proposal. Offers of discounts for payment within ten (10) days following the end of the month are preferred.
- B. In connection with any discount offered, time will be computed from the date of delivery and acceptance at destination, or from the date correct invoice or voucher is received, whichever is the later date. Payment is deemed to be made for the purpose of earning the discount, on the date of the County check.

XI. AWARD

- A. Award will be made to the highest scoring responsive and responsible proposer according to the criteria stated in the proposal documents. The County may make such investigations as it deems necessary to determine the ability of the proposer to perform, and the proposer shall furnish to the County all such information and data for this purpose as the County may request. The County reserves the right to reject any proposal if the evidence submitted by, or investigation of, such proposer fails to satisfy the County that such proposer is properly qualified to carry out the obligations of the Contract.
- B. The County reserves the right to reject or accept any or all proposals and to waive technicalities, informalities, and minor irregularities in the proposals received.
- C. The County reserves the right to make an award as deemed in its best interest, which may include awarding a proposal to a single proposer or multiple proposers; or to award the whole proposal, only part of the proposal, or none of the proposal to single or multiple proposers, based on its sole discretion of its best interest.
- D. In the event scores rounded to the nearest whole number result in a tie score, the award will be based on lowest cost.

- E. In the event that negotiations with the highest-ranked firm are unsuccessful, the County may then negotiate with the second ranked firm and so on until a satisfactory agreement has been reached.

XII. DELIVERY FAILURES

Failure of a Contractor to deliver within the time specified or within reasonable time as interpreted by the Purchasing Director, or failure to make replacements of rejected articles/ services when so requested, immediately or as directed by the Purchasing Director, shall constitute authority for the Purchasing Director to purchase in the open market articles/services of comparable grade to replace the articles/services rejected or not delivered. On all such purchases, the Contractor shall reimburse the County within a reasonable time specified by the Purchasing Director for any expense incurred in excess of Contract prices, or the County shall have the right to deduct such amount from monies owed the defaulting Contractor. Alternatively, the County may penalize the Contractor one percent (1%) per day for a period of up to ten (10) days for each day that delivery or replacement is late. Should public necessity demand it, the County reserves the right to use or consume articles/services delivered, which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Director.

XIII. COUNTY FURNISHED PROPERTY

The County will furnish no material, labor, or facilities unless so provided in the RFP.

XIV. REJECTION OF PROPOSALS

Failure to observe any of the instructions or conditions in this request for proposal shall constitute grounds for rejection of proposal.

XV. CONTRACT

Each proposal is received with the understanding that the acceptance in writing by the County of the offer to furnish any or all of the commodities or services described therein shall constitute a Contract between the proposer and the County which shall bind the proposer on his part to furnish and deliver the articles quoted at the prices stated in accordance with the conditions of said accepted proposal. The County, on its part, may order from such Contractor, except for cause beyond reasonable control, and to pay for, at the agreed prices, all articles specified and delivered.

Upon receipt of a proposal containing a Gwinnett County "Sample Contract" as part of the requirements, it is understood that the proposer has reviewed the documents with the understanding that Gwinnett County requires that all agreements between the parties must be entered into via these documents. If any exceptions are taken to any part, each exception must be stated in detail and submitted as part of the proposal document. If no exceptions are stated, it is assumed that the proposer fully agrees to the "Sample Contract" in its entirety.

Any Consultant as defined in O.C.G.A. §36-80-28 that is engaged to develop or draft specifications/requirements or serve in a consultative role during the procurement process for any County procurement method, by entering into such an arrangement or executing a Contract that the Consultant agrees to (1) Avoid any appearance of impropriety and shall follow all

policies and procedures of the County (2) disclose to the County, any material transaction or relationship pursuant to §36-80-28, considered a conflict of interest, any involvement in litigation or other dispute, relationship or financial interest not disclosed in the ethics affidavit, when ethics affidavit is required or such that may be discovered during the pending Contract or arrangement; and (3) Acknowledge that any violation or threatened violation of the Agreement may cause irreparable injury to the County, entitling the County, to seek injunctive relief in addition to all other legal remedies. This requirement does not apply to confidential economic development activities pursuant to §50-18-72 or to any development authority for the purpose of promoting the development of trade, commerce, industry, and employment opportunities or for other purposes and, without limiting the generality of the foregoing, shall specifically include all authorities created pursuant to Title 36 Chapter 62; However, per provisions of subparagraph (e)(1)(B) of Code Section 36-62-5 reporting of potential conflicts of interest by development authority board members is required.

