



**313 Luck Avenue SW  
Roanoke, VA 24016**

**ISSUE DATE: July 16, 2018**

**REQUEST FOR PROPOSAL  
FOR  
STATEWIDE MULTIMODAL RIDEMATCHING AND  
TRIP PLANNING SYSTEM**

**Proposals Due:**

**August 31, 2018**

**4:00 PM**

## REQUEST FOR PROPOSAL

### STATEWIDE MULTIMODAL RIDEMATCHING AND TRIP PLANNING SYSTEM

The Roanoke Valley Alleghany-Regional Commission (RVARC) is seeking proposals from qualified firms to provide a ridematching and trip planning system.

All questions must be submitted before **5:00 p.m., August 3, 2018**. If necessary, any addenda will be issued and posted to the RVARC website (rvarc.org). All such addenda shall become a part of the solicitation documents, must be addressed in the proposal, if applicable, and shall become a Contract Document. The RVARC accepts no liability for late or non-receipt of addenda.

Proposals shall be received by the Roanoke Valley-Alleghany Regional Commission by **4:00 p.m., August 31, 2018**. Consultants shall submit **one (1) original and five (5) hard copies** of their proposal in a sealed envelope clearly marked on the outside with the company's name and **"Statewide Multimodal Ridematching and Trip Planning System"** **Additionally, one digital copy must be provided on a disc or portable drive as part of the submitted packet.** Any proposals received after the mentioned time and date will be returned to the firm unopened. Faxed or emailed proposals will not be accepted.

As this is a Request for Proposal, a selection committee will be established to review and evaluate all responses. The Commission reserves the right to cancel this RFP and/or reject any or all proposals and to waive any informalities or irregularities in any proposal. This section must be completed by the Consultant and must be returned with the proposal. In compliance with this Request for Proposal and to all the terms and conditions imposed herein and hereby incorporated by reference, the undersigned offers and agrees to furnish the services and/or items in accordance with the attached signed proposal or as mutually agreed upon by subsequent negotiation.

Legal Name and Address: \_\_\_\_\_ Date: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ By: \_\_\_\_\_  
\_\_\_\_\_ (Signature in ink)  
\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone (\_\_\_\_) \_\_\_\_\_

E-mail: \_\_\_\_\_

Business License #: \_\_\_\_\_

Virginia State Corporation Commission Identification Number: \_\_\_\_\_

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# Request for Proposals

## Statewide Multimodal Ridematching and Trip Planning System

### I. Purpose

The Roanoke Valley-Alleghany Regional Commission (RVARC) is issuing this Request for Proposal (RFP) to solicit proposals for a multimodal ridematching and trip planning system to be used throughout Virginia, but primarily in the central, southeast and southwest parts of the Commonwealth of Virginia. RVARC is issuing this RFP in conjunction with and on behalf of the Department of Rail and Public Transportation (DRPT), an agency of the Commonwealth of Virginia.

### II. Background

Since the 1970's there have been county, city and regional commuter assistance programs helping citizens and workers in Virginia find carpool, vanpool and transit service for commuting to work and other purposes. Over the years, the commuter assistance programs expanded their services from carpool/vanpool ridematching to working with employers and their employees, providing guaranteed/emergency ride home services, and providing contests or rewards. Currently, there are sixteen such programs. The agencies, such as RVARC, that operate commuter assistance programs receive the majority of the funding through the Virginia Department of Rail and Public Transportation (DRPT).

#### Central, Southeast and Southwest Virginia Programs

- RideFinders (serves the greater Richmond region) [www.ridefinders.com](http://www.ridefinders.com)
- TRAFFIX (serves the Hampton Roads region) [www.gohrt.com/services/traffix](http://www.gohrt.com/services/traffix)
- RIDE Solutions (serves Southwest Virginia) [www.ridesolutions.org](http://www.ridesolutions.org)
- RideShare (serves the greater Charlottesville and Central Shenandoah regions) [www.rideshareinfo.org](http://www.rideshareinfo.org)
- MidPenRideshare (serves the Middle Peninsula region) [www.midpenrideshare.org](http://www.midpenrideshare.org)

#### Northern Virginia Programs

- GOAlex (serves the City of Alexandria) [www.alexandriava/GOAlex](http://www.alexandriava/GOAlex)
- Arlington County Commuter Services (serves Arlington County) [www.commuterpage.com](http://www.commuterpage.com)

