



12/27/23

**REQUEST FOR PROPOSAL  
RP003-24**

The Gwinnett County Board of Commissioners is soliciting competitive sealed proposals from qualified vendors for the **Provision of Engineering Design Services and Construction Document Development for the I-985 and Thompson Mill Road Interchange** for the Department of Transportation.

Proposals must be returned in a sealed container marked on the outside with the Request for Proposal number and Company Name. Proposals will be received until **2:50 P.M. local time on January 23, 2024** at the Gwinnett County Financial Services - Purchasing Division – 2<sup>nd</sup> 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 3:00 P.M. A list of firms submitting proposals will be available the following business day on our website [www.gwinnettcounty.com](http://www.gwinnettcounty.com).

A pre-proposal conference is scheduled for **10:00 A.M. on January 9, 2024** at DOT Central located at 620 Winder Highway, Lawrenceville, GA 30045. All vendors are urged to attend.

Questions regarding proposals should be directed to Kaley Ivins, Purchasing Manager at [Kaley.Ivins@GwinnettCounty.com](mailto:Kaley.Ivins@GwinnettCounty.com) or by calling 770-822-8732, no later than **3:00 pm January 11, 2024**. Proposals are legal and binding upon the vendor when submitted. One unbound single sided original and four (4) bound copies should be submitted. **All copies must be identical to the original.**

Successful vendors 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 A.M. Best rating of A-5 or higher.

Gwinnett County does not discriminate on the basis of 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 the ADA Coordinator at the 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.

Award notification will be posted after award on the County website, [www.gwinnettcounty.com](http://www.gwinnettcounty.com) and companies submitting a proposal will be notified via email.

We look forward to your proposal and appreciate your interest in Gwinnett County.

Kaley Ivins  
Purchasing Manager

## I. INTRODUCTION

The Gwinnett County Board of Commissioners, Department of Transportation, Pre-Construction Division invites you to submit a proposal responsive to the items outlined in this request for proposals to provide construction document development for a new interchange on I-985 at Thompson Mill Road. Award will be made on the basis of the criteria as outlined in this proposal document.

Gwinnett County is a suburban county of with a population of about 1,000,000 located along I-85 approximately 20 miles northeast of downtown Atlanta. It is the second most populous county in Georgia and has the third highest per capita income in the state. The unparalleled growth experienced by Gwinnett County over the past twenty years has greatly increased the demand for new recreational and transportation facilities in the County.

With northern Gwinnett County experiencing rapid population and traffic growth, SR 20 serves as the sole interchange on the I-985 corridor. The I-985 at SR 20 interchange is experiencing high levels of traffic congestion and is operating below preferred levels of service. Current crash and injury rates on I-985 and SR 20 exceed the statewide average rates when compared to similar type roadways.

As one of the prominent east-west routes of travel in this region- Thompson Mill Road provides commuters passage to and from SR 13/Buford Highway to access local public, commercial, and residential amenities. The purpose of providing access ramps to Thompson Mill Road at I-985 is to reduce traffic congestion on the SR 20 Interchange; reduce the frequency and severity of crashes on SR 20 and the I-985 mainline; reduce the queuing of traffic on the I-985 northbound auxiliary lane and improve east-west mobility in northern Gwinnett. An Interchange Justification Report completed by GDOT Office of Planning in 2021 will be included with this solicitation for reference.

This project consists of the design and development of construction documents for a new three quadrant partial cloverleaf interchange configuration with a northbound loop off-ramp on I-985 at Thompson Mill Road. This improvement would provide full access to and from I-985 northbound and southbound at the new interchange with Thompson Mill Road.

This project is funded with federal funds administered by Georgia Department of Transportation (GDOT) and with local funds from the County Special Purpose Local Option Sales Tax (SPLOST) program. Therefore, the consultant and/or sub-consultants must be pre-qualified by GDOT for the Area Classes listed below.

- 1.06a NEPA Documentation
- 1.06b History
- 1.06c Air Studies
- 1.06d Noise Studies
- 1.06e Ecology
- 1.06f Archaeology
- 1.06g Freshwater Aquatic Surveys
- 1.06h Bat Surveys
- 1.10 Traffic Studies
- 3.02 Two-Lane or Multi-Lane Urban Roadway Design
- 3.04 Multi-Lane Rural Interstate Limited Access Design
- 3.06 Traffic Operations Studies
- 3.07 Traffic Operations Design
- 3.08 Landscape Architecture
- 3.09 Traffic Control Systems Analysis, Design, and Implementation

- 3.10 Utility Coordination
- 3.12 Hydraulic and Hydrological Studies (Roadway)
- 3.13 Facilities for Bicycles and Pedestrians
- 3.15 Highway Lighting
- 4.02 Major Bridge Design
- 4.04 Hydraulic and Hydrological Studies (Bridges)
- 5.01 Land Surveying
- 5.02 Engineering Surveying
- 5.04 Aerial Photography
- 5.05 Photogrammetry
- 5.08 Overhead/Subsurface Utility Engineering (SUE)
- 6.01(a) Soil Survey Studies
- 6.02 Bridge Foundation Studies
- 9.01 Erosion, Sedimentation and Pollution Control Plan

In addition, this project will follow the full GDOT Plan Development Process (PDP) and the drawings will comply with the GDOT's Plan Presentation Guide (PPG) and the Electronic Data Guidelines (EDG), most recent editions.

Consultant must have successfully completed the design work for a federally funded project in Georgia that followed the full GDOT PDP.

As a part of the SPLOST program, this project will be managed by a project manager employed by the Gwinnett County Department of Transportation and by a Program Management firm responsible for general implementation of the SPLOST program. This firm is currently under contract with the County.

## II. SCOPE OF WORK

Upon receiving the Notice to Proceed, the consultant shall review all base data provided by the County and prepare for an initial kick-off meeting with the County. This meeting will be used to ensure a complete understanding of the scope of work and to prepare the initial schedule for the development of the construction documents. Consultant is expected to prepare for the initial kick-off meeting by completing the following tasks:

- (1) Visit site to assess conditions.
- (2) Evaluate existing known utilities.
- (3) Prepare list of challenges and questions
- (4) Outline permitting process.

Consultant shall meet with the County staff and Program Management team in the kick-off meeting to accomplish the following tasks:

- (1) Review and discuss layout for the interchange, collector distributor roads and braided ramps.
- (2) Review and discuss the budget.
- (3) Review and discuss submittal and review process involving GDOT and possibly, Atlanta Regional Commission (ARC) and Federal Highway Administration (FHWA)
- (4) Review drawing format requirements
- (5) Discuss and resolve issues and questions.
- (6) Discuss utilities.
- (7) Receive additional data if available.
- (8) Review the required permits and the process to obtain these permits.

(9) Prepare initial schedule.

It is expected that a Public Information Open House (PIOH) and a Public Hearing Open House (PHOH) will be required. The consultant shall provide appropriate project related displays, handouts and other necessary documents required by GCDOT and GDOT for the PIOH and PHOH meetings. The consultant shall be prepared for and be available to attend all meetings related to this project. These meetings include:

- Initial Kick-off Meeting
- Concept Team Meeting
- Preliminary Field Plan Review (PFPR)
- Final Field Plan Review (FFPR)
- Public Information Open House (PIOH)
- Public Hearing Open House (PHOH)

In addition to the meetings outlined above, meetings with Gwinnett County Department of Planning and Development (P&D), Gwinnett County Department of Water Resources (DWR) and other regulatory agencies may be required.

