

REQUEST FOR PROPOSALS

Uptown Canandaigua Mixed-Use & Transportation Corridor Feasibility Study

Town of Canandaigua

Attn: Doug Finch, Town Manager
5440 State Route 5 & 20 West
Canandaigua, NY 14424

Issue Date: July 21, 2017

Updated: August 10, 2017

Town of Canandaigua

5440 Routes 5 & 20 West
Canandaigua, NY 14424
(585) 394-1120
www.townofcanandaigua.org
Established 1789

Request for Proposals for Uptown Canandaigua Mixed-Use and Transportation Corridor Feasibility Study Consulting Services

INTRODUCTION

The Town of Canandaigua (herein after referred as the “Town”) has been awarded a UPWP Grant through the Genesee Transportation Council for the purposes of conducting a multi-modal transportation plan that covers a specific geographic section of the Town referred to as “Uptown”. The selected consultant will put forward a proposal that will assist the Town in identifying transportation issues and concerns for all modes; and will develop recommendations to improve safety and accessibility for tourists, residents, workers, and users of wheeled devices relating to the geographic area.

The maximum contract amount for this project (UPWP Task #7704) is \$90,000.

PROPOSAL SUBMISSION:

The Request for Proposals (RFP) is posted on the Town of Canandaigua’s website at www.townofcanandaigua.org. *NOTE: Timeline updated August 10, 2017.*

RFP released:	July 21, 2017
Pre-Proposal Conference:	July 31, 2017 <i>(Town of Canandaigua, Town Hall, 5440 Route 5 & 20 West Canandaigua)</i>
Deadline for Questions:	August 18, 2017
Final Q & A posting:	August 23, 2017
Proposals due to Town:	September 1, 2017
Potential Interviews:	September 2017
Selection:	September/October 2017
Contract Begins:	October/November 2017
Contract Ends:	November 2018

Proposals **MUST BE RECEIVED** by 4:00 p.m. September 1, 2017. Proposals must be submitted through postal mail to:

Town of Canandaigua
Attn: Doug Finch, Town Manager
5440 State Route 5 & 20 West
Canandaigua, NY 14424

Email and facsimile copies will not be accepted.

QUESTIONS CONCERNING THE RFQ/RFP

All questions or clarifications needed regarding this RFP should be submitted to the above address with Attn to: Sarah Reynolds or by email to sreynolds@townofcanandaigua.org. All questions must be submitted by 4:00 p.m., August 18, 2017.

A proposed consultant's Q&A meeting will be held on July 31, 2017 @ Noon at the Canandaigua Town Hall @ 5440 Route 5 & 20 Canandaigua – you are welcome to attend.

Uptown Canandaigua Mixed-Use and Transportation Corridor Feasibility Study RFP

PROJECT PURPOSE

The purpose of this project is to plan for the future of the Uptown region of the Town of Canandaigua as it relates to the transportation and place-making needs, current and future projected, of all users in Uptown Canandaigua.

BACKGROUND

Uptown Canandaigua Mixed-Use and Transportation Corridor Feasibility Study will provide a community-centered multimodal transportation plan. This plan will encompass walking, biking, driving, deliveries, community identity and place-making. The project area this study encompasses is approximately 1,400 acres. It extends from the Town's boundary with the City of Canandaigua at North Street north to Thomas/Emerson Road and from the Airport west of State Route 332 to County Road 28, and North Road to Canandaigua Academy. A map of the Study Area can be found on page 15. This area has been identified in the Town of Canandaigua's Comprehensive Plan as a growth node for various uses, including residential, commercial and industrial. This includes residential growth for people of all ages, abilities, and income levels; promotion of a sustainable tax base; expansion of the Town's recreational resources; and, embracing complete streetscapes for all users.

The required outcome of the project is a list of recommendations for improving the multi-modal transportation infrastructure in the study area. The recommendations should include options for improving the walking, biking and transit infrastructure. Particular concern should be given to ensure all recommendations adhere to universal design principles that ensure access by the broadest user groups possible. Recommendations should be prioritized and given rough cost estimates.

The Uptown area in the Town of Canandaigua is one of the fastest growing regions within the Town. Current development and projected trends in this area include multi-family and low-maintenance residential units as well as commercial development. Due to the low-maintenance options, this area tends to attract "empty-nesters" and millennial generation families. The demographics include persons with lower income levels as well as persons who have special housing needs. This area includes nearly one thousand multi-family style dwellings including apartments and townhomes, a regional airport, and the largest private employer in Ontario County. Additionally the area is bisected by a four-lane NY State highway, State Route 332. This State Route is a freight corridor, and freight/truck traffic needs must be considered. The area is home to municipal parks, Canandaigua Academy (which has approximately 1,200 students and 170 faculty and staff), and serves as a destination for pedestrians who currently walk along the roadways.

Additionally, it should be noted that in 2015 a group of students from Sustainability Department of Hobart and William Smith College in Geneva studied this area to assist the Town as a starting point. Those findings are available online at:

http://townofcanandaigua.org/documents/large_files/HWS_MULTIMODAL_STUDY.pdf

PROJECT OVERSIGHT

The Town of Canandaigua Town Board will have ultimate oversight over this project. The Project Advisory Committee will include individuals from the Citizens Implementation Committee (CIC), New York State DOT, the Ontario County Department of Public Works, Development Office staff, GTC, and the Town Manager.

SCOPE OF WORK

1. Study Coordination

The Consultant will coordinate all project activities with the Town Development Office (Planning). A Steering Committee consisting of representatives of the Study Participants identified in Section D. will be convened and meet as necessary to guide this Study. The Consultant will conduct two to four Steering Committee meetings.