When the Contractor has performed in accordance with the provisions of this Agreement, Gwinnett County shall pay to the Contractor, within thirty (30) days of receipt of any department approved payment request and based upon work completed or service provided pursuant to the Contract, the sum so requested, less the retainage stated in this Agreement, if any. In the event that Gwinnett County fails to pay the Contractor within sixty (60) days of receipt of a pay request based upon work completed or service provided pursuant to the Contract, the County shall pay the Contractor interest at the rate of ½% per month or pro rata fraction thereof, beginning the sixty-first (61) day following receipt of pay requests. The Contractor's acceptance of progress payments or final payment shall release all claims for interest on said payment.

XVI. NON-COLLUSION

Proposer declares that the proposal is not made in connection with any other proposer submitting a proposal for the same commodity or commodities and that the proposal is bona fide and is in all respects fair and without collusion or fraud. Each proposer, if included in proposal documents, shall execute an affidavit of non-collusion. Collusion and fraud in bid preparation shall be reported to the State of Georgia Attorney General and the United States Justice Department.

XVII. DEFAULT

The Contract may be canceled or annulled by the Purchasing Director in whole or in part by written notice of default to the Contractor upon non-performance or violation of Contract terms. An award may be made to the next highest rated responsive and responsible proposer, or articles specified may be purchased on the open market similar to those so terminated. In either event, the defaulting Contractor (or their surety) shall be liable to the County for costs to the County in excess of the defaulted Contract prices; provided, however, that the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this clause. Failure of the Contractor to deliver materials or services within the time stipulated on his proposal unless extended in writing by the Purchasing Director shall constitute Contract default.

XVIII. TERMINATION FOR CAUSE

The County may terminate this Agreement for cause upon ten days prior written notice to the Contractor of the Contractor's default in the performance of any term of this Agreement. Such termination shall be without prejudice to any of the County's rights or remedies by law.

XIX. TERMINATION FOR CONVENIENCE

The County may terminate this Agreement for its convenience at any time upon 30 days written notice to the Contractor. In the event of the County's termination of this Agreement for convenience, the Contractor will be paid for those services actually performed. Partially completed performance of the Agreement will be compensated based upon a signed statement of completion to be submitted by the Contractor, which shall itemize each element of performance.

XX. DISPUTES

Except as otherwise provided in the Contract documents, any dispute concerning a question of fact arising under the Contract which is not disposed of shall be decided after a hearing by the Purchasing Director who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Purchasing Director shall be final and binding; however, the Contractor shall have the right to appeal said decision to a court of competent jurisdiction.

XXI. SUBSTITUTIONS:

Proposers offering and quoting on substitutions or who are deviating from the attached specifications shall list such deviations on a separate sheet to be submitted with their proposal. The absence of such a substitution list shall indicate that the proposer has taken no exception to the specifications contained therein.

XXII. INELIGIBLE PROPOSERS

The County may choose not to accept the proposal of one who is in default on the payment of taxes, licenses, or other monies owed to the County. Failure to respond three (3) consecutive times for any given commodity may result in removal from the list under that commodity.

XXIII. OCCUPATION TAX CERTIFICATE

Each successful proposer shall provide evidence of a valid Gwinnett County occupation tax certificate if the proposer maintains an office within the unincorporated area of Gwinnett County. Incorporated, out of County, and out of State, proposers are required to provide evidence of a certificate to do business in any town, county, or municipality in the State of Georgia, or as otherwise required by County ordinance or resolution.

XXIV. PURCHASING POLICY AND REVIEW COMMITTEE:

The Purchasing Policy and Review Committee has been established to review purchasing procedures and make recommendations for changes; resolve problems regarding the purchasing process; make recommendations for standardization of commodities, schedule buying, qualified products list, annual contracts, supplier performance (Ineligible Source List) and other problems

or requirements related to Purchasing. The Purchasing Policy and Review Committee have authority to place suppliers and contractors on the Ineligible Source List for reasons listed in the Gwinnett County Purchasing Ordinance.

XXV. AMERICANS WITH DISABILITIES ACT:

All contractors for Gwinnett County are required to comply with all applicable sections of the Americans with Disabilities Act (ADA) as an equal opportunity employer. In compliance with the Americans with Disabilities Act (ADA), Gwinnett County provides reasonable accommodations to permit a qualified applicant with a disability to enjoy the privileges of employment equal to those employees without disabilities. Disabled individuals must satisfy job requirements for education background, employment experience, and must be able to perform those tasks that are essential to the job with or without reasonable accommodations. Any requests for reasonable accommodations required by individuals to fully participate in any open meeting, program or activity of Gwinnett County should be directed to Susan Canon, Human Relations Coordinator, 75 Langley Drive, Lawrenceville, Georgia 30046, 770.822.8165.

XXVI. ALTERATIONS OF SOLICITATION AND ASSOCIATED DOCUMENTS:

Alterations of County documents are strictly prohibited and will result in automatic disqualification of the firm’s solicitation response. If there are “exceptions” or comments to any of the solicitation requirements or other language, then the firm may make notes to those areas, but may not materially alter any document language.