The consultant shall obtain environmental documentation approval to comply with the National Environmental Protection Act (NEPA) and Georgia Environmental Protection Act (GEPA), as appropriate, and stream buffer variance permits for the development of the proposed design.

There may be wetlands within the development area. The consultant will delineate them as part of the design process and provide all required data and exhibits to obtain all project permits, including, but not limited to, US Army Corps of Engineers and FEMA approvals.

If the design of the path or bridges has a potential impact on the flood plain, the Consultant shall be responsible for securing adequate data in the form of a hydrological study to satisfy FEMA requirements. All bridges crossing FEMA studied streams must be designed for a no-rise condition of flow.

Geotechnical services and analysis may be required during design. The Consultant shall be responsible for providing all geotechnical services. The Consultant shall be responsible for determining the areas requiring subsurface evaluation for soil suitability to support all structures, walls and/or bridges, in order to assure a high level of confidence in Consultant's estimated costs.

The consultant shall perform utility coordination with the utility owners in accordance with the GDOT PDP process and requirements. This work includes the submittal of plans to utility owners to obtain the existing facilities and proposed utility relocations. This data will be incorporated in the plans following the GDOT requirements.

The consultant shall prepare a detailed cost estimate at the milestones as required by GDOT using the GDOT Cost Estimation System (CES) tool. These estimates shall be submitted to the County for review and approval prior to submittal to GDOT. These estimates shall be at a level of detail that includes specific materials, systems and quantities derived from the drawings, and quality and performance standards contained in the specifications. The consultant is expected to develop cost estimates that will enable the County to determine those elements that can be accomplished within the budget established for this project. It may be necessary, however, to use these estimates to redefine the elements of the project in order to remain within the established budget.

The design process will include the following phases: Concept Development and Database Preparation, Preliminary Design, Right of Way Plan Development and Final Design. Consultant shall

not proceed with a subsequent phase until receiving notice from the County. A Preliminary Field Plan Review (PFPR) and a Final Field Plan Review (FFPR) will be required as a part of this project.

**Concept Development and Database Preparation:** Consultant shall meet with County staff and Program Management team to determine needs. Consultant shall follow the GDOT PDP process for the concept development and database preparation for GDOT's approval. Consultant shall obtain topographic field survey of the proposed route. Consultant shall obtain all survey information necessary to complete the construction plans and to minimize costs and conflicts during construction. Survey shall include, but is not limited to:

- Edges of pavement and/or travel lanes
- Drainage structures including tops and inverts.
- Above ground utilities
- Trees 12" and over in Diameter at Breast Height (DBH)
- Wetland limits
- Stream buffer limits
- Top of stream banks
- Edge of water

Consultant shall create a base sheet compiled from the mapping and all survey data collected. The survey database shall be tied to State Plane Coordinates, and it shall include field investigation, utility investigations, aerial photos, roadway plans and all other available data. Base sheet shall be prepared in digital format and shall utilize existing digital information provided to the maximum extent possible.

Consultant shall prepare traffic engineering studies and traffic projections following GDOT's requirements. Consultant shall prepare a concept report following the GDOT PDP process.

The following items may be discussed during the Concept Development and Database Preparation Phase:

1. Review preliminary designs and information for determining alignment of the roadway.
2. Review cost estimate and budget to determine construction staging, limits, and scope of work and to make value engineering decisions.
3. Review required permits – local, state, and federal – to evaluate difficulties and timeliness, and consultant recommendations for minimizing the process.
4. Review utility requirements and costs.
5. Evaluate grading and clearing limits and costs.
6. Review right of way impacts and costs.
7. Resolve outstanding issues raised by the consultant.
8. Review preliminary details of options and cost projections for unique items.
9. Identify locations for geotechnical borings required to determine subsurface and surface conditions which will affect the design details, depth of rock, water table, soil conditions and foundation design parameters.
10. Discuss and present any other plans or information necessary to communicate the consultant's design.

**Preliminary Design:** Upon determination of any changes to the alignment, consultant shall obtain any additional field survey necessary to prepare a preliminary plan set in accordance with GDOT's Plan Presentation Guide (PPG) and the GDOT PDP process.

Consultant shall present the design development package to GDOT in a formal PFPR submittal

package to request a PFPR meeting and receive input and final decisions on design and budget. The PFPR meeting will also include a field visit. The consultant will be provided with written comments after the PFPR meeting. Consultant shall prepare preliminary design plans per GDOT's PPG and EDG.

The PFPR submittal package to GDOT shall follow the GDOT PDP process and requirements.

In addition to the PFPR package submittal to GDOT, the consultant shall submit two half size sets of the PFPR plans to the Gwinnett County Department of Transportation and the Program Manager. This submittal package shall also include a copy of the preliminary cost estimate that identifies all major components and elements of the project by unit cost and total for design items, with allowances for all other costs, and 10% contingency. Two copies of the preliminary Drainage Report and two copies of the hydraulic study (if applicable) shall also be submitted at this time.

Additional submittals may be required by other State or County agencies, for example, the Departments of Planning and Development, Stormwater Division, Environmental Health, Public Utilities, Public Safety, etc.

**Right of Way Plan Development:** Consultant is expected to provide right of way and easement plans for any construction areas outside of the existing State or County right of way, in accordance with GDOT PDP process and requirements.

In addition to the right of way plans submittal package to GDOT, the consultant shall submit two full size and three half size sets of the right of way plans to the Gwinnett County Department of Transportation.

**Final Design:** The consultant shall revise the plans to address all comments received as a result of the PFPR. Consultant shall then proceed to prepare the final plans following the GDOT PDP process and requirements.

Consultant shall present a final plans package to GDOT in a formal FFPR submittal package for review and comment. The FFPR meeting will also include a field visit. The consultant will be provided with written comments after the FFPR meeting. The FFPR submittal package shall be in accordance with the GDOT PPG and EDG.

In addition to the FFPR package submittal to GDOT, the consultant shall submit two half size sets of the FFPR plans to the Gwinnett County Department of Transportation and the Program Manager. This submittal package shall also include a copy of the final plan cost estimate that identifies all major components and elements of the project by unit cost and total for design items with allowances for all other costs. Two copies of the final Drainage Report and two copies of the hydraulic study (if applicable) shall also be submitted at this time.

Consultant shall submit corrected final plans addressing the FFPR comments, special provisions and a cost estimate to GDOT following the GDOT PDP process and requirements. The final submittal shall include all plans and project specific special provisions necessary to bid and construct the project. The County will review the plans for compliance with all the previous decisions and directions given during the design phases.

The consultant shall be responsible for providing digital information as a part of the final deliverable package at the completion of the project. The plans shall be submitted in both pdf and CAD format.

### III. PROPOSAL SUBMISSION INSTRUCTIONS

Consultants are requested to submit one (1) original unbound single sided and four (4) bound copies of the proposal package to meet the requirements below. All copies must be identical to the original.