- Fairfax County Transportation Services Group (serves Fairfax County) [www.fairfaxcounty.gov/transportation/commuter-services](http://www.fairfaxcounty.gov/transportation/commuter-services)
- Live More Commute Less (Dulles Area Transportation Association (DATA) serves parts of the counties of Fairfax, Loudoun and Prince William and the Dulles International Airport) [www.livemore.us](http://www.livemore.us)
- Loudoun County Commuter Services (serves Loudoun County) [www.loudoun.gov/commute](http://www.loudoun.gov/commute)
- OmniMatch (serves Prince William County) [www.prtcctransit.org/ridesharing/](http://www.prtcctransit.org/ridesharing/)
- GWRideConnect (serves the greater Fredericksburg region) [www.gwrideconnect.org](http://www.gwrideconnect.org)
- Commuter Services (serves the greater Culpeper/Rappahannock region) [www.rrcommute.org](http://www.rrcommute.org)
- NeckRide.org (serves the Northern Neck region) [www.neckride.org](http://www.neckride.org)
- RideSmart (serves the Northern Shenandoah Valley region) [www.ridesmartva.org](http://www.ridesmartva.org)
- Vanpool Alliance (serves Northern Virginia) [www.vanpoolalliance.org](http://www.vanpoolalliance.org)

The commuter assistance programs provide, through their websites and direct interaction via phone or at a promotional event, information to the public about their commuting options and encourage single occupant vehicle (SOV) drivers to carpool, vanpool, use transit, and bike or bike share. Some programs also provide Guaranteed/Emergency Ride Home (G/ERH) services in case a commuter needs to get home unexpectedly and does not have their automobile, because they did not drive to work. The G/ERH trips are provided free or for a nominal payment by taxi, transit, rental car, and transportation network companies.

Staff from commuter assistance programs also work with employers and their employees to provide and promote non-SOV commute modes, help employers set up commute benefits and telework programs.

Currently, the commuter assistance programs in the central, southeastern and southwestern areas use different ridematching systems that are not connected to each other and use different databases. That means a commuter that lives in one region and works in another must contact or use more than one commuter assistance program to maximize their options and ridematching potential. The Northern Virginia programs use a single system as part of the Commuter Connections network ([www.commuterconnections.corm](http://www.commuterconnections.corm)).

Each commuter assistance has their own brand and will keep their public facing brand. The new system will either need to assume the commuter assistance program brand, cobrand or develop a single statewide brand for the system.

### **III. Purpose and Statement of Needs**

The main purpose of this RFP is to have the commuter assistance programs and the public in the central, southeastern and southwestern areas use the same ridematching system and consolidate the databases from each of the current systems into one. requested through this solicitation. This RFP will not replace the Commuter Connections system currently used by the Northern Virginia programs. However, a few of those programs and the public in those areas may use the new system to assist the public with travel to central, southeastern and southwestern areas.

Although this new system will be for the public to use on a self-service basis, there is still a need for staff of the commuter assistance programs to use the new system to help the public. The system should be accessible to the public via a mobile app and internet.

Through this RFP, RVARC and DRPT are seeking to procure a system that provides commute and travel options to the public so they can make informed decisions about the travel mode or modes, and help them easily access these services. Also, it is very important to DRPT and RVARC that the new system provide a means to measure performance of the commuter assistance programs and travel modes. Examples of performance measures are, but not limited to: Placement rate (rate at which users are placed in a non-single occupant vehicle mode); carpools formed; carpool users; vanpools formed; vanpool riders; transit users; bike share users and trips; G/ERH registrants, users, trip characteristics and payments; number of users; what features are used and how often; what users are seeking; and, bounce rates.

RVARC and DRPT are looking for innovative solutions to the following needs.

#### **Services Needed**

**Users** – Public, vanpool coordinators, commuter assistance program administrators and state administrators at DRPT.

- 1. Multimodal Ridematching/Trip Planning** – Provides all transportation modal options for the entire trip.
- 2. Multi-Platform** – Provides both online and mobile application access.
- 3. Easy to Use** – Minimal clicks or touches.
- 4. Real-Time and Planned Results** – Matching with carpools, vanpools and transit should be instant and in real-time and for future trips.