2. Inventory of Existing and Planned Conditions

To support the analysis and decision-making necessary to advance this Study, the Consultant will inventory the following:

- a. Existing physical characteristics of the corridor (e.g., design, condition, public and private signage, etc.)
- b. Existing operating conditions of the corridor (e.g., traffic volumes, patterns, level of service, accident data, etc.)
- c. Existing pedestrian and recreational amenities and infrastructure serving the corridor (e.g., sidewalks, trails, crosswalks, benches)
- d. Planned transportation improvements along the corridor (vehicular, pedestrian, and other)
- e. Existing municipal zoning and other regulations as they relate to the corridor
- f. Existing and potential land uses and market trends given present or proposed plans and regulations (including surrounding agricultural uses with a significant bearing on the corridor)
- g. Existing freight movements and how they conflict with other user needs
- h. Other key information as necessary, including relevant anecdotal information, which may materially benefit study decision-making

3. Needs Assessment

To support the analysis and decision-making necessary to advance the Study, the Consultant will identify specific transportation needs, issues, and opportunities related to:

- a. The Corridor's importance to the overall economic vitality of the Town of Canandaigua
- b. The general safety of the Corridor
- c. The newly developed Business Park
- d. Tourism
- e. Other issues significantly impacting the Corridor

In conjunction with this task, the Consultant will conduct a Public Meeting to solicit input on issues and needs relating to the Corridor.

4. Corridor Recommendations

Pursuant to the information developed in the Tasks 2 and 3 and the Study Purpose, the Consultant will:

- a. Create a baseline ("do nothing") scenario representing a build-out of the Corridor pursuant to development anticipated with existing zoning and growth patterns
- b. Develop alternative strategies to address the needs, issues, and opportunities related to economic development in the Corridor
- c. Identify transportation improvements necessary to (1) support the economic development strategies identified in 4.b and (2) maintain the capacity and enhance the safety of the Corridor
- d. Identify other actions necessary to support the economic development strategies identified in 4.b. and overall achievement of the Study Purpose (including model land use planning and development guidelines for the Corridor that promote achievement of the Study Purpose)
- e. Present alternatives including strategies ("Recommended Alternatives") for development of the Corridor, including the estimated overall cost and sub-component costs of the associated public improvements

In conjunction with Task 4.e. above, the Consultant will conduct a Public Meeting to select the preferred alternative.

5. Follow-On Activities

The follow-on activities necessary to advance the Study recommendations into reality must be identified. Accordingly, the consultant will:

- a. Identify specific and achievable follow-on activities and schedules that are needed to advance the findings of this Study, including potential sources of funding to conduct these activities
- b. Identify specifically what important factors were not able to be examined within the Study scope/budget and should be addressed through follow-on activity
- c. Identify potentially transferable portions of the Study for use elsewhere in the Town of Canandaigua

6. Produce Final Report and Executive Summary

Based on input received from the Steering Committee, the Consultant will make the appropriate revisions and produce the Final Report.

SCHEDULE

Provide an implementation schedule based on a timeline that you will be able to deliver the final product.

NOTIFICATION OF AWARD

The Town of Canandaigua will notify the successful proposer(s) verbally, followed by a written confirmation. Each proposer whose proposal is not selected will be notified in writing (either by email or postal mail) by the Committee. A contract defining all project terms and conditions and responsibilities of the successful proposer(s) is subject to development, review and approval by the Town Attorney and the Town Board.

PAYMENT

Final payment is dependent on acceptance and approval of the finished product by the Town Board of the Town of Canandaigua. All payment questions shall be submitted to the following persons:

Town of Canandaigua
Doug Finch, Town Manager
5440 NYS Route 5 & 20 West
Canandaigua, NY 14424

Termination:

The Agreement may be terminated if the Consultant is not completing the deliverables in accordance with the terms of this Agreement and subsequent contract.

PROPOSAL CONTENT

Proposals must include the following information:

- (1) Resumes (or other written statement of qualifications) that clearly and concisely identify the experience of all individuals that will be working on the Plan and also state the specific individual that will be responsible for deliverables. Identify past similar projects completed by the key team members.
- (2) A written description of the Consultant's understanding of the project and how the Consultant will meet the deliverables. Consultants may propose options such as web casting or other uses of technology to facilitate completion of the Plan and minimize travel costs. Identify the maps which, at a minimum, will be created or updated for inclusion in the Plan.
- (3) A time line for the duration of each of the plans.
- (4) A budget which clearly states the personal service costs to complete the project as well as other anticipated costs such as office supplies, printing and travel.
- (5) References.
- (6) Additional forms as required – see “Proposal Format/Requirements” for additional requirements.

REQUIRED REPORTING

The Consultant shall file monthly written progress reports. Progress reports shall provide a detailed

narrative description of the work that has been completed and shall include an identification of specific objectives that have been accomplished to date.

PRODUCTS

Required PRODUCTS:

1. Scope of Work in digital format
2. Project Advisory Committee and Public Meeting materials in digital format
3. draft report – 15 paper copies and a digital word/pdf document
4. final report – 20 paper copies and an electronic file
5. executive summary – 40 paper copies and an electronic file
6. electronic and/or photocopy-ready copies of the final products – an electronic file
7. PowerPoint presentation – (digital copy)

Accomplishments and deliverables will include a final, detailed report containing a thorough study of current conditions of the Uses and Transportation facilities in Uptown Region of the Town of Canandaigua, identification of opportunities for improvement and recommendations for the overall region (for all uses and users), with suggested tools for implementation (including possible funding opportunities). The report will be appended with necessary diagrams, graphics, and maps that will demonstrate current conditions as well as the recommendations for the future of the Uptown region.

With the help and oversight of the CIC and Economic Development teams, the Town hopes to apply the outcomes of the proposed study immediately where possible and as development occurs in areas with anticipated development such as multi-family apartments.

The Town plans to apply for funding opportunities to coincide with the longer range implementation schedule for this proposed project.

DELIVERABLES

Deliverables will be presented for each of the following categories:

- 1) Monthly Progress Reports submitted to the Economic Development Team and appropriate board(s) (due last Friday of each month)
- 2) Summary Report of Public Meetings (one week after each meeting)
- 3) Draft Plan (due on or before March 2018)
- 4) Final Plan (due on or before May 2018)

PROPOSAL SUBMITTAL AND EVALUATION

Responding firms are responsible for submitting their Proposal as described herein. Failure to submit a complete proposal by the submission deadline will disqualify a firm from consideration.