#### **EXPERIENCE – 20 Points**

- A. Provide a description of the experience of the firm or team in performing design services for projects that followed the GDOT PDP process and are of similar size and scope of work over the past five (5) years. Indicate the extent of the firm's involvement, whether as lead, sub-consultant 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 no more than five (5) specific projects. Consultant shall submit a copy of the approval of the pre-qualification by GDOT for all classifications identified previously.

#### **QUALIFICATIONS – 25 Points**

- B. Provide a description of the qualifications and experience of the key team members that will be working on this project. Describe the experiences of the team members with regard to similar federally funded projects that were managed by GDOT and followed the GDOT PDP process. Describe any special skills or experience that key personnel might contribute to the successful completion of this particular project. Provide a project organizational chart describing all key personnel including point of contact with the County's agents, personnel responsible for quality control, personnel responsible for coordination of all sub-consultants, and personnel responsible for performance of the project manager. The key personnel identified are expected to perform the work on this project. Any deviations must be approved in advance by the County. Organizational charts may be printed on 11" x 17" provided it is folded to 8-1/2" x 11" size. **Experience gained with an employer different from current must be identified as such.**

#### **SCHEDULE – 10 Points**

- C. Provide a preliminary schedule indicating the time necessary for each phase of work identified in these documents: Concept Development and Database Preparation, Environmental Documentation and Permitting, Preliminary Design, Right of Way Plan Development, Utility Coordination and Final Design. Utilize actual dates based on an anticipated design contract notice to proceed date of September 26, 2017. This schedule will be evaluated in terms of the consultant's estimation of the total time frame for project design, the state and federal permitting process, GDOT review process and environmental documentation approval process. Refer to any similar government project where a similar schedule was accomplished.

#### **UNDERSTANDING – 40 Points**

- D. Provide a written project approach to identify how the consultant will proceed with all aspects of the process to develop the final construction documents, including experience and creative methods with regard to permitting issues, GDOT review issues, and sequencing/staging to construct the project as limited by funding. Describe how your team will incorporate staging/sequencing of construction directions into the construction documents. Consultant is urged not to simply repeat the process included in Section II of this RFP.

#### **REFERENCES – 5 Points**

- E. Provide at least three (3) references for similar work completed within the last five (5) years complete with names, addresses, current telephone number, email address and project identifying information for that reference. All references should be verified for current contact information prior to submission. 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 submission of proposal(s). Provide references for prime

consultant and for civil engineering sub- consultants, if used.

**IV. SELECTION PROCEDURE**

Proposals will be evaluated based on their relative responsiveness to the criteria described above and with those criteria's values weighted as shown.

Part I Technical Evaluation (MAXIMUM 100 POINTS):

A. Experience of the firm or team proposed to work on this project as they relate to projects of a similar nature and scope of work.	20 points
B. Qualifications, experience, and availability of proposed key personnel as they relate to projects of a similar nature and scope of work.	25 points
C. Complete schedule, including design and permitting of the project.	10 points
D. The consultant's understanding of the variety and progression of work tasks from Concept through Final Design, as explained in its Project Approach.	40 points
E. References	5 points
<b>Sub Total</b>	<b>100 points</b>
F. Interview (if needed)	20 points
<b>Total</b>	<b>120 points</b>

The proposals will be evaluated in order to select the firms or teams which rate highest according to the criteria elaborated in above items. The selection committee then, at its discretion, may short list the highest scoring firms. Should the County choose to short list the firms, those making the list may be invited to participate in an oral presentation at the discretion of Gwinnett County. The full cost of the proposal preparation and all costs incurred to participate in the oral presentation/interview/demonstration are to be borne by the proposing firm.

Upon completion of the qualifications-based evaluation and ranking of proposals, the County will initiate negotiations with the most highly qualified consultant to arrive at a fair and reasonable compensation for the solicited services which considers the scope, complexity, professional nature and estimated value of the services to be rendered. If the County and the most highly qualified consultant are unable to negotiate a fair and reasonable contract, the County may formally terminate negotiations and undertake negotiations with the next most qualified consultant, continuing the process until an agreement is reached.

**V. INSURANCE REQUIREMENTS**

The successful consultant shall provide adequate coverage for the entire term of the contract per the attached requirements.

**VI. ADDITIONAL INFORMATION**

If there are any questions or should the respondent require more information, contact: Kaley Ivins, Gwinnett County Department of Financial Services, Purchasing Division, 75 Langley Drive, Lawrenceville, Ga. 30046, (770) 822-8732, kaley.ivins@gwinnettcountry.com.



**VII. GENERAL INFORMATION/REQUIREMENTS**

- A. Individuals, firms, and business 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 without permission of 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. Violations will be reviewed by the Purchasing Director. If it is 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.
- B. Proposals shall be addressed to Gwinnett County Purchasing Division, Gwinnett County Justice & Administration Center, Second Floor, 446 West Crogan Street, Lawrenceville, Georgia 30046 and shall be identified with the proposal number, date of opening, and company name.
- C. Proposals submitted are not publicly available until after award by the Gwinnett County Board of Commissioners. All technical proposals and supporting materials submitted, as well as correspondence relating to this RFP, become property of Gwinnett County when received.
- D. Gwinnett County reserves the right to reject any or all proposals, in whole or in part, to negotiate changes in the scope of services and to waive any technicalities as deemed in its best interest.
- E. Successful vendor is required within ten (10) days of the Notice to Proceed to provide the following:
  - i. Certificate of Insurance as specified in the proposal documents.
  - ii. Two (2) properly executed contract documents.

Failure to provide the above documents within ten (10) days may be just cause for the annulment of the award. At the discretion of the County, the award may then be made to the next highest scoring responsible proposer.

FAILURE TO RETURN THIS PAGE AS PART OF YOUR PROPOSAL DOCUMENT MAY RESULT IN REJECTION OF PROPOSAL.

**PROPOSAL FEE SCHEDULE (RETURN IN A SEPARATE ENVELOPE)**

<b>Item #</b>	<b>Billing Category</b>	<b>Number of Hours</b>	<b>Hourly Rates</b>	<b>Total</b>
1.	Principal-In-Charge			
2.	Project Manager			
3.	Engineer, Senior			
4.	Engineer			
5.	Engineer, Associate			
6.	Technician			
7.	CADD Technician			
8.	Administrative Support			
9.	Landscape Architect, Senior			
10.	Landscape Architect			
11.	Surveyor, Principal			
12.	Surveyor, Senior			
13.	Surveyor, Project			
14.	Survey Crew			
15.	Aerial Survey			
16.	Mobile Scanner			
17.	SUE Crew			
18.	Vacuum Excavation Crew			
19.	Planner, Principal			
20.	Geotechnical Engineer, Senior			
21.	Geotechnical Engineer			
22.	Geotechnical Field Crew			
23.	Planner, Senior			
24.	Planner			
25.	Scientist, Principal			
26.	Scientist, Senior			
27.	Scientist			
28.	Scientist, Associate			
<b>TOTAL PROJECT COST</b>				<b>\$</b>

**Company Name** \_\_\_\_\_

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**FIRM INFORMATION**

The undersigned acknowledges receipt of the following addenda, listed by number and date appearing on each:

Addendum No.	Date	Addendum No.	Date
_____	_____	_____	_____
_____	_____	_____	_____

Certification Of Non-Collusion in Proposal Preparation \_\_\_\_\_  
 (Signature) (Date)

**In compliance with the attached specifications, the undersigned acknowledges all requirements outlined in the "Instructions to Vendors" and all documents referred to therein. 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 the price set opposite each item, delivered to the designated point(s) within the time specified in the fee schedule.**

Legal Business Name \_\_\_\_\_

Address \_\_\_\_\_

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

Representative Signature \_\_\_\_\_

Print Authorized Representative's Name \_\_\_\_\_

Telephone Number \_\_\_\_\_ Fax Number \_\_\_\_\_

E-Mail Address \_\_\_\_\_

Contact Person (if someone other than the authorized representative listed above) \_\_\_\_\_

Telephone Number \_\_\_\_\_ Fax Number \_\_\_\_\_

E-Mail Address \_\_\_\_\_

**REFERENCES**

Gwinnett County requests a minimum of three, (3) references where work of a similar size and scope has been completed within the last five (5) years.

