



BAY COUNTY TRANSPORTATION PLANNING ORGANIZATION

**BAY COUNTY PUBLIC TRANSIT SYSTEM ADMINISTRATION AND MEETING FACILITY
1021 Massalina Drive Panama City, Florida 32401**

**REQUEST FOR QUALIFICATIONS (RFQ)
DESIGN and CONSTRUCTION MANAGEMENT OF A NEW BUS WASH FACILITY
LOCATED AT
919 MASSALINA DRIVE PANAMA CITY, FLORIDA 32401**

SUBMITTED BY:

TPO-RFQ No. 21-02

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RESPONDENT INSTRUCTIONS

***Some of the instructions below may not apply to all projects.
The scope of work/specifications shall control any conflicting provisions.***

INTRODUCTION/SCOPE OF SERVICES

The Bay County Transportation Planning Organization (TPO) is seeking Qualifications from firms to design and perform construction management services for the construction of a new bus wash facility located at 919 Massalina Drive Panama City, Florida 32401. The TPO operates the Bay Town Trolley and has determined a need for the construction a new bus wash facility to be used for exterior washing of transit vehicles. The TPO is the recipient of a Federal Transit Administration (FTA) grant for that purpose. The architect proposing under this solicitation should show evidence of experience and familiarity with previous planning, programming, design, permitting, and construction management for similar facilities, and should be familiar with FTA guidelines and procedures for such facilities. Evidence and examples of this previous work experience should be provided in the architect's response.

This Request for Qualifications is subject to the Florida Consultants' Competitive Negotiations Act, Sec. 287.055, Florida Statutes, and Federal Transit Administration Circular 4220.1.F. If any terms of this RFQ are in conflict with the Statute or Circular, the terms of the Statute or Circular shall control.

Funding for this project has been made possible through grants from the Federal Transit Administration (FTA) and is contingent on strict conformance to the guidelines set forth by FTA.

MANDATORY PRE-SUBMITTAL MEETING

A Mandatory Pre-Submittal Meeting will be held on **Day of Week, Date, 2021 at Time CDST** in the Bay County Transit System Administration and Meeting Facility, 1021 Massalina Drive, Panama City, FL 32401.

Respondents shall attend the pre-submittal meeting. Any respondent who fails to attend will be deemed non-responsive and automatically disqualified from further consideration. The purpose of this meeting is to familiarize respondents with the project and answer questions.

Note: All Proposers must be present and signed in prior to the start of the Mandatory Pre-Submittal Meeting. The convener of the meeting will collect the sign in sheet(s) and the meeting will "Officially" start. Anyone not signed in at the "Official" start of the meeting will be considered late and will not be allowed to propose on the project. Please allow 10 to 15 minutes to sign in prior to the start of the Mandatory Pre-Submittal Meeting.

In the event that any discussions or questions at the pre-submittal meeting or afterward require additional clarification the TPO will issue a written summary of questions and answers as an addendum to this Request for Qualifications.

SUBMITTAL DEADLINE/DELIVERY

Sealed submittals for TPO-RFQ NO: 21-02, Architectural Services for The Design and

Construction Management of a Bus Wash Facility Located at 919 Massalina Drive Panama City, Florida, are due on **Day of Week, Date, 2021 at Time CDST**. Proposals will be submitted to the attention of Mrs. Vanessa Phillips. The address for U.S. mail and hand delivery is Bay County TPO, Bay County Transit System Administration and Meeting Facility, 1021 Massalina Drive, Panama City, Florida 32401. The telephone number is 850-248-8161; and the email address is vphillips@baycountyfl.gov. It is the responsibility of the Proposer to assure that correspondence has been received by the Bay County TPO, Bay County Transit System Administration and Meeting Facility. Submittals will be publicly opened immediately following the deadline.

If an emergency or unanticipated event interrupts normal agency processes so that proposals cannot be received at the Bay County TPO, Bay County Transit System Administration and Meeting Facility by the exact time specified in the solicitation, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which the Bay County TPO, Bay County Transit System Administration and Meeting Facility is open to the public.

SOLICITATION DOCUMENTS

A copy of the Request for Qualifications is available at the Bay County Transit System Administration and Meeting Facility, 1021 Massalina Drive, Panama City, Florida 32401, and on the Bay County website: <http://co.bay.fl.us/169/Purchasing>.

POINT OF CONTACT

The Bay County Transit Program Administrator or their authorized representative Transit Procurement and Operations Technician: Mrs. Vanessa Phillips, Bay County Transit Department at (850) 248-8161, vphillips@baycountyfl.gov will be the only point of contact for this RFQ. Under no circumstances may a Respondent contact any TPO Member, Committee Member, or employee concerning this RFQ until after award. Any such contact may result in disqualification.

QUESTIONS

Respondents shall submit all questions, in writing and to Transit Procurement and Operations Technician: Mrs. Vanessa Phillips, Bay County Transit Department at vphillips@baycountyfl.gov. All questions shall be submitted no later than **Day of Week, Date, 2021 at Time CDST**.

ADDENDA

If any addenda are issued after the initial specifications are released, the TPO will post the addenda on the Bay County website: <http://co.bay.fl.us/169/Purchasing>.

It is the responsibility of the Respondent prior to submission of any proposal to check the above website or contact the Transit Procurement and Operations Technician: Mrs. Vanessa Phillips, to verify any addenda issued. The receipt of all addenda must be acknowledged on the addenda response sheet.

SUBMITTAL FORM

To receive consideration, all Submittals shall be made on the forms provided, properly executed and with all items filled out. Do not change the wording of the Submittal Form. No conditions, limitations or provisions will be attached or added to the Submittal Form by the

Respondent. Alterations by erasure or interlineations must be explained or noted in the Submittal over the signature of the Respondent.