XXVII. TAX LIABILITY:

Local and state governmental entities must notify contractors of their use tax liability on public works projects. Under Georgia law, private contractors are responsible for paying a use tax equal to the sales tax rate on material and equipment purchased under a governmental exemption that is incorporated into a government construction project: excluding material and equipment provided for the installation, repair, or expansion of a public water, gas or sewer system when the property is installed for general distribution purposes. To the extent the tangible personal property maintains its character (for example, the installation of a kitchen stove), it remains tax-exempt. However, if the installation incorporates the tangible personal property into reality, e.g., the installation of sheetrock, it becomes taxable to the private contractor. See O.C.G.A. 48-8-3(2) and O.C.G.A. 48-8-63

XXVIII. STATE LAW REGARDING WORKER VERIFICATION

Effective July 1, 2013, State Law requires that all who enter into a contract for the physical performance of services for all labor or service contract(s) that exceed \$2,499.99 (except for services performed by an individual who is licensed pursuant to Title 26, Title 43, or the State Bar of Georgia) for the County, must satisfy the Illegal Immigration Reform Enhancements for 2013, in all manner, and such are conditions of the Contract.

The Purchasing Division Director, with the assistance of the Performance Analysis Division, shall be authorized to conduct random audits of a Contractor’s or Subcontractors’ compliance with the Illegal Immigration Reform Enhancements for 2013 and the rules and regulations of the Georgia Department of Labor. The Contractor and Subcontractors shall retain all documents and records of its compliance for a period of five (5) years following completion of the Contract. This

requirement shall apply to all contracts for all labor or service contracts that exceed \$2,499.99 except for services performed by an individual who is licensed pursuant to Title 26, Title 43, or the State Bar of Georgia.

Whenever it appears that a Contractor's or Subcontractor's records are not sufficient to verify the work eligibility of any individual in the employ of such Contractor or Subcontractor, the Purchasing Director shall report same to the Department of Homeland Security and may result in termination of the Contract if it is determined at any time during the work that the Contractor/or Subcontractor is no longer in compliance with the Illegal Immigration Reform Enhancements for 2013.

XXIX. SOLID WASTE ORDINANCE

No individual, partnership, corporation, or other entity shall engage in solid waste handling except in such a manner as to conform to and comply with the current Gwinnett County Solid Waste Ordinance and all other applicable local, state, and federal legislation, rules, regulation, and orders.

XXX. GENERAL CONTRACTORS LICENSE

Effective July 1, 2008: **All general contractors must have a current valid license from the State Licensing Board for Residential and General Contractors, unless specifically exempted from holding such license pursuant to Georgia law (O.C.G.A. Section 43-41-17).**

XXIX. PRODUCTS MANUFACTURED IN GEORGIA

Gwinnett County, when contracting for or purchasing supplies, materials, equipment, or agricultural products that exceeds \$100,000.00, excluding beverages for immediate consumption, shall give preference as far as may be reasonable and practicable to such supplies, materials, equipment, and agricultural products as may be manufactured or produced in this state. Such preference shall not sacrifice quality. Gwinnett County Board of Commissioners shall consider, among other factors, information submitted by the bidder, which may include the bidder's estimate of the multiplier effect on gross state domestic product and the effect on public revenues of the state and the effect on public revenues of political subdivisions resulting from acceptance of a bid or offer to sell Georgia manufactured or produced goods as opposed to out-of-state manufactured or produced goods. Any such estimates shall be in writing. **(O.C.G.A. Section 36-84-1).**

XXXI. INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall, at his sole cost and expense, indemnify, defend, satisfy all judgments, and hold harmless the County, the engineer, and their agents and employees from and against all claims, damages, actions, judgments, costs, penalties, liabilities, losses and expenses, including, but not limited to, attorney's fees arising out of or resulting from the performance of the work, provided that any such claim, damage, action, judgment, cost, penalty, liability, loss or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by the negligent acts, errors or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless whether

such claim is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any of the rights or obligations of indemnity which would otherwise exist as to any party or person described in this Agreement. In any and all claims against the County, the engineer, or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation contained herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor under Worker's Compensation Acts, disability benefit acts, or other employee benefit acts.

XXXII. CODE OF ETHICS:

“Proposer/Bidder” shall disclose under oath the name of all elected officials whom it employs or who have a direct or indirect pecuniary interest in the business entity, its affiliates, or its Subcontractors. The “Proposer/Bidder” shall execute a Code of Ethics affidavit. Failure to submit the affidavit during the bid or proposal process shall render the bid or proposal non-responsive.