- 1. Company Name \_\_\_\_\_  
Brief Description of Project \_\_\_\_\_  
Completion Date \_\_\_\_\_  
Contact Person \_\_\_\_\_  
Telephone \_\_\_\_\_ Facsimile \_\_\_\_\_  
E-Mail Address \_\_\_\_\_
  
- 2. Company Name \_\_\_\_\_  
Brief Description of Project \_\_\_\_\_  
Completion Date \_\_\_\_\_  
Contact Person \_\_\_\_\_  
Telephone \_\_\_\_\_ Facsimile \_\_\_\_\_  
E-Mail Address \_\_\_\_\_
  
- 3. Company Name \_\_\_\_\_  
Brief Description of Project \_\_\_\_\_  
Completion Date \_\_\_\_\_  
Contact Person \_\_\_\_\_  
Telephone \_\_\_\_\_ Facsimile \_\_\_\_\_  
E-Mail Address \_\_\_\_\_

**Company Name** \_\_\_\_\_

## 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, nonowned, 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 or a claim/aggregate limit of \$3,000,000 per occurrence and \$3,000,000 aggregate.
  - ✓ Insurance company 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 10 days notice for nonpayment and 30 days notice of cancellation.
  
7. Certificate Holder should read:
  - Gwinnett County Board of Commissioners
  - 75 Langley Drive
  - Lawrenceville, GA 30046-6935
  
8. Insurance Company, except Worker' Compensation carrier, must have an A.M. 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 A.M. 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 (ies) or a certified letter from the insurance company (ies) 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. 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 preapproved 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.

#### Surety Bonds (If Required)

All of the surety requirements will stay the same except the Surety Company must have the same rating as item 8 above.

GENERAL CONDITIONS  
TO CONSULTANT AGREEMENT  
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## 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 CONSULTANT executes and enters into a 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 Subconsultant-means any person, firm, partnership, joint venture, company, corporation, or entity having a contractual agreement with CONSULTANT or with any of its subconsultants 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, workmanship, 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 Agreement Supplemental Agreements shall constitute the Agreement Documents.

### 2.2 Conflict and Precedence



2.0.1 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; and further shall employ only qualified surveyors in responsible charge of any survey 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. TERMINATION OF AGREEMENT FOR CAUSE

If through any cause, the CONSULTANT shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the CONSULTANT shall violate any of the covenants, agreements or stipulations of this Agreement, the COUNTY shall thereupon have the right to terminate this Agreement by giving written notice to the CONSULTANT of such termination, and specifying the effective date thereof, at least ten (10) days before the effective date of such termination. Failure to maintain the scheduled level of effort as proposed and prescribed, or deviation from the aforesaid schedule without prior approval of the COUNTY, shall constitute cause for termination. In such event, all finished or unfinished documents, maps, data, studies, work papers and reports prepared by the CONSULTANT under this Agreement shall become the property of the COUNTY, and the CONSULTANT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents, as determined by the COUNTY.

8. TERMINATION FOR CONVENIENCE OF THE COUNTY

The COUNTY may terminate this Agreement for its convenience at any time upon 30 days notice in writing to the CONSULTANT. If the Agreement is terminated by the COUNTY as provided in this Article 8, the CONSULTANT will be paid compensation for those services actually performed. Partially completed tasks will be compensated for based on a signed statement of completion to be submitted by the CONSULTANT which shall itemize each task element and briefly state what work has been completed and what work remains to be done.

All such expenses shall be properly documented and submitted to the Director or his designee for processing and payment. The Gwinnett County Board of Commissioners shall be the final authority in the event of any disputes over authorized costs between the Director and the CONSULTANT.

9. 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.

10. 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 acts, errors 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.

11. 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.

## 12. 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 liability under such insurance policy shall be not less than in the attached.

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

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.

The policies shall be written by a responsible company(s), to be approved by the COUNTY, and shall be noncancellable except on thirty (30) days' written notice to the COUNTY. Such policies shall name the COUNTY as additional insured, 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.

## 13. PROHIBITED INTERESTS

13.1 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, unless disclosed per O.C.G.A.36-80-28. The CONSULTANT further agrees that, in the performance of the Agreement, no person having any such interest shall be employed.

13.2 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.

## 14. 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 Department's prior written approval of the subconsultant. The Department will not approve any subconsultant 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.

## 15. 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.

## 16. 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 subconsultant, provided that the foregoing provision shall not apply to contracts or subcontracts for standard commercial supplies of raw materials.

17. ANTI-KICKBACK CLAUSE

Salaries of architects, draftsmen, 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.

18. 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 for examination all of its records with respect to all matters covered by this Agreement. It shall also permit the COUNTY 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 subconsultant, assignee, or transferee.

19. 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.

20. 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.

21. INDEPENDENT CONSULTANT

The CONSULTANT shall perform the services under this Agreement as an independent consultant 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.

22. NOTICES

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

**\*\*SAMPLE\*\* CONSULTANT CONTRACT****RP003-24, Provision of Engineering Design Services and Construction Document Development for the I-985 and Thompson Mill Road Interchange**

This **CONTRACT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between Gwinnett County, Georgia (Party of the First Part, hereinafter called the COUNTY), 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 upon execution of contract.

**2. ATTACHMENTS:**

This Contract shall consist of the Service Provider's bid/proposal and all Invitations to Bid/Proposals including all drawings, specifications, price lists, Instructions to Bidders, General Conditions, Special Provisions, Detailed Specifications, addenda, and change orders issued after execution of the Contract (hereinafter collectively referred to as the "Bid"), which are specifically incorporated herein by reference (Exhibit A). In the event of a conflict between the County's contract documents and the Service Provider's bid/proposal, the County'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, workmanlike manner, the work specified, in strict conformity with the Bid Proposal.

**4. PRICE:**

As full compensation for the performance of this Contract, the County shall pay the Consultant for the actual quantity of work performed, which shall in no event exceed \$ \_\_\_\_\_. The fees for the work to be performed under this Contract shall be charged to the County in accordance with the rate schedule referenced in the Bid Proposal (Exhibit A). The County agrees to pay the Consultant following receipt by the County of a detailed invoice, reflecting the actual work performed by the Consultant.

**5. 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 acts, errors 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.