SUBMITTAL REQUIREMENTS

Each Firm's submittal shall include sufficient information to enable the TPO to evaluate the capability of the Firm to provide the desired services. The data shall be significant to the project and discussions of past performances on other projects shall be minimized except as they relate to work or experience similar to the proposed work.

All Submittals are to be on 8 ½" x 11" paper or if larger documents are required they are to be folded to 8 ½" x 11" size. Submittals should be stapled together or bound with comb binding. Submittals submitted in 3 ring binders will not be accepted. Submittals shall be prepared simply and economically, providing a straightforward, concise delineation of the Respondent's capabilities to satisfy the requirements of the RFQ. Elaborate binding, colored displays, and promotional material are not desired; however, technical literature may be included as attachments to the Submittal.

Respondents should submit one **(1) original (clearly labeled "Original")**, **five (5) copies and one (1) electronic version of the package**. The electronic version should be in pdf format. If the submittal contains confidential information, such information shall be in a separate pdf document. Proposals must be submitted to the attention of Transit Procurement and Operations Technician: Mrs. Vanessa Phillips. Proposal outer packaging must be clearly marked with "TPO RFQ #21-02" and "ARCHITECTURAL SERVICES FOR BUS WASH FACILITY in capital letters. Submittals shall be valid to the TPO for a period of ninety (90) days after the opening.

Emphasis in each Submittal must be on completeness and clarity of content.

In order to expedite the evaluation of Submittals, it is essential that Respondents follow the format and instructions contained in the RFQ.

The following information is the minimum content required for the Submittal and will be used to compare and evaluate the firms:

(Please number and title tabs for each section as indicated).

- 1) Table of Contents (Tab 1)
 - a) Clearly identify all sections referenced below.
 - b) Sections shall be separately tabbed for ease of reference.
- 2) General Information (Tab 2) – 10 points
 - a) Firm information
 - i. Name, address, phone, fax, email, Federal ID#, and website (if applicable)
 - ii. Date the firm was established under the name given
 - iii. Type of ownership or legal structure of the firm. (Corporation, joint venture, partnership)
 - iv. Incorporation by the Secretary of State and current Florida Professional License
 - v. Brief history of the firm

- vi. Point of contact within the firm
 - b) Litigation, disputes, default, & liens
Describe and explain any disputes, litigations and defaults, the results and settlements of any prior litigation, arbitration, mediation or other claims for a period of five years prior to submission of the RFQ.
- 3) Experience with Similar Projects (Tab 3) – 50 points
- This should be a narrative description and any applicable illustrations to show that the firm understands all elements and describes the firms' experience on similar projects. Major consideration will be given to the successful completion of previous projects comparable in design, scope, and complexity. References will be considered in this section.
- a) List projects which best illustrate the experience of your firm and current staff that are being assigned to this project
 - i. List no more than 5 projects, and no projects which were completed more than 10 years ago
 - (1) Name and location of the project
 - (2) The nature of the firm's responsibility on the project
 - (3) Project owner's representative's name, address, and phone number (references may be contacted and should be notified)
 - (4) Project client agency's representative's name, address, and phone number (references may be contacted and should be notified)
 - (5) Date project was completed or is anticipated to be completed
 - (6) Size of project
 - (7) Cost of project (construction cost)
 - (8) Work for which the proposed staff was responsible
 - (9) Present status of this project
 - (10) Change Order history showing dollar amounts and time extensions
 - (11) Project Manager and other key professionals involved on listed project and who of that staff would be assigned to this project
- 4) Team Experience (Tab 4) – 20 points
- a) Provide resumes for all key personnel describing their experience.
 - i. Give brief resume of personnel to be assigned to the project including, but not limited to the following information:
 - (1) Name and title
 - (2) Job assignment for other projects
 - (3) Percentage of time to be assigned full time to this project
 - (4) How many years with this firm
 - (5) How many years with other firms
 - (6) Experience
 - (a) Types of projects
 - (b) Size of projects
 - (c) What were the specific project involvements?
 - (7) Education

- (8) Active registration(s) and certification(s)
- (9) Provide all required licenses and certificates
- (10) Other experience and qualifications that are relevant to this project

5) Team Qualifications (Tab 5) – 15 points

Provide an organizational chart.

- a) Describe how the organizational structure will ensure orderly communication, distribution of information, effective coordination of activities, and accountability.
- b) List of consultants and subcontractors, if any
 - i. Name any consultants, or subcontractors which are included as part of the proposed team. Describe the proposed role of any persons outside your firm and their related experience. List projects on which your firm has worked with the person/firm in the past.
 - ii. Provide all required licenses and certificates.
- c) Describe how the team is experienced in complying with the Florida Consultants' Competitive Negotiations Act and the federal Buy America and Buy American requirements.

6) Required Additional Forms (Tab 7)

- a) Submittal Form
- b) Addendum Acknowledgement
- c) Federal Clauses Acknowledgement Form
- d) Government-Wide Debarment and Suspension

EXAMINATION OF WORK SITES

All prospective firms may visit the site and become familiar with the existing conditions. A tour will be conducted immediately following the pre-submittal conference. Contact Transit Procurement and Operations Technician: Mrs. Vanessa Phillips, for any other visits. No allowance will be made to any prospective firm because of a claimed lack of such examination or knowledge. Responding to the RFQ shall be construed as conclusive evidence that the prospective firm has made such examination.

CONSULTANTS' COMPETITIVE NEGOTIATIONS ACT

The TPO shall follow the procedures set forth in Sec. 287.055, Florida Statutes and in this RFQ, to evaluate and rank the proposers, and shall begin negotiating with the highest ranked Proposer, in accordance with sub-Sections 287.055(3), (4), and (5).

The TPO shall negotiate a contract with the top ranked firm for services, at compensation which the TPO determines is fair, competitive and reasonable.

Contract price will include all charges for completing the work and shall include, insurance, taxes, field office and supervision, overhead and profit, and any miscellaneous items.