Fifteen copies of the Proposal along with an electronic version must be received on or before 4:00 p.m., on September 1. Proposals shall be addressed to:

Town of Canandaigua
Doug Finch, Town Manager

5440 NYS Route 5 & 20 West
Canandaigua, NY 14424
Email: dfinch@townofcanandaigua.org

QUESTIONS CONCERNING THE RFP

All questions or clarifications needed regarding this RFP should be submitted to the above address with Attn to: Sarah Reynolds or by email to sreynolds@townofcanandaigua.org. All questions must be submitted by 4:00 p.m., August 18, 2017.

A proposed consultant's Pre-Proposal Conference will be held on July 31, 2017 @ Noon at the Canandaigua Town Hall @ 5440 Route 5 & 20 Canandaigua – you are welcome to attend.

This RFP does not commit the Town of Canandaigua to award a contract, to pay for any costs incurred in the preparation of a Proposal, or to pay for any costs incurred in the preparation of a contract for services. The Town of Canandaigua reserves the right to 1) accept or reject any or all Proposals received, for any reasons, 2) cancel, in part or in whole, this RFQ/RFP, or 3) re-solicit Proposals in the event no response is deemed acceptable.

The Town of Canandaigua reserves the right to invite any or all Proposers for an interview before making a final selection. Such an invitation does not commit the Town of Canandaigua to pay any costs incurred in participating in said interview.

ADDITIONAL INFORMATION AND REQUIREMENTS

A. Proposal Format / Requirements

Proposals must be succinct and in no case exceed 15 pages, inclusive of requirements #1 through #10 below. Pages must be numbered. Boilerplate and promotional materials are discouraged; any such materials deemed necessary should be included as a separate appendix and may or may not be considered as part of the evaluation. Proposals exceeding 15 pages for requirements #1 through #10 below will be disqualified from consideration.

The outside of the proposal package should be clearly marked "Uptown Canandaigua Mixed-Use and Transportation Corridor Feasibility Study". The package should contain three separate envelopes, as follows:

Envelope 1: Technical Proposal

The technical proposal must be enclosed in a separate sealed envelope marked "Technical Proposal" with the name of the Consultant shown on the outside. The Technical Proposal should include:

1. Project Understanding — a demonstration of the Consultant's understanding of the proposed project and its various tasks.
2. Project Approach — including a detailed description of the Consultant's proposed technical approach and scope of services for completing the project's tasks; proposed stakeholder/public participation process; proposed visits to study area; and other relevant information.
3. Statement of firm's qualifications and experience with similar projects.

4. Names, positions, responsibilities, and résumés of key personnel, including Subconsultants, involved in the project and estimated number of hours each will work on project.
5. Provide a brief description of the Consultant's firm, size and organizational structure, number of full-time and part-time employees, area of practice, and number of years the firm has been in the business of conducting the described services. Describe the firm's background, resources (financial and personnel), and capabilities in the relevant areas.
6. Three recent references from similar projects, including contact names, telephone numbers, and email addresses.
7. Target schedule for project, including task deliverables.
8. Indication that Consultant is certified to do business in New York State and can comply with all federal and state contracting requirements.
9. Indication whether Consultant or Subconsultants are certified Disadvantaged Business Enterprises as defined by the Federal Highway Administration and listed in New York State's Unified Certification Program Directory.
10. Availability to meet with the Evaluation Team for an interview in September 2017 at:

5440 Routes 5 & 20 West
Canandaigua, NY 14424

Envelope 2: Price Proposal

The price proposal must be enclosed in a separate sealed envelope marked "Price Proposal" with the name of the Consultant shown on the outside. The Price Proposal shall be for a firm fixed price for the services to be provided. The price proposal should include:

1. Budget for the entire project, and where applicable, disaggregated by component. Payments will be tied to task deliverables that are considered complete and acceptable by the Town of Canandaigua. All potential costs must be included in the budget.
2. Billing rate schedule.

Proposers should assume a service agreement with the Town of Canandaigua from contract execution through project completion. Hourly rate(s) for project personnel shall remain fixed for the entire duration of the contract.

This is a full-service contract. For purposes of this contract, full service shall mean that the Proposer's price proposal includes, but is not necessarily limited to: all labor and fees, all material and supplies, special requests; all administrative, reporting or other requirements, all overhead costs and profit. It shall also include all travel costs, parking fees, and any other ancillary fees and costs including permits, licenses, insurance, etc. Details of service not explicitly stated in these specifications, but necessarily attendant to, are deemed to be understood by the Consultant and included herein.

Envelope 3: Required Forms

The following required forms must be completed, signed, and enclosed in a separate envelope marked

“Required Forms” with the name of the Consultant shown on the outside:

- REQUIRED FORM A – Non-Collusion Proposal Certificate
- REQUIRED FORM B – Certificate of Eligibility
- REQUIRED FORM C – Sub-Contractor(s) Information
- REQUIRED FORM D – Affirmative Action Program Questionnaire
- REQUIRED FORM E – Equal Employment Opportunity Policy Statement
- REQUIRED FORM F – Affidavit of Non-Discrimination
- REQUIRED FORM G – Bidder’s Information
- REQUIRED FORM H – Employer Information Report EEO-1
- REQUIRED FORM I – Standard Title VI Assurance (Appendix B)

Please note: the completed Required Forms will not count towards the 15 page maximum for the Proposal submission.

B. Disadvantaged Business Enterprise (DBE)

In the event that subcontractors are utilized for this contract, Consultants shall make affirmative efforts to involve certified DBE firms for sub-consulting opportunities and shall provide documentation of those efforts. Firms electing to subcontract work in response to this solicitation, but which are unable to utilize certified DBE firms will be required to document their good-faith efforts to involve certified DBE firms as subcontractors and the reasons why such involvement was not attainable.

GTC’s overall goal for DBE participation is 4.48% of federal funds spent on contractual services. Only those DBE firms that are certified with the New York State Department of Transportation as DBE Firms qualify under this provision.