**6. TERMINATION FOR CAUSE:**

The COUNTY may terminate this Contract 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 Contract. Such termination shall be without prejudice to any of the COUNTY's rights or remedies provided by law.

**7. TERMINATION FOR CONVENIENCE:**

The COUNTY may terminate this Contract for its convenience at any time upon 30 days written notice to the Consultant. In the event of the COUNTY's termination of this Contract for convenience, the Consultant will be paid

for those services actually performed. Partially completed performance of the Contract will be compensated based upon a signed statement of completion to be submitted by the Consultant, which shall itemize each element of performance.

**8. CONTRACT 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 subconsultant, providing that the foregoing provisions shall not apply to contracts or subconsultants for standard commercial supplies of raw materials.

**9. 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 County in writing.

**10. WAIVER:**

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

**11. SEVERABILITY:**

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

**12. GOVERNING LAW:**

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

**13. MERGER CLAUSE:**

The parties agree that the terms of this Contract include the entire Contract 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 Contract.

(Signature Next Page)

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

WINNETT COUNTY, GEORGIA

By: \_\_\_\_\_  
Nicole L. Hendrickson, Chairwoman  
Gwinnett County Board of Commissioners

ATTEST:

\_\_\_\_\_  
Signature  
  
Tina King, County Clerk  
Board of Commissioners

APPROVED AS TO FORM:

\_\_\_\_\_  
Signature  
Gwinnett County Staff Attorney

CONSULTANT: \_\_\_\_\_

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

ATTEST:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name  
Corporate Secretary  
(Seal)



RP003-24, Provision of Engineering Design Services and Construction Document Development for the I-985 and Thompson Mill Road Interchange Page 24

### CODE OF ETHICS AFFIDAVIT

PLEASE RETURN THIS FORM COMPLETED WITH YOUR SUBMITTAL. SUBMITTED FORMS ARE 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 their 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 select one of the following:  
No information to disclose (*complete only section 4 below*)  
Disclosed information below (*complete section 3 & section 4 below*)

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. BY: \_\_\_\_\_  
Authorized Officer or Agent Signature

Sworn to and subscribed before me this

\_\_\_\_\_  
Printed Name of Authorized Officer or Agent

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Title of Authorized Officer or Agent of Contractor

\_\_\_\_\_  
Notary Public

(seal)

Note: See Gwinnett County Code of Ethics Ordinance EO2011, Sec. 54-33. The ordinance will be available to view in its' entirety at **GwinnettCounty.com**





**RP003-24, Provision of Engineering Design Services and Construction Document Development for the I-985 and Thompson Mill Road Interchange** **Page 25**

**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, 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. 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: Authorized Officer or Agent  
(Contractor Signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title of Authorized Officer or Agent of Contractor

\_\_\_\_\_  
Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN  
BEFORE ME ON THIS THE  
\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

<b>For Gwinnett County Use Only:</b>
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).

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

**RP003-24, Provision of Engineering Design Services and Construction Document Development for the I-985 and Thompson Mill Road Interchange**

Buyer Initials: KI

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

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COMPANY NAME \_\_\_\_\_

AUTHORIZED REPRESENTATIVE \_\_\_\_\_

SIGNATURE

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

**\*\*\*ATTENTION\*\*\***

FAILURE TO RETURN THE FOLLOWING DOCUMENTS MAY RESULT IN SUBMITTAL BEING DEEMED NON-RESPONSIVE AND AUTOMATIC REJECTION. THE COUNTY SHALL BE THE SOLE DETERMINANT OF TECHNICALITY VS. NON-RESPONSIVE SUBMITTAL:

1. FAILURE TO USE COUNTY QUOTE/BID/FEE SCHEDULE.
2. FAILURE TO RETURN OR ACKNOWLEDGE APPLICABLE COMPLIANCE/SPECIFICATION SHEETS.
3. FAILURE TO RETURN OR ACKNOWLEDGE APPLICABLE ADDENDA.
4. FAILURE TO PROVIDE INFORMATION ON ALTERNATES OR EQUIVALENTS.
5. FAILURE TO PROVIDE BID BOND, WHEN REQUIRED, WILL RESULT IN SUBMITTAL BEING DEEMED NON-RESPONSIVE AND AUTOMATIC REJECTION. BID BONDS ARE NOT REQUIRED ON ALL SOLICITATIONS. BOND REQUIREMENTS ARE CLEARLY STATED ON THE INVITATION PAGE. IF CLARIFICATION IS NEEDED, CONTACT THE PURCHASING ASSOCIATE LISTED IN THE INVITATION. **IF BONDS ARE REQUIRED, FORMS WILL BE PROVIDED IN THIS SOLICITATION DOCUMENT.**
6. FAILURE TO PROVIDE CONTRACTOR AFFIDAVIT AND AGREEMENT, WHEN REQUIRED, MAY RESULT IN SUBMITTAL BEING DEEMED NON-RESPONSIVE AND REJECTED. THE CONTRACTOR AFFIDAVIT AND AGREEMENT IS NOT REQUIRED ON ALL SOLICITATIONS. IF CLARIFICATION IS NEEDED, CONTACT THE PURCHASING ASSOCIATE LISTED IN THE INVITATION.
7. FAILURE TO PROVIDE AN ETHICS AFFIDAVIT WHEN REQUIRED, MAY RESULT IN SUBMITTAL BEING DEEMED NON-RESPONSIVE AND REJECTED. THE ETHICS AFFIDAVIT IS REQUIRED ON ALL FORMAL SOLICITATIONS OVER \$100,000.00. IF CLARIFICATION IS NEEDED, CONTACT THE PURCHASING ASSOCIATE LISTED IN THE INVITATION.

**I. PREPARATION OF SUBMITTAL**

- A. Each vendor shall examine the drawings, specifications, schedule, and all instructions. Failure to do so will be at the vendor's risk, as the vendor will be held accountable for their submittal.
- B. Each vendor shall furnish all information required by the solicitation form or document. Each vendor shall sign the submittal and print or type his or her name on the quote/bid/fee schedule. The person signing the submittal should initial erasures or other changes. An authorized agent of the vendor must sign the submittal.
- C. Fee schedule pricing should have only two decimal places unless otherwise stated. In the event of a calculation error in total price, the unit pricing prevails.
- D. Except for 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 award. 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.
- E. Sample contracts (if pertinent) are attached. These do NOT have to be filled out with the submittal but are contained for informational purposes only. If awarded, the successful vendor(s) will be required to execute these documents prior to County execution.
- F. 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 vendor's 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 submittal may result in being deemed non-responsive and automatic rejection.

**II. DELIVERY**

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

**III. EXPLANATION TO VENDORS**

Any explanation desired by a vendor regarding the meaning or interpretation of the solicitation, drawings, specifications, etc. must be requested by the question cutoff deadline stated in the solicitation for a reply to reach all vendors before the deadline of the solicitation. Any information given to a prospective vendor concerning a solicitation will be furnished to all prospective vendors as an addendum to the solicitation if such information is necessary or if the lack of such information would be prejudicial to uninformed vendors. The written solicitation documents supersede any verbal or written communications between the parties. Receipt of addenda should be acknowledged in the submittal. **It is the vendor's responsibility to ensure they have all applicable addenda prior to their submittal.** This may be accomplished by contacting the assigned Purchasing Associate prior to the submittal or visiting the Gwinnett County website.