WITHDRAWAL OF SUBMITTALS

Any Respondent may withdraw its Submittal, either personally or by written request, at any time prior to the scheduled time for opening Submittals. No Respondent may withdraw its Submittal for a period of 90 days after the date for opening and all Submittals shall be subject to acceptance by the TPO during this period.

BASIS OF AWARD

The contract will be awarded to the responsive, responsible Respondent who ranks highest in the evaluation process based on the criteria specified in the evaluation of Submittals information enclosed in this Request for Qualifications and who successfully negotiates a fair, competitive, and reasonable contract price with the TPO.

RIGHT TO REJECT

The TPO reserves the right to:

- a. reject any or all Submittals received;
- b. select and award any portion of any or all Submittal items;
- c. waive minor informalities and irregularities in the Respondent's Submittal

A Submittal may be rejected if it is non-responsive or does not conform to the requirements and instructions in this RFQ. A Submittal may be non-responsive by reasons, including, but not limited to, failure to utilize or complete prescribed forms, conditional Submittals, incomplete Submittals, indefinite or ambiguous Submittals, failure to meet deadlines and improper and/or undated signatures. Other conditions which may cause rejection of Submittals include evidence of collusion, obvious lack of experience or expertise to perform the required work, submission of more than one Submittal for the same work from an individual, Respondent or corporation under the same or a different name, failure to perform or meet financial obligations on previous contracts. Submittals may be rejected if not delivered on or before the date and time specified as the due date for submission of the Submittal.

FISCAL AND CONTRACT MANAGEMENT.

Bay County Board of County Commissioners acts as the Community Transportation Coordinator for the Bay Area Transportation. Contract fiscal management on behalf of the TPO will be provided by Bay County Board of County Commissioners, Transit Department.

AUDIT REQUIREMENTS

The Consultant shall maintain books, records and documents directly pertinent to performance under this Contract in accordance with generally accepted accounting principles consistently applied. The TPO, Bay County, the State of Florida, and the FTA, or their authorized representatives shall have access to such records for audit purposes during the term of this Contract and for five (5) years following Contract completion.

EXECUTION OF AGREEMENT

The successful Firm shall, within 10 days after receipt of the Notice of Award and the contract forms or documents, sign and deliver to Transit Procurement and Operations Technician: Mrs. Vanessa Phillips, all required contract documents. The awarded Firm shall also deliver the policies of insurance or insurance certificate as required. All insurance documents shall be approved by the Transit Program Administrator before the successful Firm may proceed with the work.

The contract shall commence upon receipt of Notice to Proceed (NTP).

Payments shall be made in accordance with the Florida Prompt Payment Act, Chapter 218, Florida Statutes.

REPRESENTATIONS

The contract documents contain the provisions required for the project. Information obtained from an officer, agent, or employee of the TPO or any other person shall not affect the risks or obligations assumed by the Consultant or relieve the Consultant from fulfilling any of the conditions of the contract.

PUBLIC ENTITY CRIMES STATEMENT

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. By submission of a proposal in response to this document, the vendor certifies compliance with the above requirements as stated in Section 287.133, Florida Statutes.

EMPLOYMENT ELIGIBILITY VERIFICATION

Consultant shall utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of:

1. All persons employed by the Consultant during the term of the Contract to perform employment duties within Florida; and
2. All persons, including subcontractors, assigned by the Consultant to perform work pursuant to the contract with the Department.

By submission of a bid in response to this document, the consultant certifies compliance with the above requirements.

HOLD HARMLESS AND INDEMNIFICATION

- a. The Consultant shall indemnify and hold harmless the TPO, and its officers and employees, from any and all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the design professional in the performance of the agreement.
- b. The parties understand and agree that such indemnification by the Consultant relating to any matter which is the subject of this Agreement shall extend throughout the term of this Agreement and any statutes of limitations thereafter.
- c. The Consultant's obligation shall not be limited by or in any way to any insurance coverage or by any provision in or exclusion or omission from any policy of insurance.

DUTY TO PAY DEFENSE COSTS AND EXPENSES

- a. The Consultant agrees to reimburse and pay on behalf of the TPO the cost of the TPO's legal defense, through and including all appeals, and to include all attorneys' fees, costs, and expenses of any kind for any and all 1) claims

described in the Hold Harmless and Indemnification paragraph or 2) other claims arising out of the Consultant's performance of the Contract and in which the TPO has prevailed.

- b. The TPO shall choose its legal defense team, experts, and consultants and invoice the Consultant accordingly for all fees, costs and expenses upon the conclusion of the claim.
- c. Such payment on the behalf of the TPO shall be in addition to any and all other legal remedies available to the TPO and shall not be considered to be the TPO's exclusive remedy.

PROTEST

Eligible third parties reserve the right to protest certain procurement and award decisions made by the TPO as described below. To be eligible to submit a protest action, a third party must qualify as an "interested party". An interested party is an actual or prospective bidder or proposer whose economic interest would be directly harmed by the Bay County TPO's actions. Subcontractors, individual members of contractors, or business groups that are not direct contractors do not qualify as interested parties. Interested parties may submit protests during the pre-award, bid/proposal evaluation, or post award stages of the procurement process. The Bay County Transit System will review and manage all protests received in accordance with the procedures outlined below.

1. All protests by interested parties shall be submitted in writing to the Bay County Transit System Program Administrator. All protests shall include the following information:
 - Name of contractor including basis as an interested party
 - Name of the solicitation/contract
 - Specific basis of protest, including all relevant supporting documentation
 - Relief sought by protestor
2. All protests shall be submitted within the following timeframes
 - For protests prior to receipt of bids/proposals, all protest actions must be submitted not less than ten (10) business days prior to the due date for the receipt of bids or proposals. Protests may be rejected for failure to meet this deadline.
 - For protests during the award process, protests must be submitted prior the date of contract award.
 - For protests subsequent to contract award, protests must be submitted not later than five (5) business days subsequent to award.