To obtain a listing of certified DBE firms or information about the New York State Department of Transportation’s DBE Certification Program, contact:

New York State Department of Transportation
Office of Civil Rights
50 Wolf Road, Sixth Floor
Albany, NY 12232
Phone: (518) 457-1129
Fax: (518) 485-5517
Web: <https://www.dot.ny.gov/main/business-center/civil-rights>
(Contact information per NYS DOT website accessed June 27, 2013)

C. Proposal Evaluation

The Evaluation Team (Town of Canandaigua staff and key study participants) will review and rank the technical proposals using the factors listed below to select the preferred Consultant. Based upon the

evaluation of the technical proposals, the Town of Canandaigua reserves the right to invite any or all Consultants for an interview with the Evaluation Team. Such an invitation does not commit the Town of Canandaigua or GTC to pay any costs incurred in participating in said interview.

Selection of a preferred Consultant will be based upon qualifications and price is excluded as a factor provided the price is within the maximum budget for the project and the proposal provides the “best value” to the Town of Canandaigua.

The evaluation factors are:

1. Experience, Qualifications, and Capacity of the Consultant

The capabilities of each responding firm will be evaluated in these specific areas:

- a. Recent relevant experience of the firm in similar projects
- b. The extent to which the firm has personnel, equipment, and facilities to perform the scope of work
- c. Experience of recent clients for similar services

2. Qualifications of the Project Team

- a. The quality and experience of the proposed staff and the proper balance of relevant skills
- b. The quality and experience of any proposed Subconsultants

3. Proposals

The Proposals will be evaluated for their demonstrated understanding of the requirements of this RFP and their ability to meet the study objectives. This will include:

- a. Project understanding
- b. Clarity of the Proposal
- c. Proposed scope of work and study approach

4. Price

Once the Evaluation Team has selected the preferred Consultant, that Consultant’s price proposal will be opened to ensure that proposal does not exceed the maximum available project budget (see Section H). In the event that the preferred Consultant’s price proposal exceeds the maximum available budget, the Evaluation Team will select a new preferred Consultant based on the factors listed above. This process will be repeated until a preferred Consultant whose price proposal does not exceed the maximum available budget is selected.

D. Professional Services Agreement Template

This project is being progressed with federal funds administered by New York State. As such, there are certain requirements and certifications that must be adhered to. The final contract will be developed by the Town of Canandaigua and GTC. A template for GTC’s standard Professionals Services Agreement

(i.e., contract) is attached for your reference. The preferred consultant will be expected to execute a contract that substantially follows this template. By submitting a Proposal in response to this RFP, you agree to proceed in a good faith effort to execute a contract that substantially follows this template including the mutual covenants and conditions therein and all required New York State and Federal clauses.

The successful vendor shall fully comply with each and every provision of law relating to the contract, and each and every provision of law and clause required by law to be inserted shall be deemed to have been inserted herein, and if, through mistake or otherwise, such provision is not inserted, then upon application of either party, the contract document shall be physically amended forthwith to make such insertion.

E. PROTEST PROCEDURES

1. Pre-Bid Opening Protests. If a bidder can demonstrate that the specifications issued in this RFP are unduly exclusionary and restrictive or that federal, state or local laws or regulations have been violated during the course of the procurement, then the bidder may seek a review by Project Manager Sarah Reynolds (sreynolds@townofcanandaigua.org). Protests shall be clearly identified as Protests and submitted in writing as early as possible but no later than five (5) business days before the proposal due date. Within five (5) business days after receipt of a pre-bid protest, the Project Manager shall make one of the determinations listed in paragraph 4.
2. Post-Bid Opening Protests. A protest to the acceptance or rejection of any or all offers or bids to a contract, or to the award thereof, or to any such action proposed or intended by the Town of Canandaigua must be received in writing by the Project Manager no later than five (5) business days after the protesting party first learned, or reasonably ought to have learned, of the action or the proposed or intended action to which he/she protests. Protest shall be submitted by certified mail addressed to the Project Manager and marked "Protest."
3. In the event the protestor alleges that the Project Manager or the representative appointed by the Project Manager to serve as Decision-Maker for the particular protest, engaged in improper conduct during the subject procurement, the GTC Executive Director or his appointed representative, at 50 West Main Street, Suite 8112, Rochester, New York 14614 serve as the Decision-Maker. In the event it has been alleged that the GTC Executive Director has engaged in improper conduct during the subject procurement, then the Rochester Genesee Regional Transportation Authority General Counsel shall serve as the Decision-Maker.
4. Rulings on Protests. Within ten (10) business days, the Decision-Maker, or his appointed designee, shall render one of the following determinations:
 - a. There are no grounds for protest.
 - b. Protest is overruled.
 - c. Protest is substantiated. Decision-Maker shall issue instructions to remedy issues relating to the protest.
 - d. Procurement activity is suspended until written notification by the Decision-Maker.

The determination shall be in writing and shall provide at a minimum a general response to each

material issue raised in the protest. All documents submitted by the Protestor and/or the Town of Canandaigua staff and/or GTC staff and reviewed by the Decision-Maker in the reaching of a determination shall form and be retained by GTC as the formal record of the dispute resolution process.

The issuance of the foregoing determination is GTC's final decision of the dispute.

All interested parties shall be notified of any protests that are filed. The Town of Canandaigua shall refrain from awarding a contract within five (5) business days of the date of a decision rendered by the Decision-Maker regarding a protest, unless the Town of Canandaigua and GTC determines that:

- a. The items to be procured are urgently required.
- b. Delivery or performance will be unduly delayed by failure to make a prompt award.
- c. Failure to make a prompt award will otherwise cause undue harm to the Town of Canandaigua or GTC or the federal government.

5. Protestor's Appeal to Federal or State Agencies. In the event that the Town of Canandaigua fails to abide by the protest procedures set forth above, then the protestor may seek a review by the appropriate funding agency. Protestors shall file such a protest in accordance with the requirements set forth below, not later than five (5) business days after a final decision is rendered under the Town of Canandaigua's protest procedure. In instances where the protestor alleges that the Town of Canandaigua failed to make a final determination on the protest, protestors shall file a protest with the appropriate agency not later than five (5) business days after the protestor knew or should have known of the Town of Canandaigua's failure to render a final determination on the protest.
6. Submission of Protest to FHWA. Protestors shall file such a protest filing in accordance with the procedures set by FHWA. GTC will provide all information that is necessary to file a protest with FHWA upon request.