The act of submitting false information or omitting material information shall be referred to the Purchasing Policy & Review Committee for action pursuant to the Purchasing Ordinance or to the District Attorney for possible criminal prosecution.

Any business entity holding a contract with Gwinnett County that subsequent to execution of the contract or issuance of the purchase order employs, subcontracts with, or transfers a direct or indirect pecuniary interest in the business entity to an elected official shall within five (5) days disclose such fact in writing under oath to the Clerk of the Board of Commissioners. Failure to comply shall be referred to the Purchasing Policy & Review Committee for action pursuant to the Purchasing Ordinance or to the District Attorney for possible criminal prosecution.

Note: See Gwinnett County Code of Ethics Ordinance EO2011, Sec. 60-33. The ordinance will be available to view in its entirety at www.gwinnettcountry.com

XXXIII. PENDING LITIGATION:

A proposal submitted by an individual, firm, or business who has litigation pending against the County, or anyone representing a firm or business in litigation against the County, not arising out of the procurement process, will be disqualified.

XXXIV. ELECTRONIC PAYMENT

Vendors accepting procurements should select one of Gwinnett County’s electronic payment options.

- A. A vendor may select ePayables payment process, which allows acceptance of Gwinnett County’s virtual credit card as payment for outstanding invoices. The authorized vendor representative must send an email to vendorelectronicpayment@gwinnettcountry.com and indicate the desire to enroll in Gwinnett County’s virtual credit card payment process.
- B. A vendor may select Direct Deposit payment process, and the payment will be deposited directly into an account at their designated financial institution. To securely enroll in Direct Deposit, either access your online [Vendor Login and Registration](#) on the County’s web site and

update the requested information on the Direct Deposit tab or mail a [Direct Deposit Authorization Agreement](#) form.

The County will send a Payment Advice notification via email for both payment types.

For more information about Electronic Payments, please go to the Treasury Division page on the County's Web Site or click here -> [Gwinnett County Electronic Payments](#).

DIRECTIONS TO GJAC BUILDING FROM I-85

Take I-85 to Georgia Highway 316 (Lawrenceville/Athens exit). Exit Highway 120 (Lawrenceville/Duluth exit) and turn right. At seventh traffic light, turn right onto Langley Drive. Cross Highway 29 through the traffic light and cross at the 4-way stop sign. The main public parking lot is on the left or behind the building; click [here](#) for additional information about parking. The Purchasing Division is located in the Administrative Wing.

6. Attachments

Attachment A: FTA Clauses

Fly America Requirements – Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor shall comply with 49 USC 40118 (the “Fly America” Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US 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. Contractor shall include the requirements of this section in all Subcontracts that may involve international air transportation.

Seismic Safety – Applicability – Construction of new buildings or additions to existing buildings. These requirements do not apply to micro purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this Contract, including work performed by Subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

Energy Conservation – Applicability – All contracts except micro purchases (\$10,000 or less, except for construction contracts over \$2,000) Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

Clean Water – Applicability – All Contracts and Subcontracts over \$150,000. Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each Subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

Lobbying – Applicability – Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey Contracts over \$100,000 Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104- 65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995, who has made lobbying contacts on its behalf with nonfederal funds with respect to that Federal contract, grant, or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Access to Records and Reports – Applicability – As shown below. These requirements do not apply to micro purchases (\$10,000 or less, except for construction contracts over \$2,000) The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), Contractor shall provide the purchaser, the FTA, the US Comptroller General, or their authorized representatives access to any books, documents, papers and Contractor records which are pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to Contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, Contractor shall provide the purchaser, authorized FTA representatives, including any PMO contractor, access to Contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$250,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, Contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers, and record of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, Contractor

- shall make available records related to the Contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 6. Contractor shall maintain all books, records, accounts, and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in Subcontracts.

Federal Changes – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) Contractor shall comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation, those listed directly or by reference in the Master Agreement between the recipient and FTA, as they may be amended or promulgated from time to time during the term of the Contract. Contractor's failure to comply shall constitute a material breach of the Contract.

Clean Air – Applicability – All Contracts over \$150,000. 1) Contractor shall comply with all applicable standards, orders, or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. 2) Contractor shall include these requirements in each Subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

No Government Obligation to Third Parties – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

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

(2) Contractor agrees to include the above clause in each Subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or FTA-assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on Contractor to the extent the US Government deems appropriate.