EVALUATION PROCESS AND CRITERIA

The Transit Procurement and Operations Technician will review the submittals for completeness. Those submittals deemed complete and responsive will be forwarded to the Evaluation Committee.

Evaluation Committee

- A. Evaluation Committee may consist of 3 or 5 members or the Transportation Planning Organization, or representatives selected by the TPO for the purpose.
- B. The Transit Procurement and Operations Technician will provide reasonable notice of all meetings, no less than 72 hours in advance of such scheduled meeting, excluding holidays and weekends, by posting a Notice of Evaluation Committee Meeting on the public notice bulletin board in the Bay County Public Transit System Administration and Maintenance Facility and on the Bay County website.
- C. Contact with the Evaluation Committee. Members of the Evaluation Committee are prohibited from discussing the project with any professional or professional firm that may submit a proposal during the procurement process, except in formal committee meetings.
- D. Evaluation of Submittals. Only written responses of statements of qualifications, performance data, and other data received in the transit office by the publicized submission time and date shall be evaluated.
- E. The initial ranking of proposals is based upon the points given in the scoring sheet utilizing the evaluation criteria in this RFQ.
- F. Shortlisting. The best-qualified respondents shall be based upon the Evaluation Committee's ability to differentiate qualifications applicable to the scope and nature of the services to be performed as indicated by the ratings on the scoring sheet. The top three rated firms, if there are at least three responsive respondents, will be considered as the shortlisted firms, unless the Transit Program Administrator, after input and discussion with the Evaluation Committee, approves adding additional firms to the shortlist.
- G. Presentations/Interviews. The Evaluation Committee may choose to conduct formal presentations/interviews with shortlisted firms prior to final ranking. Notice of required presentations will be provided to the shortlisted firms on a date and at a time determined by the Transit Program Administrator, and the Transit Procurement and Operations Technician. Formal presentations to the full TPO may be required.
- H. Final Ranking. The Evaluation Committee or the Transportation Planning Organization, as appropriate, shall use the ordinal process to rank the firms. The respondents shall be listed in order of preference. The list of best-qualified persons shall be approved by the Transit Program Administrator, as appropriate, prior to beginning contract negotiations.

The TPO shall negotiate a contract with the top ranked firm for services at compensation which the TPO determines is fair, competitive and reasonable as further described in the Scope of Services.

The provisions of the Request for Qualifications and the receipt of submittals from respondents shall not create any legal or other obligation between the TPO and respondents (except as expressly set out in this RFQ).

The TPO will make the selections primarily on the basis of the response to this RFQ, and any further information received from respondents, if interviewed. Although information additional to that requested in this RFQ may be provided by respondents, any consideration of this information shall be at the discretion of the TPO and its representatives. The TPO shall be the sole judge of the award of this project to the respondent considered by the TPO to offer the best overall response with a resulting negotiated agreement that is most advantageous and in the best interest of the TPO.

REFERENCES QUESTIONNAIRE
(TO BE COMPLETED BY THE TPO)

Proposer's Name _____

Proposer's Reference Name _____

Person Interviewed _____

Interviewed By _____

Date of Interview _____

The following questions will be asked of the client reference chosen at the discretion of the TPO:

1. Briefly describe the work the Proposer performed for your company.	
2. How well did the Proposer adhere to the agreed upon schedule? Excellent = 4 points; Above Satisfactory = 3 points; Satisfactory = 2 points; Fair = 1 point; Poor = 0 points.	
3. How would you rate the Proposer's quality of work? Excellent = 4 points; Above Satisfactory = 3 points; Satisfactory = 2 points; Fair = 1 point; Poor = 0 points.	
4. How would you rate the Proposer's use of adequate personnel in quantity, experience and profession? Excellent = 4 points; Above Satisfactory = 3 points; Satisfactory = 2 points; Fair = 1 point; Poor = 0 points.	
5. How would you rate the Proposer's use of appropriate equipment and methods? Excellent = 4 points; Above Satisfactory = 3 points; Satisfactory = 2 points; Fair = 1 point; Poor = 0 points.	

Score	
Divided by	4
= Average Score	

BAY COUNTY TPO
INSURANCE REQUIREMENTS

1. LOSS CONTROL/SAFETY

- a. Precaution shall be exercised at all times by the Consultant for the protection of all persons, including employees, and property. The Consultant shall be expected to comply with all laws, regulations or ordinances related to safety and health, shall make special effort to detect hazardous conditions and shall take prompt action where loss control/safety measures should reasonably be expected.
- b. The TPO may order work to be stopped if conditions exist that present immediate danger to persons or property. The Consultant acknowledges that such stoppage will not shift responsibility for any damages from the Consultant to the TPO.
- c. The Consultant acknowledges that possession, use, or threat of use of weapons or firearms is not permitted on TPO property, including in the Consultant's vehicles, unless such possession or use of a weapon is a necessary and an approved requirement of the contract.

2. DRUG FREE WORK PLACE REQUIREMENTS

All contracts with individuals or organizations that wish to do business with the Bay County Transportation Planning Organization, a stipulation will be made in the contract or purchase order that requires contractors, subcontractors, vendors or consultants to have a substance abuse policy. The employees of such contractors, subcontractors, vendors or consultants will be subject to the same rules of conduct and tests as the employees of the TPO. In the event of an employee of a supplier of goods or services is found to have violated the Substance Abuse Policy, that employee will be denied access to the TPO's premises and job sites. In addition, if the violation(s) is/are considered flagrant, or the TPO is not satisfied with the actions of the contractor, subcontractor, vendor, or consultant, the TPO can exercise its right to bar all of the contractor's, subcontractor's, vendor's, or consultants employees from its premises or decline to do business with the contractor, subcontractor, vendor or consultant in the future. All expenses and penalties incurred by a contractor, subcontractor, vendor or consultant as a result of a violation of the TPO's Substance Abuse Policy shall be borne by the contractor, subcontractor, vendor, or consultant.