5. **Multimodal Matching and Planning** – Trip options include carpool, vanpool, transit and bike share.
6. **Matching and Planning for All Trip Types** – Ability to provide matching and planning for commute to work trips and events (e.g. concerts, sporting events, etc.) and “school pools” for faculty, students and parents.
7. **Customizing of Routes and Locations** – Ability for users to select pick-up, drop-off and meeting locations, such as park-and-ride locations, transit stations, bike share locations, single employer locations and office parks.
8. **Mapping of Results** – Travel and transit routes, pick-up and drop-off locations, including park-and-ride lots and transit stations are shown on up to date maps.
9. **Updating of Data** – Ability to update park-and-ride, transit, vanpool and bike share data to keep it current.
10. **Vanpool/Microtransit Matching and Tracking** – Ability for commuters to find an available seat on an existing vanpool or microtransit vehicle. Ability for vanpool coordinators to find commuters looking for vanpool rides. Tracking of individual vanpools and vanpool rosters.
11. **Guaranteed/Emergency Ride Home Functions** – Provides ability for public to register and request a trip, administrator approval/denial of trip, tracking of trips used and remaining trips, re-registration, scheduling of trip and billing and payment with service providers to include taxi, rental car and transportation network companies.
12. **Communications Among Ride Seekers and Drivers/Operators** – Ability for users to easily contact each other to confirm rides. Potentially across multiple platforms (social media and other applications).
13. **Administrative Functions** – Ability for the customer to easily contact a commuter assistance program administrator if they cannot find a ride or need additional assistance with their commute.
14. **Contests, Promotions and Rewards** – Ability to conduct contests and challenges, record Try Transit Week pledges, Bike to Work promotion responses, Telework Week promotion responses, trip logging, and provide rewards and incentives.
15. **Reporting Features** – Ability for commuter assistance program administrator and state administrators to know when a trip match is not found for follow up

with the customer, run reports showing usage, success rates, trip origins and destination, look up number of GRH/ERH registrants and program data, look up registrants and users by employer name and locations, etc.

**16. Performance Measurement** – Ability for administrators to conduct surveys and obtain customers feedback and data to determine success of moving more people and reducing auto congestion.

**17. Data Integration** – Ability to transfer existing data from existing ridematching systems into the selected system. Ability to dump employee origin data from an employer into the system.

**18. Reliability, Security and Data Protection** – Ideally a system/service that is accessible to the users 24 hours/day, 7 days/week with no or minimum down time is optimal. Also, as there will be personal information entered by the user, the system and data need to be secure and protected.

#### **IV. Procurement Schedule**

Issue Date of RFP	July 16, 2018
Pre-Proposal Conference	July 26, 2018
Deadline for receipt of questions	August 3, 2018
Deadline for receipt of Proposals	August 31, 2018
Oral Presentations (if needed)	Week of September 17, 2018**
Negotiations	Week of October 1, 2018**
Proposed Contract Award	October 19, 2018**

\*\*Theses dates may change

All inquiries and questions must be directed in writing to:  
Jeremy Holmes  
[jholmes@rvarc.org](mailto:jholmes@rvarc.org)

The Pre-Proposal Conference will be held on July 26, 2018 at 10 a.m. at RVARC, 313 Luck Avenue SW, Roanoke, VA 24016. A conference call number has been set up for those that cannot attend in person. The conference call number is 1-866-842-5779, conference code 6756108734. The purpose of the pre-proposal conference is to allow potential Offerors the opportunity to present questions and obtain clarification relative to any facet of this solicitation. Firms are not required to attend the pre-proposal conference in order to submit a response to this RFP, but attendance is recommended. Directions to the conference location can be obtain by calling 504-343-4417 or online at rvarc.org.

**V. Contract Term**

The initial contract term shall be for a period of two years from date of award, renewable for three successive one-year periods. It is understood and agreed that this contract shall be subject to a funding stream to the Roanoke Valley-Alleghany Regional Commission from the Virginia Department of Rail and Public Transportation. Should the funding cease for this contract, the contract shall be terminated when existing funds are exhausted. There shall be no penalty should the Regional Commission fail to obtain expected funding for this contract.

**VI. Proposal Submission Requirements**

The Offeror (“Offeror”) is the firm submitting the proposal. In order to be considered for selection, Offerors must submit a complete sealed written response to this RFP. One original of each proposal and five copies, each of which are marked “Copy,” must be submitted to RVARC in addition to one electronic version on a flash drive.

Proprietary information must be clearly marked as proprietary prior to submittal. If the Offeror wishes to submit a version of the proposal that has proprietary information redacted, the redacted version must be submitted in electronic format on a flash drive and must redact all proprietary information. Section numbers which are redacted must be identified as follows: Example: Section 3, paragraph B: “Redacted.” The Offeror is responsible for ensuring that the redacted version of the proposal is carefully edited, altered, and refined in order to protect and maintain complete confidentiality of protected information.