**IV. SUBMISSION OF FORMAL OFFERS/SUBMITTALS**

- A. Formal bid and proposal submittals shall be enclosed in a sealed package or envelope, addressed to the Gwinnett County Purchasing Division with the name of the vendor, the date and hour of opening and the solicitation number on the face of the package or envelope. Facsimile or emailed submittals 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 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 vendor's request and expense, if items are not destroyed by testing.
- 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 identification of each item submitted, including brand name, model, catalog number, etc. must be furnished to identify exactly what the vendor is offering. Manufacturer's literature may be furnished but vendor should not submit excessive marketing material.
- F. The vendor must certify that items to be furnished are new and that the quality has not deteriorated to impair its usefulness.
- G. Unsigned submittals will not be considered except in cases where it is enclosed with other documents that have been signed. The County will determine acceptability in these cases.
- H. Gwinnett County is exempt from federal excise tax and Georgia sales tax regarding goods and services purchased directly by Gwinnett County. Vendors are responsible for federal excise tax and sales tax, including taxes for materials incorporated in county construction projects. Vendors should contact the State of Georgia Sales Tax Division for additional information. Agreements were there is a cost-plus mark-up, mark-up will not be paid on taxes.
- I. Information submitted by a vendor in the solicitation process shall be subject to disclosure after the public opening in accordance with the Georgia Open Records Act.

#### **V. WITHDRAWAL DUE TO ERRORS**

Vendors must give Gwinnett County Purchasing Division written notice within two (2) business days of completion of the opening stating that they wish to withdraw their submittal without penalty for an obvious clerical or calculation error. Submittal may be withdrawn from consideration if the price was substantially lower than the other submittals due solely to a mistake therein, provided pricing was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake and was due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of the submittal. The unintentional arithmetic error or omission can be clearly proven through inspection of the original work papers, documents, and materials used in preparing the submittal sought to be withdrawn. The vendor's original work papers shall be the sole acceptable evidence of error and mistake if a vendor elects to withdraw their submittal. If a quote or bid submittal is withdrawn under the authority of this provision, the lowest remaining responsive offer shall be deemed to be low bid.

No vendor who is permitted to withdraw their submittal 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 bid or proposal was submitted.

Vendors who fail to request withdrawal by the required forty-eight (48) hours may automatically forfeit bid bond

if a bond was required. Bid may not be withdrawn otherwise.

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 vendor.

#### VII. F.O.B. POINT

Unless otherwise stated in the request for invitation and any resulting contract, or unless qualified by the vendor, items shall be shipped F.O.B. Destination, Freight Prepaid and Allowed. 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 vendor guarantees to hold the County, its agents, officers, or employees harmless from liability of any nature or kind for use of any copyrighted or uncopied composition, secret process, patented or unpatented invention, articles or appliances furnished or used in the performance of the contract, for which the vendor 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 solicitation as required in the solicitation package or document. **Failure to submit a bid bond with the proper rating will result in submittal 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 A.M. Best rating as stated in the insurance requirement of the solicitation. **The bid bond, payment bond, and performance bond must have the proper A.M. Best rating as stated in the solicitation document.**

#### X. DISCOUNTS

- A. Time payment discounts may be considered in arriving at net prices and in award of solicitations. 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 either the highest scoring firm (for proposals) or the lowest responsive and responsible vendor (for quotes/bids). The quality of the articles to be supplied, their conformity with the specifications, their suitability to the requirements of the County, and the delivery terms will be taken into consideration in making the award. The County may make such investigations as it deems necessary to determine the ability of the vendor to perform, and the vendor 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 submittal if the evidence submitted by, or investigation of such vendor fails to satisfy the County that such vendor is properly qualified to carry out the obligations of the contract.

- B. The County reserves the right to reject or accept any or all offers and to waive technicalities, informalities and minor irregularities in the submittals received.
- C. The County reserves the right to make an award as deemed in its best interest, which may include awarding to a single vendor or multiple vendors; or to award the whole solicitation agreement, only part of the agreement, or none of the agreement, based on its sole discretion of its best interest.
- D. In the event of proposal scores rounded to the nearest whole number result in a tie score, the award will be based on lowest cost.
- E. If proposal 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 vendor to deliver within the time specified or within reasonable time as interpreted by the Purchasing Director, or failure to make replacement 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 vendor shall reimburse the County within a reasonable time specified by the Purchasing Director for any expense incurred in excess of the contract prices, or the County shall have the right to deduct such amount from monies owed the defaulting vendor. Alternatively, the County may penalize the vendor 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**

No material, labor or facilities will be furnished by the County unless so provided in the solicitation package.

## **XIV. REJECTION OF SUBMITTALS**

Failure to observe any of the instructions or conditions in this solicitation package may constitute grounds for rejection.

## **XV. CONTRACT**

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

Upon receipt of a solicitation package containing a Gwinnett County "Sample Contract" as part of the requirements, it is understood that the vendor has reviewed the documents with the understanding that Gwinnett County requires that all agreements between the parties must be entered into via this document. If any exceptions are taken to any part, each must be stated in detail and submitted as part of the vendor's submittal. If no exceptions are stated, it is assumed that the vendor fully agrees to the provisions contained in 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, the consultant agrees to abide by the current state law and: 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, that is considered a conflict of interest, any involvement in litigation or other dispute, relationship, or

financial interest not disclosed in the ethics affidavit, 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.

When the vendor has performed in accordance with the provisions of this agreement, Gwinnett County shall pay to the vendor, 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. If Gwinnett County fails to pay the vendor 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 vendor interest at the rate of ½% per month or pro rata fraction thereof, beginning the sixty-first (61<sup>st</sup>) day following receipt of pay requests. The vendor's acceptance of progress payments or final payment shall release all claims for interest on said payment.

The parties agree that this Contract shall be governed and construed in accordance with the laws of the State of Georgia.

#### **XVI. NON-COLLUSION**

Vendor declares that the submittal is not made in connection with any other vendor's submittal for the same commodity or commodities, and that the submittal is bona fide and is in all respects fair and without collusion or fraud. An affidavit of non-collusion shall be executed by each vendor. Collusion and fraud in submittal 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 vendor upon non-performance or violation of contract terms. An award may be made to the next low responsive and responsible vendor, or the next highest scoring responsive and responsible proposer, or articles specified may be purchased on the open market similar to those so terminated. In either event, the defaulting vendor (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 vendor shall continue the performance of this contract to the extent not terminated under the provisions of this clause. Failure of the vendor to deliver materials or services within the time stipulated on their offer, 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 vendor of the vendor'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 vendor. In the event of the County's termination of this agreement for convenience, the vendor 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 vendor, which shall itemize each element of performance.

#### **XX. SUBSTITUTIONS**

Vendors offering substitutions or who are deviating from the attached specifications shall list such deviations on a separate sheet to be submitted with their offer. The absence of such a substitution list shall indicate that the vendor has taken no exception to the specifications contained herein.

#### **XXI. INELIGIBLE VENDORS**

The County may choose not to accept the offer by an individual, firm, or business who is in default on the payment of taxes, licenses, or other monies owed to the County. Additionally, vendors or persons placed on an



Ineligible Source List for reasons listed in Part 6, Section II of the Gwinnett County Purchasing Ordinance shall not be eligible to provide any commodities or services to the County during the period such person remains on the Ineligible Source List.