(2) If Contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a Contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(h)(1) on Contractor, to the extent the US Government deems appropriate. (3) Contractor shall include the above two clauses in each Subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

Termination – Applicability – All contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$250,000

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

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

accordance with the manner of performance set forth in the Contract. If it is later determined by the recipient that 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 Contractor, the recipient, after setting up a new delivery or performance schedule, may allow Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient 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 the recipient 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 the recipient elects to waive its remedies for any breach by Contractor of any covenant, term, or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

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

f. Termination for Default (Supplies and Service) If Contractor fails to deliver supplies or to perform the services within the time specified in this Contract or any extension or if the Contractor fails to comply with any other provisions of this Contract, the recipient may terminate this Contract for default. The recipient shall terminate by delivering to Contractor a notice of termination specifying the nature of default. Contractor shall only be paid the Contract price for supplies delivered and accepted or services performed in accordance with the manner of performance set forth in this Contract. If, after termination for failure to fulfill Contract obligations, it is determined that Contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

g. Termination for Default (Transportation Services) If Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this Contract or any extension or if Contractor fails to comply with any other provisions of this Contract, the recipient may terminate this Contract for default. The recipient shall terminate by delivering to Contractor a notice of termination specifying the nature of default. Contractor shall only be paid the Contract price for services performed in accordance with the manner of performance set forth in this Contract. If this Contract is terminated while Contractor has possession of the recipient goods, Contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill Contract obligations, it is determined that Contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

h. Termination for Default (Construction) If Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if Contractor fails to comply with any other provisions of this Contract, the recipient may terminate this Contract for default. The recipient shall terminate by delivering to Contractor a notice of termination specifying the nature of default. In this event, the recipient 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. Contractor and its sureties shall be liable for any damage to the recipient resulting from Contractor's refusal or failure to complete the work within specified time, whether or not Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work.

Contractor's right to proceed shall not be terminated nor shall Contractor be charged with damages under this clause if:

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of Contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another Contractor in the performance of a Contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If, in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this Contract in whole or in part, for the recipient's convenience or because of Contractor's failure to fulfill Contract obligations. The recipient shall terminate by delivering to Contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the Contract price but shall allow no anticipated profit on unperformed services. If termination is for

Contractor's failure to fulfill Contract obligations, the recipient may complete the work by contract or otherwise and Contractor shall be liable for any additional cost incurred by the recipient. If, after termination for failure to fulfill Contract obligations, it is determined that Contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

j. Termination for Convenience or Default (Cost Type Contracts) the recipient may terminate this Contract, or any portion of it, by serving a notice of termination on Contractor. The notice shall state whether termination is for convenience of the recipient or for default of Contractor. If termination is for default, the notice shall state the manner in which Contractor has failed to perform the requirements of the Contract. Contractor shall account for any property in its possession paid for from funds received from the recipient or property supplied to Contractor by the recipient. If termination is for default, the recipient may fix the fee, if the Contract provides for a fee, to be paid to Contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient, and the parties shall negotiate the termination settlement to be paid to Contractor. If termination is for the recipient's convenience, Contractor shall be paid its Contract close-out costs, and a fee, if the Contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a notice of termination for default, the recipient determines that Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of Contractor, the recipient, after setting up a new work schedule, may allow Contractor to continue work, or treat the termination as a termination for convenience.

Government Wide Debarment and Suspension (Nonprocurement) – Applicability – contracts over \$25,000 The Recipient agrees to the following:

(1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," <https://www.sam.gov>, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower-tier covered transaction, ensuring that each lower-tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

Contracts Involving Federal Privacy Act Requirements – Applicability – When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

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

(1) The Contractor agrees to comply with and assures the compliance of its employees with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Contract.

(2) The Contractor also agrees to include these requirements in each Subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Civil Rights Requirements – Applicability – All contracts except micro purchases (\$10,000 or less, except for construction contracts over \$2,000) The following requirements apply to the underlying Contract:

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute): (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit

Program. FTA does not require an Indian Tribe to comply with FTA program specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will:

- (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, “Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and
- (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, “Title VI and Title VI Dependent Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3, and
- (c) Other applicable Federal guidance that may be issued,

c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246, Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with FTA Circular 4704.1 other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed, and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5

Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of “Employer.” (3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with (a) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246, Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note,

d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as “Disadvantaged Business Enterprises” (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of Map-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital, and/or operating assistance that will award prime third party contracts exceeding \$250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) The Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The Recipient’s DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation, and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under Map-21 and previous legislation,

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including:

- (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis

of age, including:

(1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) 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, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of “employer,” (c) 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, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including (a) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. part 37, (b) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27, (c) U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and 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, (e) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35, (f) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36, (g) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194, and (j) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd –290dd-2,

i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: 1) Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 Fed. Reg. 74087, December 14, 2005,

j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

Breaches and Dispute Resolution – Applicability – All contracts over \$250,000 Disputes arising in the performance of this Contract, which are not resolved by agreement of the parties shall be decided in writing by the recipient’s authorized representative. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, Contractor mails or otherwise furnishes a written appeal to the recipient’s CEO. In connection with such appeal, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient’s CEO shall be binding upon Contractor, and Contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute - Unless otherwise directed by the 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 therefore shall be made in writing to such other party within ten days 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 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 residing State.