No other distribution of the written proposal shall be made by the Offeror.

The signed proposal must be returned in an envelope or package, sealed and identified as follow:

From: \_\_\_\_\_ 8/31/2018 4:00 p.m.  
Name of Offeror Due Date Time

\_\_\_\_\_  
Street or Box Number

\_\_\_\_\_  
City, State, Zip Code

Statewide Multimodal Ridematching and Trip Planning System  
RFP Title

Name of Contract/Purchase Officer or Buyer: Jeremy Holmes

Proposals must be received at the following location by August 31, 2018 at 4:00p.m

Roanoke Valley-Alleghany Regional Commission  
313 Luck Avenue SW  
Roanoke, VA 24016

In addition, the Offeror may be required to make a subsequent oral presentation detailing how the Offeror would approach the specific program objectives outlined in the Statement of Needs. RVARC reserves the right to ask any Offeror to submit information missing from its offer, to clarify its offer, and to submit additional information which RVARC deems desirable, and does not affect quality, quantity, price or delivery.

### **Written Proposal Preparation**

Partnerships with other firms/vendors are acceptable and encouraged.

Proposals shall be signed by an authorized representative of the Offeror. All information requested must be submitted. Failure to submit all information requested may result in RVARC requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. Proposals, which are substantially incomplete or lack key information, may be rejected by RVARC at its discretion.

Proposals must be organized in the order in which the requirements are presented in the RFP. All pages of the proposal must be numbered. Each section in the proposal must reference the corresponding need cited in the RFP. The proposal must contain a table of contents which cross-references the RFP requirements. Information which the Offeror desires to present that does not fall within any of the requirements of the RFP must be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.

Proposals should be prepared simply and economically, providing straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content. Each copy of the proposal must be in a single volume where practical. Elaborate brochures and other representations beyond that sufficient to present a complete and effective proposal are neither required nor desired. No proposal, in its entirety, should exceed 100 pages one-sided.

### **Specific Proposal Requirements**

Proposals must be as thorough and detailed as possible so that RVARC may properly evaluate the Offeror's capabilities to provide the required services. Offerors are required to submit the following items in order for their proposal to be considered complete.

Proposals shall be binding upon the Offeror for 120 days following the proposal due date. If the proposal is not withdrawn at that time, it remains in effect until an award is made or the solicitation is canceled. Every effort will be made by RVARC to provide status information during the selection process.

**RFP Cover Sheet** – The RFP Cover Sheet which is page two of this RFP shall be completely filled out and signed as required.

**State Corporation Commission (SCC) Identification Number** – See Attachment A - Special Terms and Conditions for the SCC Identification Number reporting requirement.

### **Tab 1 Services Needed**

The Offeror must provide a detailed description of if and how the proposed system meets each of the needs describing in the Services Needed in this RFP. It is not enough to just state that they proposed system meets a need. An explanation of how the system functions to meet each need. If a service need is not available in the current system, but can be added, an explanation of how that service will be added.

### **Tab 2 Experience and Qualifications**

The Offeror must describe the skills and qualifications it has available to perform the various types of tasks described in the Statement of Needs. The key personnel who will be assigned to this project and tasks they will perform. The Offeror shall provide all of the following information concerning its company, subcontractor and personnel qualifications.

- A. A detailed statement indicating the organizational structure under which the firm proposes to conduct business. If more than one firm is involved in this project, state the type of arrangement between the firms and the percentage of work to be performed by each.
- B. A list of the key personnel including subcontractors who could be assigned to the various tasks identified. Give the relevant experience record of each and include resumes and any certifications.
- C. A list of references to include name, address, telephone number, email address, project, and dollar amount of project.

- D. A Certificate of Insurance with at least the minimum amount of coverage cited in the Insurance clause in Attachment B - Required General Terms and Conditions of the RFP.

**Tab 3 Contact Person**

The primary Offeror must identify the name, telephone number and email address for the contact person who will be responsible for coordinating the efforts and personnel of all parties and subcontractors involved in the proposal.

**Tab 4 Data Security and Privacy**

Data security and privacy are important to the provision of service to the public. The Offeror shall describe the security features that will keep the data secure, data ownership and privacy policy.

**Tab 5 Pricing**

Offerors shall provide separate pricing for each of the following: initial set up; out of pocket expenses; training of administrators; one year (12 full months) of service; and, annual service operations for each year after the first year of service. Pricing shall include details of what services and functions, updates, maintenance, etc. are included in the pricing or the price of each, if priced separately.