Uptown Canandaigua Mixed-Use & Transportation Corridor Study

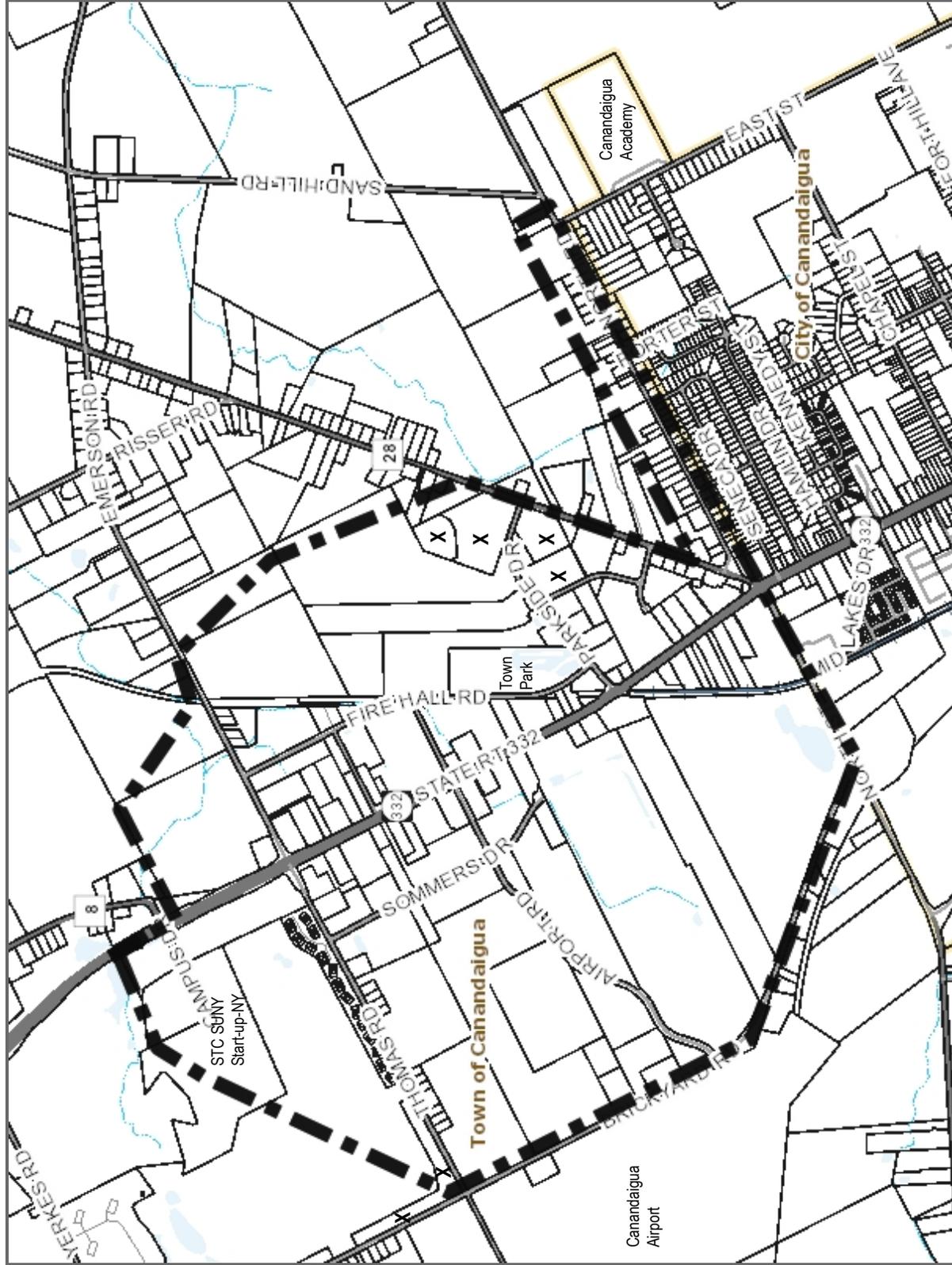


Location Map



Legend

- Thruway Exits
- Tax Parcels
- Streets
- Interstate
- State or US Routes
- County Roads
- Local Public Roads
- Private Roads
- Railroads
- Streams
- Municipal Boundaries
- Finger Lakes Region
- Water Bodies
- Study Boundary
- Multi-Family Developments



Notes

This map and information is provided AS IS and Ontario County makes no warranties or guarantees, expressed or implied, including warranties of title, non-infringement, merchantability and that of fitness for a particular purpose concerning this map the information herein. User assumes all risks and responsibility for determining whether this map is sufficient for purposes intended.

3,530.3 1,765.13 3,530.3 Feet

1:21,182

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Map Created October, 18, 2016

REQUIRED FORMS

CERTIFICATION REGARDING LOBBYING

I, _____, hereby certify on behalf of
(Name and Title of Authorized Official)

_____ that:
(Service Provider)

- (1) No Federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

Signature of Authorized Official

Title

THIS IS A REQUIRED BID SUBMISSION DOCUMENT. FAILURE TO COMPLETE THIS FORM AND TO SUBMIT IT WITH YOUR PROPOSAL MAY RENDER THE BID NON-RESPONSIVE AND INELIGIBLE FOR AWARD.