**XXII. PENDING LITIGATION**

An individual, firm, or business that 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.

**XXIII. OCCUPATION TAX CERTIFICATE**

Each successful vendor must have a valid Gwinnett County occupation tax certificate if the vendor maintains an office within the unincorporated area of Gwinnett County. Incorporated, out of County, and out of State vendors are required to have any and all certificates necessary to do business in any town, County or municipality in the State of Georgia, or as otherwise required by County ordinance or resolution. Vendors may be required to provide evidence of valid certificates. Out of State vendors are required to have a certificate in the Georgia jurisdiction where they receive the most revenue.

**XXIV. PURCHASING POLICY AND REVIEW COMMITTEE**

The Purchasing Policy & 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 & Review Committee has authority to place vendors on the Ineligible Source List for reasons listed in Part 6, Section II of the Gwinnett County Purchasing Ordinance, for a period not to exceed three (3) years.

**XXV. AMERICANS WITH DISABILITIES ACT**

All vendors 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 the reasonable accommodations required by individuals to fully participate in any open meeting, program or activity of Gwinnett County should be directed to the ADA 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 vendor'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 vendors of their use tax liability on public works projects. Under Georgia law, private vendors 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 realty (for example, the installation of sheetrock), it becomes taxable to the private vendor. See O.C.G.A. §48-8-3(2) and O.C.G.A. §48-8-63.

**XXVIII. STATE AND FEDERAL 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) and that all who enter into a contract for public works as defined by O.C.G.A. §36-91-2(12) for the County, must satisfy the Illegal Immigration Reform Enhancements for 2013 in conjunction with the Federal Immigration Reform and Control Act (IRCA) of 1986, in all manner, and such are conditions of the contract.

The Purchasing Division Director with the assistance of the Internal Audit Division shall be authorized to conduct random audits of a vendor's or subcontractors' compliance with the Illegal Immigration Reform Enhancements for 2013 and the rules and regulations of the Georgia Department of Labor. The vendor and subcontractors shall retain all documents and records of its compliance for a period of five (5) years following completion of the contract or shall abide by the current time requirements at the time of the contract. This requirement shall apply to all contracts for all public works, 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 vendor's or subcontractor's records are not sufficient to verify the work eligibility of any individual in the employment of such vendor 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 vendor or subcontractor is no longer in compliance with worker verification.

By submitting an offer to the County, vendor agrees that, in the event the vendor employs or contracts with any subcontractor(s) in connection with the covered contract, the vendor will secure from the subcontractor(s) such subcontractor(s) indication of the employee-number category applicable to the subcontractor, as well as attestation(s) from such subcontractor(s) that they follow the Illegal Immigration Reform Enhancements for 2013 in conjunction with all federal requirements. Original signed, notarized Subcontractor Affidavits and Agreements must be maintained by the vendor awarded the contract.

A vendor's or subcontractor's failure to participate in the federal work authorization program as defined above shall be subject to termination of the contract. A vendor's failure to follow Gwinnett County's instruction to terminate a subcontractor that is not participating in the federal work authorization program may be subject to termination of the contract.

**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. §43-41-17).**

**XXXI. PRODUCTS MANUFACTURED IN GEORGIA**

When contracting for or purchasing supplies, materials, equipment, or agricultural products that exceeds \$100,000.00, excluding beverages for immediate consumption, Gwinnett County 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 vendor which may include the vendor'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 an 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. §36-84-1).**

**XXXII. INDEMNIFICATION**

To the fullest extent permitted by law, the vendor shall, at his sole cost and expense, indemnify, defend, satisfy all judgments, and hold harmless the County, its commissioners, officers, 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 by any act or omission of the vendor, 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, its commissioners, officers, agents, and employees by any employee of the vendor, 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 vendor or any subcontractor under Worker's Compensation Acts, disability benefit acts, or other employee benefit acts.

Vendor shall also indemnify, hold harmless, insure, and defend the County for damages, losses, or expenses to the extent caused by or resulting from the negligence, recklessness, or intentionally wrongful conduct of the vendor or other persons employed or utilized by the vendor in the performance of a contract that utilizes survey services.

**XXXIII. CODE OF ETHICS**

Vendors 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. (This shall not apply to informal purchases as defined by the Purchasing Ordinance.) The vendor shall execute a Code of Ethics affidavit. Failure to submit the affidavit during the procurement process shall render the offer non-responsive.

Any business entity holding a contract with Gwinnett County that after 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, or vendors 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. Note: See Gwinnett County Code of Ethics Ordinance E02011, Sec. 54-33. The ordinance is available to view in its entirety at [www.gwinnettcounty.com](http://www.gwinnettcounty.com).

**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@gwinnettcounty.com](mailto:vendorelectronicpayment@gwinnettcounty.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 visit the Gwinnett County Treasury Division page 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 proceed through the roundabout. Visitors can either proceed to the front parking area on the left or to the parking deck behind the building. Click [here](#) for additional information about parking. The Purchasing Division is located on the second floor, West Wing.

EXHIBIT A (Federal Certifications)

CERTIFICATION AND RESTRICTIONS ON LOBBYING

I \_\_\_\_\_, hereby certify (Name and title of official)

On behalf of \_\_\_\_\_ 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 federal 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 be 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 \_\_\_\_\_

Type or print name \_\_\_\_\_

Signature of authorized representative \_\_\_\_\_ Date \_\_\_/\_\_\_/\_\_\_

Signature of notary and SEAL \_\_\_\_\_

## **EXHIBIT B (FEDERAL CLAUSES)** **DEBARMENT AND SUSPENSION**

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, debar, 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.

### **LOBBYING**

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

### **CLEAN AIR**

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the FTA and the Regional Office of the Environmental Protection Agency (EPA). Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

### **CONTRACT WORK HOURS & SAFETY STANDARDS ACT**

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in para. (1) of this section, contractor, and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in para. (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - the recipient shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in para. (2) of this section.

(4) Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

#### TERMINATION

All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

- 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 or 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 ensure 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 complete 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.

## DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146- 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").

(1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. (ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed. (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division,

Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof. (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination, and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met: (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination. (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30- day period that additional time is necessary.(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding - The recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and

mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the grantee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

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

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the recipient for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following: (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete; (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3; (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract. (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section. (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code. (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to

submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees- (i) Apprentices- Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved. (ii) Trainees- Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of Eligibility - (i) By entering into this contract, contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (iii) The penalty for making false statements is prescribed in 18 USC 1001.

#### RECYCLED PRODUCTS

All contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the current or previous fiscal year using Federal funds. The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C.6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

#### CIVIL RIGHTS

The following requirements apply to the underlying contract:

- a) The Recipient agrees that it must comply with applicable federal civil rights laws, regulations, requirements, and guidance, and follow applicable federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or a federal program, including the Tribal Transit Program or the Indian Tribe Recipient, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service.
- b) Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that it and each Third Party Participant, will: (1) Prohibit discrimination based on the basis of race, color,

religion, national origin, sex, disability, or age. (2) Prohibit the: (a) Exclusion from participation in employment or a business opportunity for reasons identified in 49 U.S.C. § 5332, (b) Denial of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332, or (c) Discrimination, including discrimination in employment or a business opportunity identified in 49 U.S.C. § 5332. (3) Follow: (a) 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, requirements, and guidance, and other applicable federal guidance that may be issued, but (b) FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its Underlying Agreement supported with federal assistance under the Tribal Transit Program.