**Tab 6 Timeline**

Offerors shall provide a detailed timeline of the set up and installation of the system and any other pertinent tasks to be completed.

**VII. Evaluation Criteria**

Proposals will be evaluation on the system's ability to meet as many needs as possible, how easy the system is to use and price. A selection team will review all proposals and evaluate proposals on the following weighted criteria:

1. Functionality of the system, ease of use, ability to meet the Services Needs and the number of those needs the system meets. (60 points)
2. Experience and qualifications of the firms and personnel. (25 points)
3. Price (15 points)

Funding for this project is provided by DRPT and award of a contract is subject to continuation of DRPT's funding. RVARC may cancel this RFP and reject proposals at any time prior to an award and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous. **RVARC reserves the right to make multiple awards based on this solicitation.**

## ATTACHMENT A

### REQUIRED GENERAL TERMS AND CONDITIONS

**A. APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia, without regard to its choice of law provisions, and any litigation with respect thereto shall be brought in the circuit courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (Code of Virginia, § 2.2-4366). The contractor shall comply with all applicable federal, state and local laws, rules and regulations.

**B. ANTI-DISCRIMINATION:** By submitting their (bids/proposals), (bidders/offerors) certify to RVARC that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA). If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
  - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
  - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

**C. ETHICS IN PUBLIC CONTRACTING:** By submitting their (bids/proposals), (bidders/offerors) certify that their (bids/proposals) are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other (bidder/offeror), supplier, manufacturer or subcontractor in connection with their (bid/proposal), and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

**D. IMMIGRATION REFORM AND CONTROL ACT OF 1986:** Applicable for all contracts over \$10,000: By entering into a written contract with RVARC, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

**E. DEBARMENT STATUS:** By participating in this procurement, the vendor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by this solicitation. Vendor further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.

If a vendor is created or used for the purpose of circumventing a debarment decision against another vendor, the nondebarred vendor will be debarred for the same time period as the debarred vendor.

**F. ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to RVARC all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by RVARC under said contract.

**G. MANDATORY USE OF FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs:**

1. (For Invitation For Bids): Failure to submit a bid on the official form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the RVARC reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the RVARC may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.

2. (For Request For Proposals): Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal;

however, RVARC reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

**H. CLARIFICATION OF TERMS:** If any prospective (bidder/offeror) has questions about the specifications or other solicitation documents, the prospective (bidder/offeror) should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

**I. ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of RVARC.

**J. DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, RVARC, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which RVARC may have.

**K. TAXES:** Sales to RVARC are normally exempt from State sales tax. State sales and use tax certificates of exemption will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes.

**L. DRUG-FREE WORKPLACE:** Applicable for all contracts over \$10,000:

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

**M. NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If

the award of this contract is made to a faithbased organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

**N. AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the RVARC shall be bound hereunder only to the extent that funding is available or may hereafter become legally available for the purpose of this contract.

**O. BID PRICE CURRENCY:** Unless stated otherwise in the solicitation, bidders/offerors shall state bid/offer prices in US dollars.

**P. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the Virginia Public Procurement Act shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

**ATTACHMENT B**  
**SPECIAL TERMS AND CONDITIONS**

**1. CHANGES TO THE RATES ON THE PRICE SCHEDULE:** Rates may be revised by mutual agreement of the Roanoke Valley-Alleghany Regional Commission (RVARC) and the Offeror 60 days prior to the renewal periods starting date. If RVARC elects to exercise the option to revise rates for the three one-year renewal periods the contract prices for the increase shall not exceed the contract prices stated for the third year of the original contract increased/decreased by more than the percentage increase/decrease of the Services Category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest 12 months for which statistics are available. The Offeror shall convey in writing its request to raise/lower prices to RVARC no later than 60 days prior to the renewal periods starting date. Applications for price increases shall be substantiated in writing with the request. DRPT shall have sole discretion in its decision to allow price increases.

**2. RENEWAL OF CONTRACT:** This contract may be renewed upon written agreement of both parties for two successive one-year periods, under the terms of the current contract, at approximately 60 days prior to the expiration.

**3. CANCELLATION OF CONTRACT:** RVARC reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the Offeror. After the initial two year contract period, the resulting contract may be terminated by either party, without penalty, upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the Offeror of the obligation to deliver any outstanding orders issued prior to the effective date of cancellation.