SUBCONTRACTOR INFORMATION

Offeror Name:

Offeror must check one of the following:

- All work will be performed by bidder. No subcontractors will be used.
- Subcontractors will be used in following trades to complete the work (list below):

TRADE:

The successful offerer will be required to identify specific subcontractors before a Notice to Proceed will be issued by

_____.

The undersigned acknowledges receipt of the following Addenda, and agrees that he is bound by all Addenda whether or not listed herein:

ADDENDUM NUMBER

ACKNOWLEDGED BY:

DATE

ACKNOWLEDGEMENT OF AUTHORITY TO SUBMIT PROPOSAL

SUBMITTED:

Dated: _____

Individual, Partnership, or Non-Incorporated Organization

Name of Bidder: _____

By: _____
Signature

Address of Bidder: _____

Names and Addresses of Owners of the Firm

Corporation

Name of Bidder: _____

By: _____
Signature Title

Incorporated Under the Laws of the State of: _____

Name of President: _____
Name Address

Officers:
Secretary: _____
Name Address

Treasurer: _____
Name Address

Corporate Seal

**STATE OF
COUNTY OF
CITY OF**

SS:

On this _____ day of _____, _____,
before me personally appeared the within named _____,
to me known to be the individual described in, and who executed the same.

Notary Public

NON-COLLUSION AFFIDAVIT

STATE OF _____)

COUNTY OF _____)

Important: This affidavit must be properly completed and submitted with all bids

_____, the bidder submitted this proposal, being
Name of person making affidavit

first duly sworn, deposes and says that he is _____ of
Title

_____ and under penalties of perjury affirms:
Name of firm

1. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
3. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not submit a bid for the purpose of restricting competition.
4. The bid was not made in the interest of or on behalf of any undisclosed person, partnership, company, organization or corporation.

Sworn to before me this _____
day of _____, ____.

Signature of person making affidavit

Notary Public

(SEAL)

ELIGIBLE BIDDER CERTIFICATE

I, _____, hereby certify that _____
Name of company official making the certification

_____ is NOT included on the US Comptroller
Name of firm for which certification is made

General's Consolidated List of Persons or Firms Debarred From Federal Contracts for violations of various contracts incorporating labor standards provisions.

Sworn to before me this _____
day of _____, _____

Signature of person making affidavit

Notary Public

Notary Seal

NOTE: This form must be submitted with all bids.

AFFIDAVIT OF NON-DISCRIMINATION

STATE OF _____)

SS:

COUNTY OF _____)

_____, being first duly sworn, deposes and says:

- 1. That he/she is the _____ (President or other official title) of _____
_____ Company, or Partnership, a Corporation or Partnership organized and existing
under and by virtue of the laws of the State of _____.
- 2. That _____ does not and will not discriminate in its employment
practices because of race, religion, color, sex, national origin, handicapped persons or Vietnam-Era
Veterans.
- 3. That _____ further understands this contract, purchase order, or
agreement, is subject to the Urban Mass Transportation Act of 1964, as amended, (49 USC 1601, et seq.),
and shall be subject to all rules and/or regulations issued pursuant thereto regarding non-discrimination in
federally-assisted programs of the United States Department of Transportation.

Company or Partnership

(President or Other Official Title)

(SEAL)

Subscribed and sworn to before me, this _____ day of _____, 20_____.

Notary Public in and for the County of

_____, State of _____

My commission expires on the _____ day
of _____, 20_____.

REQUIRED FORM G

**ROCHESTER-GENESEE REGIONAL TRANSPORTATION AUTHORITY
AFFIRMATIVE ACTION PROGRAM QUESTIONNAIRE**

Supplier's Name _____ Telephone _____

Street Address _____ City _____ State _____

Zip Code _____ Number of Employees _____

This Firm is

_____ Independently Owned and Operated

_____ an Affiliate
or of Parent Company _____
Address _____

_____ a Subsidiary

or

_____ a Division

_____ Small Business _____ Large Business

SELLER HAS

SELLER HAS NOT

Held contracts of subcontracts subject to the Equal Opportunity Clause of Executive Order 11246.

Filled the Equal Employment Opportunity Information Report EEO-1 for the period ending March 31.

File Equal Employment Opportunity Information Report EEO-1 when required.

Developed a written Affirmative Action Program

Seller's Equal Employment Opportunity Program has _____ has not _____ been subject to a Government Equal Opportunity Compliance Review. If so, when?

Seller acknowledges receipt of the notice to prospective subcontractors of requirement for certification of non-segregated facilities and certifies _____ does not certify _____ compliance with that requirement.

Signature _____

Title _____

Date _____

Debarment and Suspension Certification for Prospective Contractor

Must be completed by proposer for contract value over \$25,000.

Choose one alternative:

- The Proposer certifies to the best of its knowledge and belief, that it and its principals, including its first tier sub-recipients:
 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded or disqualified from covered transactions by any Federal department or agency;
 2. Have not within a three-year period preceding its proposal been convicted of or had a civil judgment rendered against any of them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction; violation of any Federal or State antitrust statute; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property;
 3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in subparagraph 2 of this certification;
 4. Have not within a three-year period preceding this certification had one or more public transactions (Federal, State, or local) terminated for cause or default.

OR

The Proposer is unable to certify to all of the statements in this certification, and attaches its explanation to this certification. (In explanation, certify to those statements that can be certified to and explain those that cannot.)

In addition to the foregoing:

The Proposer certifies that it and its principals, including its first tier sub-recipients, will treat each lower tier contract or lower tier subcontract under the Project that (a) equals or exceeds \$25,000, (b) is for audit services, or (3) requires the consent of a Federal official, as a covered contract for purposes of 2 CFR Part 1200 and 2 CFR Part 180, and will otherwise comply with the Federal requirements of 2 CFR Part 1200 and 2 CFR Part 180, and will assure that the each lower tier participant involved in the Project is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded or disqualified from participation in this transaction by any Federal department or agency;

The Proposer certifies that if, later, it or its principals, including any of its first tier sub-recipients, become aware of any information contradicting the statements of subparagraphs (1)(a) through (d) above, it will promptly provide any necessary information.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of Title 31 USC § Sections 3801 are applicable thereto.

Name:

Authorized signature

Title

Date

REQUIRED FORM I

Debarment and Suspension Certification (Lower-Tier Covered Transaction)

This form is to be submitted by each Subcontractor receiving an amount exceeding \$25,000.

The prospective lower-tier participant certifies, by submission of this Proposal, that neither it nor its "principals" as defined at 49 CFR § 29.105(p) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency.