3. INSURANCE - BASIC COVERAGES REQUIRED

- a. The Consultant shall procure and maintain the following described insurance, except for coverages specifically waived by the TPO, on policies and with insurers acceptable to the TPO. These insurance requirements shall not limit the liability of the Consultant. The TPO does not represent these types or amounts of insurance to be sufficient or adequate to protect the Consultant's interests or liabilities, but are merely minimums.
- b. Except for workers' compensation and professional liability, the Consultant's insurance policies shall be endorsed to name the TPO as an additional insured to the extent of the TPO's interests arising from this agreement, contract, or lease.
- c. Except for workers' compensation, the Consultant waives its right of recovery against the TPO, to the extent permitted by its insurance policies.
- d. The Consultant's deductibles/self-insured retentions shall be disclosed to the TPO

and may be disapproved by the TPO. They shall be reduced or eliminated at the option of the TPO. The Consultant is responsible for the amount of any deductible or self-insured retention.

- e. Insurance required of the Consultant or any other insurance of the Consultant shall be considered primary, and insurance of the TPO shall be considered excess, as may be applicable to claims which arise out of the Hold Harmless, Payment on Behalf of the TPO, Insurance, Certificates of Insurance and any Additional Insurance provisions of this agreement, contract or lease.

- f. **WORKERS' COMPENSATION COVERAGE**

The Consultant shall purchase and maintain workers' compensation insurance for all workers' compensation obligations imposed by state law and employer's liability limits of at least **\$500,000 each accident and \$500,000 each employee/\$500,000 policy limit for disease**. The Consultant shall also purchase any other coverages required by law for the benefit of employees. The Consultant shall provide to the TPO an Affidavit stating that he meets all the requirements of Florida Statute 440.02(14)(d).

- g. **GENERAL, AUTOMOBILE AND EXCESS OR UMBRELLA LIABILITY COVERAGE**

The Consultant shall purchase and maintain coverage on forms no more restrictive than the latest editions of the Commercial or Comprehensive General Liability and Business Auto policies of the Insurance Services Office. **Minimum limits of \$1,000,000 per occurrence** for all liability must be provided, with excess or umbrella insurance making up the difference, if any, between the policy limits of underlying policies (including employers liability required in the Workers' compensation Coverage section) and the amount of coverage required.

- h. **GENERAL LIABILITY COVERAGE**

Commercial General Liability - Occurrence Form Required

Coverage A shall include bodily injury and property damage liability for premises, operations, products and completed operations, independent contractors, contractual liability covering this agreement contract or lease, and broad form property damage, and property damage resulting from explosion, collapse or underground (x,c,u) exposures. Coverage B shall include personal injury. Coverage C, medical payments, is not required.

- i. **PRODUCTS/COMPLETED OPERATIONS**

The Consultant is required to continue to purchase products and completed operations coverage, at least to satisfy this agreement, contract or lease, for a minimum of three years beyond the TPO's acceptance of renovation or construction projects.

- j. **BUSINESS AUTO LIABILITY COVERAGE**

Business Auto Liability coverage is to include bodily injury and property damage arising out of ownership, maintenance or use of any auto, including owned, non-owned and hired automobiles and employee non-ownership use.

- k. **EXCESS OR UMBRELLA LIABILITY COVERAGE**

Umbrella Liability insurance is preferred, but an Excess Liability equivalent may be allowed. Whichever type of coverage is provided, it shall not be more restrictive than the underlying insurance policy coverages.

- l. **CERTIFICATES OF INSURANCE**

1. Required insurance shall be documented in Certificates of Insurance which

provide that the TPO shall be notified at least 30 days in advance of cancellation, nonrenewal or adverse change. The Certificate Holder will be addressed as the BAY COUNTY TRANSPORTATION PLANNING ORGANIZATION, 1021 Massalina Drive, Panama City, Florida 32401. All certificates, cancellation, nonrenewal or adverse change notices should be mailed to this address. Each Certificate will address the service being rendered to the TPO by the Consultant. **The Bay County TPO and Bay County Board of County Commissioners shall be named as an Additional Insured for both General Liability and Business Auto Liability.**

2. New Certificates of Insurance are to be provided to the TPO at least 15 days after coverage renewals.
 3. If requested by the TPO, the Consultant shall furnish complete copies of insurance policies, forms and endorsements.
 4. For the Commercial General Liability coverage the Consultant shall, at the option of the TPO, provide an indication of the amount of claims payments or reserves chargeable to the aggregate amount of the liability coverage.
- m. **RECEIPT OF INSUFFICIENT CERTIFICATES**
Receipt of certificates or other documentation of insurance or policies or copies of policies by the TPO, or by any of its representatives, which indicate less coverage than required does not constitute a waiver of the Consultant's obligation to fulfill the insurance requirements herein.

4. **ADDITIONAL INSURANCE**

If checked below, the TPO requires the following additional types of insurance.

Professional Liability/Malpractice/Errors or Omissions Coverage

The Consultant shall purchase and maintain professional liability or malpractice or errors or omissions insurance with minimum limits of \$1,000,000 per occurrence. If a claims made form of coverage is provided, the retroactive date of coverage shall be no later than the inception date of claims made coverage, unless the prior policy was extended indefinitely to cover prior acts.

Coverage shall be extended beyond the policy year either by a supplemental extended reporting period (ERP) of as great duration as available, and with no less coverage and with reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made coverage.

Property Coverage for Leases

The Consultant shall procure and maintain for the life of the lease, all risk/special perils (including sinkhole) property insurance (or its equivalent) to cover loss resulting from damage to or destruction of the building and personal property/contents. The policy shall cover 100% replacement cost, and shall include an agreed value endorsement to waive coinsurance.