**4. AUDIT:** The Offeror shall retain all books, records, and other documents relative to this contract for five years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The Commonwealth of Virginia, RVARC, and its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

**5. KEY PERSONNEL/SUBCONTRACTOR:** People identified in terms of this RFP as “key personnel” who will work on the service contract, must continue to work on this contract for its duration so long as they continue to be employed by the Offeror unless removed from work on the contract with the consent of RVARC.

RVARC reserves the right to approve any personnel or subcontractor proposed for the work described in this RFP and/or any subsequent purchase order resulting from this RFP. RVARC will provide written justification to the Offeror when approval is not granted. RVARC will provide the Offeror with copies of all written approvals.

**6. PRIME OFFEROR RESPONSIBILITIES FOR SUBCONTRACTS:** No portion of the work shall be subcontracted with a subcontractor not already included on the contract without a

prior request from the Offeror and written consent of the RVARC Procurement Manager. In the event that the Offeror desires to subcontract some part of the work specified herein, the Offeror shall furnish the Procurement Manager and Program Manager with the names, qualifications and experience of their proposed subcontractors. The Offeror shall, however, remain fully liable and responsible for the work to be done by its subcontractors and shall assure compliance with all requirements of the contract.

**7. APPROPRIATE LICENSURE, CERTIFICATIONS, AND/OR CREDENTIALS:** The Offeror must submit copies of appropriate licensure, certifications, and/or credentials subsequently upon award and as requested by RVARC.

**8. CLAIMS:** The Offeror shall be responsible for all damage and expense to person or property caused by its negligent activities including, without limitation, those which it chooses to deliver through its subcontractors, agents or employees, in connection with the services required under this Agreement. Further, it is expressly understood that the Offeror shall defend and hold harmless the Commonwealth of Virginia, RVARC, its officers, agents, employees and any other authorized users from and against any and all damages, claims, suits, judgments, expenses, actions, and costs of every name and description caused by any negligent act or omission in the performance by the Offeror, including, without limitation, those which it chooses to deliver through its subcontractors, agents or employees, of the services under this Agreement.

**9. CONTRACTUAL CLAIMS AND DISPUTES:** Contractual claims arising after final payment shall be governed by § 2.2-4363(A) of the Code of Virginia. Claims shall be submitted to the Director of RVARC who will render a decision within 30 days. Contractual disputes arising during the course of performance shall be submitted to the CFO of RVARC who will make a decision in 30 working days, which will be final. Vendors will not be precluded from filing a claim at the conclusion of performance as a result of the decision made during the course of contract performance.

**10. ADVERTISEMENT:** In the event a contract is awarded for supplies, equipment, or services resulting from this proposal, no indication of such sales or services to DRPT or RVARC will be used in product literature. The Offeror shall not state in any of its advertising or product literature that DRPT or RVARC has purchased or uses any of its products or services, and the Offeror shall not include DRPT or RVARC in any client list in advertising and promotional materials.

**11. INTELLECTUAL PROPERTY RIGHTS:** RVARC and DRPT shall have exclusive rights to all data and intellectual property generated in the course of the project. Intellectual property includes all inventions subject to the United States (U.S.) Patent System. This shall be inclusive but not limited to, new processes, materials, compounds and chemicals, and all creations subject to the U.S. Copyright Act of 1976, as amended, including but not limited to printed material, software, drawings, blueprints, and compilations such as electronic databases. Furthermore, RVARC and DRPT shall have all rights, title, and interest in or to any invention reduced to practice pursuant to a resulting contract. Proposals shall recognize the requirements of public

sector agencies and of public policy generally, including the Freedom of Information Act, State statutes and agency rules on release of public records, and data confidentiality.

All copyright material created pursuant to this contract shall be considered work made for hire and shall belong exclusively to RVARC and DRPT. Neither RVARC, DRPT, nor the Offeror intends that any copyright material created pursuant to the contract, together with any other copyright material with which it may be combined or used, be a “joint work” under the copyright laws. In the case that either in whole or part of any such copyright material not be deemed work made for hire, or is deemed a joint work, then Offeror agrees to assign and does hereby irrevocably assign its copyright interest therein to RVARC and DRPT. RVARC may reasonably request documents required for the purpose of acknowledging or implementing such assignment.