- c) 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 race, color, or 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, and (3) Follow: (a) 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, requirements, 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) All other applicable federal guidance that may be issued.
- d) 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, sexual orientation, gender identity, 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" September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs, (c) Comply with federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12.a of this Master Agreement, (d) FTA Circular 4704.1, "Equal Employment Opportunity Program Guidelines for Grant Recipients," July 26, 1988, and (e) Follow other federal guidance pertaining to Equal Employment Opportunity laws, regulations, and requirements, and prohibitions against discrimination on the basis of disability, (2) Specifics. The Recipient agrees to and assures that each Third Party Participant will: (a) Prohibited Discrimination. As provided by Executive Order No. 11246, as amended by any later Executive Order that amends or supersedes it, and as specified by U.S. Department of Labor regulations, ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their race, color, religion, national origin, disability, age, sexual orientation, gender identity, or status as a parent, (b) Affirmative Action. Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, recruitment, and employment, 2 Rates of pay and other forms of compensation, 3 Selection for training, including apprenticeship, and upgrading, and 4 Transfers, demotions, layoffs, and terminations, but (c) Indian Tribe. Recognize that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer," and (3) Equal Employment Opportunity Requirements for Construction Activities. Comply, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), 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 in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.
- e) Disadvantaged Business Enterprise. To the extent authorized by applicable federal laws and

regulations, 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 Underlying Agreement as follows: (1) Statutory and Regulatory Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of the FAST Act, 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 provided in section 12.a of this Master Agreement. (2) DBE Program Requirements. A Recipient that receives planning, capital and/or operating assistance and that will award prime third party contracts exceeding

\$250,000 in a federal fiscal year must have a DBE program meeting the requirements of 49 C.F.R. part 26, that is approved by FTA, and establish an annual DBE participation goal. (3) Special Requirements for a Transit Vehicle Manufacturer (TVM). The Recipient agrees that: (a) TVM Certification. Each TVM, 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, and (b) Reporting TVM Awards. Within 30 days of any third party contract award for a vehicle purchase, the Recipient must submit to FTA the name of the TVM contractor and the total dollar value of the third party contract, and notify FTA that this information has been attached to FTA's electronic award and management system, the Recipient must also submit subsequent notifications if options are exercised in subsequent years to ensure the TVM is still in good standing. (4) Assurance. As required by 49 C.F.R. § 26.13(a):

(a) Recipient Assurance. The Recipient agrees and assures that: 1 It must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted contract, or in the administration of its DBE program or the requirements of 49 C.F.R. part 26, 2 It must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT- assisted contracts, 3 Its DBE program, as required under 49 C.F.R. part 26 and as approved by U.S. DOT, is incorporated by reference and made part of the Underlying Agreement, and 4 Implementation of its DBE program approved by U.S. DOT is a legal obligation and failure to carry out its terms shall be treated as a violation of this Master Agreement. (b) Subrecipient/Third Party Contractor/Third Party Subcontractor Assurance. The Recipient agrees and assures that it will include the following assurance in each sub agreement and third party contract it signs with a Subrecipient or Third Party Contractor and agrees to obtain the agreement of each of its Subrecipients, Third Party Contractors, and Third Party Subcontractors to include the following assurance in every sub agreement and third party contract it signs: 1 The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA or

U.S. DOT-assisted sub agreement, third party contract, and third- party subcontract, as applicable, and the

administration of its DBE program or the requirements of 49 C.F.R. part 26, 2 The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT- assisted sub agreements, third party contracts, and third party subcontracts, as applicable, 3 Failure by the Subrecipient and any of its Third Party Contractors or Third Party Subcontractors to carry out the requirements of this subparagraph 13.d(4)(b) is a material breach of this subagreement, third party contract, or third party subcontract, as applicable, and 4 The following remedies, or such other remedy as the Recipient deems appropriate, include, but are not limited to, withholding monthly progress payments; assessing sanctions; liquidated damages; and/or disqualifying the Subrecipient, Third Party Contractor, or Third Party Subcontractor from future bidding as non-responsible. (5) Remedies. Upon notification to the Recipient of its failure to carry out its approved program, FTA or U.S. DOT may impose sanctions as provided for under 49 C.F.R. part 26, and, in appropriate cases, refer the matter for enforcement under either or both 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq.



- f) 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.
- g) 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, 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, (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, Projects, and related activities receiving federal assistance, (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, and (5) Federal transit law, specifically 49 U.S.C. § 5332.
- h) Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following federal prohibitions against discrimination on the basis of disability: (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 assisted Programs, Projects, 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 For FTA Recipients generally, Titles I, II, and III of the ADA apply, but 2 For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it 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 federal laws, regulations and requirements pertaining to access for seniors 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) 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, (d) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39, (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 (k) Other applicable federal civil rights and nondiscrimination guidance.
- i) 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.

- j) Access to Services for Persons with Limited English Proficiency. The Recipient agrees to promote accessibility of public transportation services to persons with limited understanding of English 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.
- k) Other Nondiscrimination Laws, Regulations, Requirements, and Guidance. The Recipient agrees to comply with other applicable federal nondiscrimination laws, regulations, and requirements, and follow federal guidance prohibiting discrimination. I. Remedies. Remedies for failure to comply with applicable federal Civil Rights laws, regulations, requirements, and guidance may be enforced as provided in those federal laws, regulations, or requirements.

#### BUY AMERICA

Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating that Federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. All steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in infrastructure projects such as transit or maintenance facilities, rail lines, and bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock, or to bimetallic power rail incorporating steel or iron components. For a manufactured product to be considered produced in the United States: (1) All of the manufacturing processes for the product must take place in the United States; and (2) All of the components of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents.

#### SEISMIC SAFETY

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

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

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 – 1377. 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.

#### ACCESS TO THIRD PARTY CONTRACT RECORDS

Upon request, the Secretary and Comptroller General, or any of their representatives, shall have access to and the right to examine and inspect all records, documents, and papers, including contracts, related to

a project for which a grant is made, as described in 49 U.S.C. §5325 (g).

#### FEDERAL CHANGES

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 purchaser 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.

#### NO GOVERNMENT OBLIGATION TO THIRD PARTIES

(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

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(n)(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.

#### BREACHES AND DISPUTE RESOLUTION

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 (10) 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.

#### DISADVANTAGED BUSINESS ENTERPRISE

- 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%. Gwinnett County's overall goal for DBE participation is 6%.
- b) The contractor shall not discriminate on the basis of race, color, religion, 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/offers 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

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 TERMS

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 current FTA Circular 4220.1, 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.

#### CARGO PREFERENCE

Contractor shall: a. use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, when it includes shipping any equipment, material or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels; b. furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through contractor in the case of a subcontractor's bill-of-lading.); c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material or commodities by ocean vessel.

#### FLY AMERICA

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.

#### CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS

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.

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.

#### 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.

#### 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.

#### 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.

#### 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.

#### 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.