Commercial General Liability Increased General Aggregate Limit (or separate aggregate)

Because the Commercial General Liability form of coverage includes an annual aggregate limitation on the amount of insurance provided, a separate project

aggregate limit of N/A is required by the TPO for this agreement or contract.

Owners Protective Liability Coverage

For renovation or construction contracts the Contractor shall provide for the TPO an owners protective liability insurance policy (preferably through the Contractor's insurer) in the name of the TPO. This is redundant coverage if the TPO is named as an additional insured in the Contractor's Commercial General Liability insurance policy. However, this separate policy may be the only source of coverage if the Contractor's liability coverage limit is used up by other claims.

Builders Risk Coverage

Builders Risk insurance is to be purchased to cover subject property for all risks of loss (including theft and sinkhole), subject to a waiver of coinsurance, and covering off-site storage, transit and installation risks as indicated in the Installation Floater and Motor Truck Cargo insurance described hereafter, if such coverages are not separately provided. If flood and/or earthquake risks exist, flood and earthquake insurance are to be purchased. If there is loss of income, extra expense and/or expediting expense exposure, such coverage is to be purchased. If boiler and machinery risks are involved, boiler and machinery insurance, including coverage for testing, is to be purchased.

The Builders Risk insurance is to be endorsed to cover the interests of all parties, including the TPO and all contractors and subcontractors. The insurance is to be endorsed to grant permission to occupy.

Installation Floater Coverage

Installation Floater insurance is to be purchased when Builder's Risk insurance is inappropriate, or when Builder's Risk insurance will not respond, to cover damage or destruction to renovations, repairs or equipment being installed or otherwise being handled or stored by the Contractor, including off-site storage, transit and installation.

The amount of coverage should be adequate to provide full replacement value of the property, repairs, additions or equipment being installed, otherwise being handled or stored on or off premises. All risks coverage is preferred.

Motor Truck Cargo Coverage

If the Installation Floater insurance does not provide transportation coverage, separate Motor Truck Cargo or Transportation insurance is to be provided for materials or equipment transported in the Contractor's vehicles from place of receipt to building sites or other storage sites. All risks coverage is preferred.

Contractor's Equipment Coverage

Contractor's Equipment insurance is to be purchased to cover loss of equipment and machinery utilized in the performance of work by the Contractor. All risks coverage is preferred. The contract may declare self-insurance for contractor equipment.

Fidelity/Dishonesty/Liability Coverage – Third Party

Fidelity/Dishonesty/Liability insurance is to be purchased or extended to cover dishonest acts of the Other Party's employees resulting in a loss to decedent, i.e. theft of valuables.

- Fidelity/Dishonesty Coverage for Employer (Contractor)**
Fidelity/Dishonesty insurance is to be purchased to cover dishonest acts of the Contractor's employees, including but not limited to theft of vehicles, materials, supplies, equipment, tools, etc., especially property necessary to work performed.
- Fidelity/Dishonesty/Liability Coverage for TPO**
Fidelity/Dishonesty/Liability insurance is to be purchased or extended to cover dishonest acts of the Contractor's employees resulting in loss to the TPO.
- Electronic Data Liability Insurance**
The Other Party shall purchase Electronic Data Liability with limits of **N/A**
- Garage Liability Coverage**
Garage Liability insurance is to be purchased to cover the Contractor and its employees for its garage and related operations while in the care, custody and control of the TPO's vehicles.
- Garage Keepers Coverage (Legal Liability Form)**
Garage Keepers Liability insurance is to be purchased to cover damage or other loss, including comprehensive and collision risks, to the TPO's vehicles while in the care, custody and control of the Contractor. This form of coverage responds on a legal liability basis, and without regard to legal liability on an excess basis over any other collectible insurance.
- Damage to Premises Rented/Leased to you- (Legal Liability Form)**
Provide property coverage for leased premises due to liability incurred because the insured's negligence results in fire or explosion. Specified limit of liability required.
- Pollution Legal Liability Coverage** N/A
Pollution legal liability insurance is to be purchased to cover pollution and/or environmental legal liability which may arise from this agreement or contract.
- United States Longshoremen and Harbor workers Act Coverage**
The Workers Compensation policy is to be endorsed to include United States Longshoremen and Harbor workers Act Coverage for exposures which may arise from this agreement or contract.

ADDENDUM ACKNOWLEDGEMENT

I acknowledge receipt of the following addenda:

ADDENDUM NO. _____ DATED _____

Name of Firm: _____

Authorized Signature _____

Printed Name: _____

Title: _____

Date: _____

It is the responsibility of the firm to ensure that they have received addendums if issued. Call Transit Operations Coordinator, Lamar Hobbs, Bay County Board of County Commissioners, Transit Department at (850) 248-8167, or email lhobbs@baycountyfl.gov prior to submitting your submittal to ensure that you have received addendums.

ANTI-COLLUSION CLAUSE

Firm certifies that their response is made without prior understanding, agreement or connection with any Corporation, Firm or person submitting a response for the same services and is in all respects fair and without collusion or fraud.

Name of Firm: _____

Authorized Signature _____

Printed Name: _____

Title: _____

Date: _____

CONFLICT OF INTEREST DISCLOSURE FORM

1. No appointed or elected official, member or other officer or employee of the Bay County Transportation Planning Organization (TPO), or of the Bay County Board of County Commissioners (BOCC), or their affiliates and subsidiaries which consist of the Bay Town Trolley (BTT) and Bay Area Transportation (BAT) Public Transit Systems is interested directly or indirectly, in any manner whatsoever in or in the performance of the Contract or in the supplies, work or business to which it relates or in any portion of the profits thereof; or has been or will be offered or given any tangible consideration in connection with this Proposal/Contract.