The Offeror warrants that no individual, other than regular employees and subcontractors of the Offeror, RVARC regular employees, agents, or assigns or additional users, while working within the scope of their employment or contracted duty, shall participate in the creation of any intellectual property pursuant to the contract. If this situation should arise, such individual and his or her employer, if any, must agree in writing to assign the intellectual property rights, as described herein, for work performed under this contract to RVARC either directly or through the Offeror.

RVARC and DRPT shall have all rights, title and interest in or to any invention reduced to practice pursuant to this contract. The Offeror shall not patent any invention conceived in the course of performing this contract. The Offeror hereby agrees that, notwithstanding anything else in this contract, in the event of any breach of this contract by RVARC, the remedies of the Offeror shall not include any right to rescind or otherwise revoke or invalidate the provisions of this section. Similarly, no termination of this contract by RVARC shall have the effect of rescinding the provisions of this section.

RVARC is only entitled to the intellectual property rights for deliverables and associated documentation produced by the Offeror for which RVARC has fully paid the Offeror as the contract is completed or as the contract is terminated for any reason.

Copyright or pre-existing work of the Offeror shall remain the property of the Offeror. The Offeror grants to RVARC and DRPT a perpetual, royalty-free, irrevocable, worldwide, non-exclusive license to use such pre-existing work in connection with exercising the rights of ownership granted to RVARC pursuant to this section.

Notwithstanding anything herein to the contrary, RVARC acknowledges that as part of the Offeror’s provision of services hereunder, the Offeror may license third-party software or acquire proprietary works of authorship (collectively referred to as “products”), which have been developed by third parties. RVARC must approve the third-party license agreements and the acquisition of these third-party products prior to their use by the Offeror and RVARC agrees that these products will remain the sole property of the third party.

The Offeror shall grant RVARC license to use all software developed by the Offeror under this contract in other applications within Virginia as RVARC sees fit. Should the Offeror desire to re-

use software developed under this contract for other projects (both RVARC contracts and others), RVARC must be notified in writing 60 days prior to such use. Furthermore, RVARC shall be justly compensated for the re-use of such software.

Compensation shall be negotiated and agreed upon prior to RVARC releasing software rights. Typically, RVARC prefers increased software capabilities and/or functionality instead of monetary compensation.

**12. PATENT RIGHTS:** If any invention, improvement or discovery of the Offeror or any of its subcontractors is conceived or first actually reduced to practice in the course of or under this project which invention, improvement or discovery may be patentable under the Patent Laws of the United States of America or any foreign country, the Offeror shall immediately notify RVARC and provide a detailed report. The rights and responsibilities of the Offeror, its subcontractors, and RVARC with respect to such invention will be determined in accordance with applicable Federal laws, regulations, policies, and waivers thereof.

**13. PROTECTION OF PERSONS AND PROPERTY:**

A. The Offeror expressly undertakes both directly and through its subcontractors, to take every precaution at all times for the protection of persons and property which may come on the building site or be affected by the Offeror's operation in connection with the work.

B. The Offeror shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work.

C. The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia, issued by the Department of Labor and Industry under Title 40.1 of the Code of Virginia shall apply to all work under this contract.

D. The Offeror shall continuously maintain adequate protection of all work from damage and shall protect the owner's property from injury or loss arising in connection with this contract. The Offeror should make good any such damage, injury, or loss, except such as may be directly due to errors in the contract documents or caused by agents or employees of the owner. The Offeror shall adequately protect adjacent property to prevent any damage to it or loss of use and enjoyment by its owners. The Offeror shall provide and maintain all passageways, guard fences, lights, and other facilities for protection required by public authorities, local conditions, any of the contract documents or erected for the fulfillment of his obligations for the protection of persons and property.

E. In an emergency affecting the safety or life of persons or of the work, or of the adjoining property, the Offeror, without special instruction or authorization from the owner, shall act, at its discretion, to prevent such threatened loss or injury. Also, should the Offeror, to prevent threatened loss or injury, be instructed or authorized to act by the owner, the Offeror shall so act immediately, without appeal.

Any additional compensation or extension of time claimed by the Offeror on account of any emergency work shall be determined as provided by Attachment A – Required General Terms and Conditions.

**14. MANNER OF CONDUCTING WORK AT JOB SITE:** All work shall be performed according to the industry standards and to the complete satisfaction of RVARC.

A. The Offeror shall be responsible for the conduct of all personnel while at the job site. All personnel involved with the work shall obey all rules and regulations of RVARC.

B. Sexual harassment of any employee, RVARC or Offeror, will not be tolerated and is to be reported immediately to the RVARC Program Manager.