Rights and Remedies - 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 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.

Patent and Rights Data - Contracts involving experimental, developmental, or research work (\$10,000 or less, except for construction contracts over \$2,000).

Patent Rights

A. General. The Recipient agrees that:

(1) Depending on the nature of the Project, the Federal Government may acquire patent rights when the Recipient or Third Party Participant produces a patented or patentable:

- (a) Invention,
- (b) Improvement, or
- (c) Discovery,

(2) The Federal Government's rights arise when the patent or patentable information is:

- (a) Conceived under the Project, or
- (b) Reduced to practice under the Project, and

(3) When a patent is issued or patented information becomes available as described in Patent Rights section A(2), the Recipient agrees to:

- (a) Notify FTA immediately, and
- (b) Provide a detailed report satisfactory to FTA,

B. Federal Rights. The Recipient agrees that:

(1) Its rights and responsibilities, and the rights and responsibilities of each Third Party Participant, in that federally funded invention, improvement, or discovery will be determined as provided by applicable Federal laws, regulations, and guidance, including any waiver thereof, and

(2) Unless the Federal Government determines otherwise in writing, irrespective of the Recipient's status or the status of any Third Party Participant as a large business, a small business, a State government, a State instrumentality, a local government, an Indian tribe, a nonprofit organization, an institution of higher education, or an individual, the Recipient agrees to transmit the Federal Government's patent rights to FTA as specified in: (a) 35 U.S.C. § 200 et seq., and (b) U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. part 401, and

C. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19:

(1) License fees and royalties for patents, patent applications, and inventions derived from the Project are program income, and

(2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except: (a) For compliance with 35

U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research type project, and (b) As FTA determines otherwise in writing.

Rights in Data and Copyrights

a) Definition of "Subject Data." means recorded information:

- (1) Copyright. Whether or not copyrighted, and
- (2) Delivery. That is delivered or specified to be delivered under the Underlying Agreement,

- b) Examples of "Subject Data." Examples of "subject data":
 - (1) Include, but are not limited to:
 - (a) Computer software, (b) Standards, (c) Specifications, (d) Engineering drawings and associated lists, (e) Process sheets, (f) Manuals, (g) Technical reports, (h) Catalog item identifications, and (i) Related information, but
 - (b) Do not include: (a) Financial reports, (b) Cost analyses, or (c) Other similar information used for Project administration,
 - c) General Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the Recipient's Project supported by the Underlying Agreement: (1) Prohibitions. The Recipient may not: (a) Publish or reproduce any subject data in whole or in part, or in any manner or form, or (b) Permit others to do so, but
 - (2) Exceptions. The prohibitions of Rights in Data and Copyrights C(1) do not apply to: (a) Publications or reproductions for the Recipient's own internal use, (b) An institution of higher learning, (c) The portion of subject data that the Federal Government has previously released or approved for release to the public, or (d) The portion of data that has the Federal Government's prior written consent for release,

D. Federal Rights in Data and Copyrights. The Recipient agrees that:

- (1) License Rights. The Recipient must provide a license to its "subject data" to the Federal Government, which license is:
 - (a) Royalty free, (b) Non-exclusive, and (c) Irrevocable,
 - (2) Uses. The Federal Government's license must permit the Federal Government to take the following actions provided those actions are taken for Federal Government purposes: (a) Reproduce the subject data, (b) Publish the subject data, (c) Otherwise use the subject data, and (d) Permit other entities or individuals to use the subject data, and

E. Special Federal Rights in Data for Research, Development, Demonstration, Deployment, and Special Studies Projects. In general, FTA's purpose in providing Federal funds for a research, development, demonstration, deployment, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to the Recipient and its Third Party Participants, therefore, the Recipient agrees that:

- (1) Publicly Available Report. When the Project is completed, it must provide a Project report that FTA may publish or make available for publication on the Internet,
- (2) Other Reports. It must provide other reports pertaining to the Project that FTA may request,
- (3) Availability of Subject Data. FTA may make available to any FTA Recipient or any of its Third Party Participants at any tier of the Project, either FTA's copyright license to the subject data or a copy of the subject data, except as the Federal Government determines otherwise in writing,
- (4) Identification of Information. It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA,
- (5) Incomplete Project. If the Project is not completed for any reason whatsoever, all data developed under the Project becomes "subject data" and must be delivered as the Federal Government may direct, but
- (6) Exception. Rights in Data and Copyrights Section E does not apply to an adaptation of automatic data processing equipment or program that is both: (a) For the Recipient's use, and (b) Acquired with FTA capital program funding,

F. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19:

- (1) License fees and royalties for copyrighted material or trademarks derived from Project are program income, and
- (2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except: (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research type project, and (b) As FTA determines otherwise in writing,

G. Hold Harmless. Upon request by the Federal Government, the Recipient agrees that:

- (1) Violation by Recipient. (a) If it willfully or intentionally violates any: 1 Proprietary rights, 2 Copyrights, or 3 Right of privacy, and (b) Its violation occurs from any of the following uses of Project data: 1 Publication, 2 Translation, 3 Reproduction, 4 Delivery, 5 Use, or 6 Disposition, then (c) It will indemnify, save, and hold harmless against any liability, including costs and expenses of: 1 The Federal Government's officers acting within the scope of their official duties,
 - 2 The Federal Government's employees acting within the scope of their official duties, and
 - 3 Federal Government's agents acting within the scope of their official duties, but (2) Exceptions. The Recipient will not be required to indemnify the Federal Government for any liability described in Rights in Data and Copyrights section G(1) if: (a) Violation by Federal Officers, Employees or Agents. The violation is caused by the wrongful acts of Federal employees or agents, or (b) State law. If indemnification is prohibited or limited by applicable State law,

- H. Restrictions on Access to Patent Rights. Nothing in this Rights in Data and Copyrights section pertaining to rights in data either:
 - (1) Implies a license to the Federal Government under any patent, or
 - (2) May be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent,

- I. Data Developed Without Federal Funding or Support. The Recipient understands and agrees that in certain circumstances it may need to provide data developed without any Federal funding or support to FTA. Nevertheless:
 - (1) Protections. Rights in Data and Copyrights Sections A, B, C, and D generally do not apply to data developed without Federal funding, even though that data may have been used in connection with the Project, and
 - (2) Identification of Information. The Recipient understands and agrees that the Federal Government will not be able to protect data developed without Federal funding from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential," and

- J. Requirements to Release Data. The Recipient understands and agrees that the Federal Government may be required to release Project data and information the Recipient submits to the Federal Government as required by:
 - (1) The Freedom of Information Act, 5 U.S.C. §552,
 - (2) Another applicable Federal law requiring access to Project records,
 - (3) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," specifically 49 C.F.R. § 19.36(d), or
 - (4) Other applicable Federal regulations and guidance pertaining to access to Project records.

Disadvantaged Business Enterprise (DBE) – Applicability – Contracts over \$10,000 awarded on the basis of a bid or proposal offering to use DBEs

- a. This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate Contract goal for DBE participation has been established for this procurement, it is listed elsewhere.
- b. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this Contract. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the municipal corporation deems appropriate. Each Subcontract the Contractor signs with a Subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. If a separate Contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.
- d. If no separate Contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- e. The Contractor is required to pay its Subcontractors performing work related to this Contract for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from the recipient. In addition, the Contractor may not hold retainage from its Subcontractors or must return any retainage payments to those Subcontractors within 30 days after the Subcontractor's work related to this Contract is satisfactorily completed or must return any retainage payments to those Subcontractors within 30 days after incremental acceptance of the Subcontractor's work by the recipient and Contractor's receipt of the partial retainage payment related to the Subcontractor's work.
- f. The Contractor must promptly notify the recipient whenever a DBE Subcontractor performing work related to this Contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE Subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE Subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

Prompt Payment – Applicability – All contracts except micro-purchases \$10,000 or less (except for construction contracts over \$2,000)

The prime Contractor agrees to pay each Subcontractor under this prime Contract for satisfactory performance of its Contract no later than 30 days from the receipt of each payment the prime Contract receives from the Recipient. The prime Contractor agrees further to return retainage payments to each Subcontractor within 30 days after the Subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE Subcontracts.

Incorporation of Federal Transit Administration (FTA) Terms – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding Contract provisions. All USDOT required Contractual provisions, as stated 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 request that would cause the recipient to be in violation of FTA terms and conditions.

Other Federal Requirements:

Full and Open Competition - In accordance with 49 U.S.C. § 5325(h) all procurement transactions shall be conducted in a manner that provides full and open competition.

Prohibition Against Exclusionary or Discriminatory Specifications - Apart from inconsistent requirements imposed by Federal statute or regulations; the Contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

Conformance with ITS National Architecture - Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

Access Requirements for Persons with Disabilities - Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

Notification of Federal Participation - To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, Contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

Interest of Members or Delegates to Congress - No members of, or delegates to, the US Congress shall be admitted to any share or part of this Contract nor to any benefit arising therefrom.

Ineligible Contractors and Subcontractors - Any name appearing upon the Comptroller General's list of ineligible contractors for federally- assisted Contracts shall be ineligible to act as a Subcontractor for Contractor pursuant to this Contract. If Contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this Contract.