Yes

No

If yes, please explain:

2. Proposer covenants that neither Proposer nor, to the best of the Proposer's knowledge after diligent inquiry, any director, officer, owner or employee of the Proposer has any interest nor shall they acquire any interest, directly or indirectly, which would conflict in any manner or degree with the faithful performance of the Contract hereunder.

Yes

No

If yes, please explain:

3. In the event Proposer has no prior knowledge of a conflict of interest as set forth in "1" and "2" above and hereafter acquires information which indicates that there may be an actual or apparent violation of any of the above, Proposer shall promptly bring such information to the attention of the Transit Operations Coordinator, Mr. Lamar Hobbs, Proposer shall thereafter cooperate with the any review and investigation of such information, and comply with any instruction it receives from the Transit Operations Coordinator in regard to remedying the situation.

Name of Firm: _____

Authorized Signature _____

Printed Name: _____

Title: _____

Date: _____

APPENDIX 1 – ARCHITECTURAL DESIGN SCOPE OF SERVICES

Section 1. Introduction

Section 2. Scope of Services

Attachment 1. Aerial photo location map.

Attachment 2. Conceptual Site Plan



APPENDIX 2 – FEDERAL CLAUSES

Acceptance of Federal Clauses

This procurement shall conform in all respects to the Federal Transit Administration's Federally Required and Other Model Clauses including but not limited to the clauses listed below:

- Fly America Requirements
- Seismic Safety
- Energy Conservation
- Access to Records and Reports
- Federal Changes
- No Government Obligation to Third Parties
- Program Fraud and False or Fraudulent Statements and Related Acts
- Termination
- Debarment and Suspension
- Civil Rights Laws and Regulations
- Patent Rights and Rights in Data
- Disadvantaged Business Enterprise (DBE)
- Prompt Payments
- Incorporation of Federal Transit Administration (FTA) Terms
- Conformance with ITS National Architecture
- Special Notification Requirements for States
- Access Requirements for Persons with Disabilities
- DHS Seal, Logo, and Flags
- Equal Employment Opportunity
- Safe Operation of Motor Vehicles
- Notification to FTA

Certification

Name of Firm: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____

Fly America Requirements

Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$3,500 or less, except for construction contracts over \$2,000). Contractor shall comply with 49 USC 40118 (the “Fly America” Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

Seismic Safety

Construction of new buildings or additions to existing buildings. These requirements do not apply to micro-purchases (\$3,500 or less, except for construction contracts over \$2,000). Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

Energy Conservation

All Contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000) Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

Access to Records and Reports

Applicability – As shown below. These requirements do not apply to micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser,

authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$150,000.

3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11). FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes

All Contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000) Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the 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

Applicability – All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

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

contract.

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

Program Fraud and False or Fraudulent Statements or Related Acts

Applicability – All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

- (1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.
- (2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(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.

Termination

Applicability – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$150,000

- a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.
- b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and

accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

- c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.
- d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner 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 insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. the recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and 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.

Government Wide Debarment and Suspension (Non Procurement)

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," <http://https.www.sam.gov,.proxy1.semalt.design> 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 <http://https.www.sam.gov,.proxy1.semalt.design> if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel.

Civil Rights Requirements

Applicability – All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

The following requirements apply to the underlying contract:

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

- a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute): (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,
- b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,
- c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with other applicable EEO laws and regulations,

as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer". (3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note,

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

program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under MAP-21 and previous legislation,

- e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,
- f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,
- g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of “employer,” (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. part 37, (b) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27, (c) U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S.

DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35, (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36, (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194, and (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,

- h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2,
- i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: 1) Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005,
- j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.
- k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

Patent and Rights in Data

Contracts Involving Experimental, Developmental, or Research Work (\$3,500 or less, except for construction contracts over \$2,000).

Patent Rights

A. General. The Recipient agrees that:

- (1) Depending on the nature of the Project, the Federal Government may acquire patent rights when the Recipient or Third Party Participant produces a patented or patentable: (a) Invention, (b) Improvement, or (c) Discovery, (2) The Federal Government's rights arise when the patent or patentable information is: (a) Conceived under the Project, or (b) Reduced to practice

under the Project, and (3) When a patent is issued or patented information becomes available as described in Patent Rights section A(2), the Recipient agrees to: (a) Notify FTA immediately, and (b) Provide a detailed report satisfactory to FTA,

B. Federal Rights. The Recipient agrees that:

- (1) Its rights and responsibilities, and the rights and responsibilities of each Third Party Participant, in that federally funded invention, improvement, or discovery will be determined as provided by applicable Federal laws, regulations, and guidance, including any waiver thereof, and (2) Unless the Federal Government determines otherwise in writing, irrespective of the Recipient's status or the status of any Third Party Participant as a large business, a small business, a State government, a State instrumentality, a local government, an Indian tribe, a nonprofit organization, an institution of higher education, or an individual, the Recipient agrees to transmit the Federal Government's patent rights to FTA as specified in: (a) 35 U.S.C. § 200 et seq., and (b) U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. part 401, and

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

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

Rights in Data and Copyrights

- A. Definition of "Subject Data." means recorded information: (1) Copyright. Whether or not copyrighted, and (2) Delivery. That is delivered or specified to be delivered under the Underlying Agreement,
- B. Examples of "Subject Data." Examples of "subject data": (1) Include, but are not limited to: (a) Computer software, (b) Standards, (c) Specifications, (d) Engineering drawings and associated lists, (e) Process sheets, (f) Manuals, (g) Technical reports, (h) Catalog item identifications, and (i) Related information, but (2) Do not include: (a) Financial reports, (b) Cost analyses, or (c) Other similar information used for Project administration,
- C. General Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the Recipient's Project supported by the Underlying Agreement: (1) Prohibitions. The Recipient may not: (a) Publish or reproduce any subject data in whole or in part, or in any manner or form, or (b) Permit others to do so, but (2) Exceptions. The prohibitions of Rights in Data and Copyrights C(1) do not apply to: (a) Publications or reproductions

for the Recipient's own internal use, (b) An institution of higher learning, (c) The portion of subject data that the Federal Government has previously released or approved for release to the public, or (d) The portion of data that has the Federal Government's prior written consent for release,