All work to be conducted by the Offeror in any facility shall be coordinated in advance with the RVARC Program Manager. If applicable, the Offeror shall coordinate his/her work efforts with other existing Offeror/agency work efforts through the RVARC Program Manager. All Offeror work shall take place on non-holiday weekdays between the hours of 8:00 A.M. and 5:00 P.M, unless otherwise approved by the RVARC Program Manager.

**15. POLICY OF EQUAL EMPLOYMENT:** RVARC is an equal opportunity/affirmative action employer. RVARC encourages all vendors to establish and maintain a policy to ensure equal opportunity employment.

**16. STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:** Pursuant to Code of Virginia, §2.2-4311.2 subsection B, an offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its proposal the identification number issued to it by the State Corporation Commission (SCC). Any offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its proposal a statement describing why the offeror is not required to be so authorized. Indicate the above information Attachment I – SCC Form. Offeror agrees that the process by which compliance with Titles 13.1 and 50 is checked during the solicitation stage (including without limitation Attachment I - SCC Form) is streamlined and not definitive, and the Commonwealth’s use and acceptance of such form, or its acceptance of Offeror’s statement describing why the Offeror was not legally required to be authorized to transact business in the Commonwealth, shall not be conclusive of the issue and shall not be relied upon by the Offeror as demonstrating compliance.

**ATTACHMENT C**

**State Corporation Commission Form**

**Virginia State Corporation Commission (SCC) registration information. The Offeror:**

Is a corporation or other business entity with the following SCC identification number:  
\_\_\_\_\_ **-OR-**

is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust business trust **-OR-**

is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the Offeror in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from Offeror's out-of-state location) **-OR-**

is an out-of-state business entity that is including with this proposal an opinion of legal counsel which accurately and completely discloses the undersigned Offeror's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1- 757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

**\*\*NOTE\*\*** >> Check the following box if you have not completed any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for proposals (the Commonwealth reserves the right to determine in its sole discretion whether to allow such a waiver.

## **ATTACHMENT D FEDERAL TERMS AND CONDITIONS**

### **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.

### **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.

### **Clean Water**

Applicability – All Contracts and Subcontracts over \$150,000. Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

### **Lobbying**

Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$150,000 Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 10465 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$150,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its

behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

### **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.

### **Clean Air**

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

**No Government Obligation to Third Parties** Applicability – All contracts except micro-purchases (\$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 closeout 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.

### **Contracts Involving Federal Privacy Act Requirements**

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000) The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

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

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

### **Civil Rights Requirements**

Applicability – All contracts except micro-purchases (\$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). 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. 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. § 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. § 5332, as stated in section a.

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

g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including:

(a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of “employer,” (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. part 37, (b) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27, (c) U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35, (f) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36, (g) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194, and (j) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,

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

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

Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005.

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

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

### **Breaches and Dispute Resolution**

All contracts over \$150,000 Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient's authorized representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient's CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved.

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

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

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the recipient or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

### **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/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor’s receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor’s work by the recipient and contractor’s receipt of the partial retainage payment related to the subcontractor’s work.

f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

**Prompt payment**

Applicability – All contracts except micro-purchases (\$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.

**Other Federal Requirements**

The following requirements are not federal clauses.

**Full and Open Competition**

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

**Prohibition Against Exclusionary or Discriminatory Specifications**

Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

**Conformance with ITS National Architecture**

Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 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.

**Notification of Federal Participation**

To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more,

contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

### **Interest of Members or Delegates to Congress**

No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

### **Ineligible Contractors and Subcontractors**

Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

### **Other Contract Requirements**

To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those provisions attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

### **Compliance with Federal Regulations**

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

### **Real Property**

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

### **Access to Services for Persons with Limited English Proficiency**

To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

### **Environmental Justice**

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

### **Environmental Protections**

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

### **Geographic Information and Related Spatial Data**

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

### **Geographic Preference**

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

### **Organizational Conflicts of Interest**

The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant’s objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose.

Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

### **Federal Single Audit Requirements for State Administered Federally Aid Funded Projects Only**

Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, “Audits of States, Local Governments, and Non Profit Organizations” (replaced with 2 CFR Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” effective December 26, 2014 as applicable). Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO). Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity’s fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation’s Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

### **Veterans Preference**

Veterans Preference. As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients: (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

### **Safe Operation of Motor Vehicles**

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.

**Catalog of Federal Domestic Assistance (CFDA) Identification Number**

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

**CFDA number for the Federal Transportation Administration**

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