Other Contract Requirements - To the extent not inconsistent with the foregoing Federal requirements, this Contract shall also include those standard clauses attached hereto and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

Compliance with Federal Regulations - Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT- required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures, and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as 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.

Real Property - Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures, and directives governing the acquisition, use, and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by Map-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

Access to Services for Persons with Limited English Proficiency - To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d one note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

Environmental Justice - Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

Environmental Protections - Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental Response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA, and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now, or that become effective in the future.

Geographic Information and Related Spatial Data - (NOT APPLICABLE TO THE TRIBAL TRANSIT PROGRAM) Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

Geographic Preference - All project activities must be advertised without geographic preference (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects, and geographic based hiring preferences as proposes to be amended in 2 CFR Part 1201).

Federal Single Audit Requirements - For State Administered Federally Aid Funded Projects Only Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non-Profit Organizations" (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014, as applicable). Non-Federal entities that expend Federal awards from a single source may provide a program-specific audit, as defined in the Circular. Non-Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptroller's Office and the U.S. Governmental Accountability Office (GAO). Non-Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than nine months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments. Catalog of Federal Domestic Assistance (CFDA) Identification Number The municipal project sponsor is required to identify in its accounts all Federal awards received and expended and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

Veterans Preference - As provided by 49 U.S.C. 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:

(1) Will give hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third-party contract in connection with a Capital Project supported with federal assistance appropriated or made

available for 49 U.S.C. chapter 53, and (2) Will not require an employer to give a preference to any veteran over an equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

Safe Operation of Motor Vehicles

Seat Belt Use. The Recipient agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by: (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned vehicles, company rented vehicles, or personally operated vehicles, and (2) Including a "Seat Belt Use" provision in each third party agreement related to the Award. b. Distracted Driving, Including Text Messaging While Driving. The Recipient agrees to comply with: (1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225), (2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, and (3) The following U.S. DOT Special Provision pertaining to Distracted Driving: (a) Safety. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award, (b) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving, and (c) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34.b(3)(a) – (b) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third-party sub-agreement at each tier supported with federal assistance.

Catalog of Federal Domestic Assistance (CFDA) Identification Number - The municipal project sponsor is required to identify in its accounts all Federal awards received and expended and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

The CFDA number for the Federal Transit Administration - Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014, as applicable) agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

Organizational Conflicts of Interest - The Recipient agrees that it will not enter into a procurement that involves a real or apparent

organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third-Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements.

Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

Federal Certifications

CERTIFICATION AND RESTRICTIONS ON LOBBYING

I [redacted] hereby certify (Name and title of official)

On behalf of [redacted] that: (Name of Bidder/Company Name)

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

If any funds other than federally appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the 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.

The undersigned shall require that the language of this certification is included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

Name of Bidder/Company Name: [redacted]

Type or print name: [redacted]

Signature of authorized representative: [redacted] Date [redacted] / [redacted] / [redacted]

Signature of notary and SEAL: [redacted]

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

- (1) It will comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR part 180,
- (2) To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:
- a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:
 1. Debarred,
 2. Suspended,
 3. Proposed for debarment,
 4. Declared ineligible,
 5. Voluntarily excluded, or
 6. Disqualified,
 - b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
 1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
 2. Violation of any Federal or State antitrust statute, or,
 3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,
 - c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with a commission of any of the offenses listed in the preceding subsection 2.b of this Certification,
 - d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,
 - e. If at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to FTA,
 - f. It will treat each lower-tier contract or lower-tier Subcontract under its Project as a covered lower-tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:
 1. Equals or exceeds \$25,000,,
 2. Is for audit services, or,
 3. Requires the consent of a Federal official, and
 - g. It will require that each covered lower-tier Contractor and Subcontractor:
 1. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
 2. Assure that each lower-tier participant in its Project is not presently declared by any Federal department or agency to be:
 - a. Debarred from participation in its federally funded Project,
 - b. Suspended from participation in its federally funded Project,
 - c. Proposed for debarment from participation in its federally funded Project,
 - d. Declared ineligible to participate in its federally funded Project,
 - e. Voluntarily excluded from participation in its federally funded Project, or
 - f. Disqualified from participation in its federally funded Project, and
 3. It will provide a written explanation as indicated on a page attached in FTA’s TrAMS platform or the Signature Page if it or any of its principals, including any of its first-tier Subrecipients or its Third-Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.
- (3) It will provide a written explanation as indicated on a page attached in FTA’s TrAMS platform or the Signature Page if it or any of its principals, including any of its first-tier Subrecipients or its Third-Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

Certification

Contractor: _____

Signature of Authorized Official: _____ Date _____ / _____ / _____

Name and Title of Contractor's Authorized Official: _____