- D. Federal Rights in Data and Copyrights. The Recipient agrees that:
- (1) License Rights. The Recipient must provide a license to its "subject data" to the Federal Government, which license is: (a) Royalty-free, (b) Non-exclusive, and (c) Irrevocable, (2) Uses. The Federal Government's license must permit the Federal Government to take the following actions provided those actions are taken for Federal Government purposes: (a) Reproduce the subject data, (b) Publish the subject data, (c) Otherwise use the subject data, and (d) Permit other entities or individuals to use the subject data, and
- E. Special Federal Rights in Data for Research, Development, Demonstration, Deployment, and Special Studies Projects. In general, FTA's purpose in providing Federal funds for a research, development, demonstration, deployment, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to the Recipient and its Third Party Participants, therefore, the Recipient agrees that: (1) Publicly Available Report. When the Project is completed, it must provide a Project report that FTA may publish or make available for publication on the Internet, (2) Other Reports. It must provide other reports pertaining to the Project that FTA may request, (3) Availability of Subject Data. FTA may make available to any FTA Recipient or any of its Third Party Participants at any tier of the Project, either FTA's copyright license to the subject data or a copy of the subject data, except as the Federal Government determines otherwise in writing, (4) Identification of Information. It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA, (5) Incomplete Project. If the Project is not completed for any reason whatsoever, all data developed under the Project becomes "subject data" and must be delivered as the Federal Government may direct, but (6) Exception. Rights in Data and Copyrights Section E does not apply to an adaptation of automatic data processing equipment or program that is both: (a) For the Recipient's use, and (b) Acquired with FTA capital program funding,
- F. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19: (1) License fees and royalties for copyrighted material or trademarks derived from Project are program income, and (2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except: (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research-type project, and (b) As FTA determines otherwise in writing,

- G. Hold Harmless. Upon request by the Federal Government, the Recipient agrees that: (1) Violation by Recipient. (a) If it willfully or intentionally violates any: 1 Proprietary rights, 2 Copyrights, or 3 Right of privacy, and (b) Its violation occurs from any of the following uses of Project data: 1 Publication, 2 Translation, 3 Reproduction, 4 Delivery, 5 Use, or 6 Disposition, then (c) It will indemnify, save, and hold harmless against any liability, including costs and expenses of: 1 The Federal Government's officers acting within the scope of their official duties, 2 The Federal Government's employees acting within the scope of their official duties, and 3 Federal Government's agents acting within the scope of their official duties, but (2) Exceptions. The Recipient will not be required to indemnify the Federal Government for any liability described in Rights in Data and Copyrights section G(1) if: (a) Violation by Federal Officers, Employees or Agents. The violation is caused by the wrongful acts of Federal employees or agents, or (b) State law. If indemnification is prohibited or limited by applicable State law,
- H. Restrictions on Access to Patent Rights. Nothing in this Rights in Data and Copyrights section pertaining to rights in data either: (1) Implies a license to the Federal Government under any patent, or (2) May be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent,
- I. Data Developed Without Federal Funding or Support. The Recipient understands and agrees that in certain circumstances it may need to provide data developed without any Federal funding or support to FTA. Nevertheless: (1) Protections. Rights in Data and Copyrights Sections A, B, C, and D generally do not apply to data developed without Federal funding, even though that data may have been used in connection with the Project, and (2) Identification of Information. The Recipient understands and agrees that the Federal Government will not be able to protect data developed without Federal funding from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential," and
- J. Requirements to Release Data. The Recipient understands and agrees that the Federal Government may be required to release Project data and information the Recipient submits to the Federal Government as required by: (1) The Freedom of Information Act, 5 U.S.C. § 552, (2) Another applicable Federal law requiring access to Project records, (3) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," specifically 49 C.F.R. § 19.36(d), or (4) Other applicable Federal regulations and guidance pertaining to access to Project records.

Disadvantaged Business Enterprise

Contracts over \$3,500 awarded on the basis of a bid or proposal offering to use DBEs

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.
- b. The contractor shall not discriminate on the basis of race, color, 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

Applicability – All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written

approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

Incorporation of Federal Transit Administration (FTA) Terms

All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

Conformance with ITS National Architecture

Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 and as amended by MAP-21 23 U.S.C. § 517(d), note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg.1455 etseq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

Special Notification Requirements for States

Applies to States

a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:

- (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
- (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
- (3) The amount of federal assistance FTA has provided for a State Program or Project.

b. Documents - The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

Access Requirements for Persons with Disabilities

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

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

DHS Seal, Logo, and Flags

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FTA pre-approval.

Equal Employment Opportunity

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246

of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- (7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Safe Operation of Motor Vehicles

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or AGENCY. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

Notification to FTA

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its sub agreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

- (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's

administration or enforcement of federal laws, regulations, and requirements.

- (3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

APPENDIX 2 – FEDERAL CERTIFICATIONS

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

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

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

- (3) Requires the consent of a Federal official, and
 - g. It will require that each covered lower tier contractor and subcontractor:
 - (1) Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
 - (2) Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
 - a. Debarred from participation in its federally funded Project,
 - b. Suspended from participation in its federally funded Project,
 - c. Proposed for debarment from participation in its federally funded Project,
 - d. Declared ineligible to participate in its federally funded Project,
 - e. Voluntarily excluded from participation in its federally funded Project, or
 - f. Disqualified from participation in its federally funded Project, and
- (3) It will provide a written explanation as indicated on a page attached in FTA's TrAMS platform or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third-Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

Certification

Name of Firm: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____