If the prospective lower-tier participant is unable to certify to the statement above, it shall attach an explanation, and indicate that it has done so by placing an "X" in the following space: _____

THE UNDERSIGNED CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND EXPLANATION, IF ANY. IN ADDITION, THE PROPOSER UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 USC §§ 3801 *ET SEQ.* APPLY TO THIS CERTIFICATION AND EXPLANATION, IF ANY.

Name and title of the lower tier participant's authorized representative:

Authorized signature

Title

Date

**COMPLIANCE UNDER
EXECUTIVE ORDER 127 IN NEW YORK STATE FINANCE LAW SECTION 139-k**

Described Procurement: _____

(Check as Applicable – Use additional pages if necessary)

Designation of Individuals and Organizations to Influence This Procurement

The party submitting this proposal (called the "Contractor") has not retained, employed, or designated any person or organization to influence this procurement.

Contractor has retained, employed, or designated the following person(s) or organization(s) to influence this procurement and the following is true, complete and accurate information regarding each such person or organization.

Name: _____

Address: _____

Telephone Number: _____ Occupation: _____

Place of Principal Employment: _____

Such person or organization does not have has a financial interest in the procurement.
If yes, describe that financial interest: _____

Name: _____

Address: _____

Telephone Number: _____ Occupation: _____

Place of Principal Employment: _____

Such person or organization does not have has a financial interest in the procurement.
If yes, describe that financial interest: _____

Agreement

Contractor agrees to notify _____ any time an additional person or organization is retained, employed or designated by Contractor to influence this procurement and to provide the information described above for any such person or organization.

Prior Findings

- Contractor has not been found non-responsible by any governmental entity during the past five years.
- Contractor has been found non-responsible by a governmental entity during the past five years.
 - The basis for the finding of non-responsibility was not due to a violation of State Finance Law §139-j.
 - The basis for the finding of non-responsibility was due to a violation of State Finance Law §139-j. (If you check this box, provide the following information)

Governmental Entity: _____

Date of Finding of Non-Responsibility: _____

Basis of Finding of Non-Responsibility (Use Additional Pages As Necessary)

_____.

Prior Contract Terminations

Has any governmental entity or other governmental agency terminated or withheld a Procurement Contract with the Contractor due to the intentional provision of false or incomplete information?

- No Yes (If Yes, provide the following information.)

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding (Use Additional Pages As Necessary)

_____.

Certification

I certify that all information provided with respect to State Finance Law §139-k is complete, true and accurate.

Agreement to Comply

Contractor affirms that it understands and agrees to comply with the procedures of _____ relative to permissible Contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

Acknowledgment

Contractor acknowledges that _____ may refuse to award a contract to the Contractor and may terminate any contract that is awarded if _____ discovers that the Contractor has intentionally failed to provide true and complete information with respect to all persons employed, retained, or designated by the Contractor to influence this procurement or has made any false statement in this document or of any information provided with respect to State Finance Law §139-k is in any respect not complete, true and accurate.

Print Contractor Name

By: _____

Title: _____

Date: _____

Address: _____

City, State, Zip: _____

Professional Services Agreement Template

AGREEMENT

THIS AGREEMENT is made as of the ____ day of _____, 20##, by and between the [Insert Agency Name], a New York municipality located at [Insert Street Address], [Insert City/Town], New York [Insert Zip Code] ("Municipality"), and [Insert Contractor Name], located at [Insert Contractor's Address] ("Contractor").

WITNESSETH:

WHEREAS, this Agreement is for the provision of professional services to provide assistance in connection with the [Insert Project Name] ("Project") on behalf of GTCS, INC., a New York corporation located at 50 West Main Street, Suite 8112, Rochester, New York 14614 ("GTCS, Inc."); and

WHEREAS, Municipality has determined that Contractor possesses the experience and expertise necessary to perform the foregoing services and Contractor desires to provide such services,

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and conditions herein contained, the parties hereto agree as follows:

1. **Scope of Services:** Contractor shall perform the services set forth in Exhibit "A", "B", and "C" attached hereto and made a part hereof, in a professional manner that will achieve the objectives identified by Municipality

2. **Time of Completion:** The services to be performed by Contractor shall commence on the date set forth above (the "Commencement Date"), and Contractor agrees that all services shall be completed no later than [Insert Completion Date] ("Completion Date").

3. **Standard Practices and Requirements:** Contractor shall render all services and furnish all materials necessary to provide Municipality with the items and documents required by the Exhibits and this Agreement.

4. **Documents Forming the Agreement:** This Agreement shall consist of this document and the following:
 - (a) Exhibit "A" – Scope of Services annexed hereto.
 - (b) Exhibit "B" – Municipality's Request for Proposals dated [Insert RFP Date] (incorporated by reference).
 - (c) Exhibit "C" – Contractor's Proposal dated [Insert Contractor's Proposal Date] (incorporated by reference).
 - (d) Exhibit "D" – Payment Terms annexed hereto.
 - (e) Exhibit "E" – New York State Required Clauses annexed hereto.
 - (f) Exhibit "F" – Federal Required Clauses annexed hereto.
5. **Taxes, Royalties and Expenses:** Contractor shall pay all taxes, royalties and expenses incurred in connection with the services performed under this Agreement except as otherwise provided herein.
6. **Contractor's Compensation:** In consideration for the services to be rendered by Contractor under this Agreement, Municipality will pay Contractor as set forth in Exhibit D annexed hereto. In no event, however, shall the amount paid to Contractor under this Agreement exceed an aggregate maximum contract price of [Insert Contract Price, written out] (\$xx,xxx). Contractor agrees that all services set forth in Exhibits "A," "B" and "C" shall be completed for the foregoing compensation.
7. **Final Payment:** Acceptance by Contractor, or any person claiming under it, of the Final Payment made by Municipality pursuant to this Agreement shall constitute an acknowledgment by Contractor that it has received payment in full under this Agreement and shall further constitute a release to Municipality by Contractor, its successors, its legal representatives and assigns, for all compensation claims by and liability to Contractor for

anything done or furnished by it pursuant to this Agreement.

8. **Inspection and Audit:** Contractor shall permit Municipality, GTCS, Inc., the Federal Transit Administration, the Federal Highway Administration, and the State of New York to inspect all work, materials, payrolls, invoices and other data and records relating to the Project and to periodically audit the books, records and accounts of Contractor relating to the Project up to three (3) years following the completion of the contract. The timing of such inspections shall be at the discretion of Municipality, provided that a good faith attempt shall be made by Municipality to avoid interference with Contractor's work relating to the Project. The obligations of this Section 8 shall survive the termination of this Agreement.
9. **Change in Scope of Services; Additional Work:** Either Municipality or Contractor may request changes in the Scope of Services set forth in Exhibits "A," "B" and "C" or additional work not specified therein to be performed by Contractor hereunder ("Extra Work"). If Municipality and Contractor mutually agree that such Extra Work will be performed and that an increase in compensation is justified, Municipality shall provide additional compensation to Contractor on a fair and equitable basis at the amounts mutually agreed upon by the parties, subject to the provisions of this Section 9. Any such change in the Scope of Services or any such Extra Work, as well as any increase or decrease in the amount of compensation to be received by Contractor therefore shall be authorized only by the execution of a written amendment to this Agreement by Contractor and Municipality. Commencement of Extra Work shall occur only after such approvals have been obtained from Municipality and such written amendment has been executed.
10. **Procedures:** Contractor will issue all drawings and sketches in an electronic form acceptable to Municipality. Drawings not in electronic form will not be used on this Project as project drawings. This prohibition does not apply to shop drawings.
11. **Assignments and Subcontracts:** Contractor shall not assign any part of its interest in this Agreement or subcontract any services to be performed hereunder without the prior written consent of Municipality. Any such assignments or subcontracting without the consent set forth above shall result in a forfeiture of compensation for any services

performed hereunder which are assigned or subcontracted, such amount to be determined by Municipality. The foregoing notwithstanding, Contractor may subcontract certain of the services to be performed hereunder to [Insert Names of Proposed Sub Contractors, if applicable; if no Sub Contractors then delete this sentence] as specified in Exhibit A and Exhibit C. The parties acknowledge that the rights under this Agreement will accrue to the benefit of the Municipality and GTCS, Inc.

12. **Interchange of Data:** All technical data and other materials relating to the Project which are in the possession of either Municipality or Contractor shall be made available upon request to the other party without expense to such party.
13. **Meetings and Documentation:** Contractor shall attend all meetings referenced in Exhibits "A", "B", and "C" and all such additional meetings as Municipality and Contractor mutually agree are necessary for the successful completion of the Project. No request to attend additional meetings shall be unreasonably refused. Contractor shall provide Municipality with written reports and documents as specified in the Exhibits.
14. **Budget Line Item Changes:** Contractor may request the reallocation of funds among the various line items in the Project Budget. Such requests shall be submitted in writing to the [Insert Title of Person designated to act for the Municipality] (acting on behalf of Municipality) for approval, so long as total contract amount does not change.
15. **Independent Contractor Status:**
 - (a) Neither Contractor, in accordance with its status as an independent contractor, nor any of its employees shall be construed to be employees or agents of Municipality or GTCS, Inc. for any purpose whatsoever. Contractor and its employees agree not to hold themselves out as employees or agents of Municipality or GTCS, Inc. by reason of their participation under this Agreement.
 - (b) Contractor shall not engage, either on a full-time or a part-time basis during the term of this Agreement, any professional or technical personnel who are or have been at any time during the term of this Agreement in the employ of Municipality

or GTCS, Inc., except regularly retired employees, without the consent of Municipality or GTCS, Inc., respectively.

16. **Insurance Requirements:**

- (a) Prior to commencing work, Contractor shall provide, at its own cost and expense, the following insurance with insurance companies duly licensed, possessing a current A.M. Best, Inc. Rating of A - or better, and reasonably acceptable to the Municipality and GTCS, Inc., to be evidenced by certificates or formal endorsements. These certificates shall serve as evidence that policies providing the required coverage, conditions, and limits required by this contract are in full force and effect. In no way should the Contractor construe these minimum required limits to be their limit of liability to Municipality or GTCS, Inc.
- (b) Each certificate shall name the Contractor, identify this Agreement, and list Municipality and GTCS, Inc. as "Additional Insured." Contractor shall also provide to Municipality a copy of the endorsement to Contractor's general liability policy which indicates that parties required to be named under contract as additional insured are included in the coverage afforded by the policy. Said insurance must cover all operations under this Agreement whether performed by Contractor or its sub-contractors.
- (c) All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of Municipality, constitute a material breach of this contract.
- (d) All insurance required by this contract shall be written on an occurrence basis, as opposed to a claims-made basis.
- (e) The Contractor shall be solely responsible for the deductible and/or self-insured retention and Municipality may, at its option, require the Contractor to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

- (f) Municipality and GTCS, Inc. reserve the right to request and to receive, within ten (10) working days, certified copies of any or all of the herein required insurance policies and/or endorsements. Municipality and GTCS, Inc. shall not be obligated, however, to review such policies and/or endorsements or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of Municipality's or GTCS, Inc.'s right to insist on strict fulfillment of Contractor's obligations under this Contract.
- (g) The insurance policies required hereunder, except Workers' Compensation, shall name Municipality and GTCS, Inc., its agents, representatives, officers, directors, officials, commissioners, and employees as Additional Insureds. The proper name of Municipality is: [Insert Municipality's legal name for insurance purposes] and all agents, representatives, officers, directors, officials, commissioners, and employees of such. The proper name for GTCS, Inc. is: Rochester-Genesee Regional Transportation Authority and its subsidiaries, GTCS, Inc. and all agents, representatives, officers, directors, officials, commissioners, and employees of such.
- (h) The insurance policies required hereunder, except Workers' Compensation, shall contain a waiver of transfer of rights of recovery (subrogation) against Municipality, its agents, representatives, officers, directors, officials and employees and against GTCS, Inc., its agents, representatives, officers, directors, officials and employees for any claims arising out of Contractor's work or service.
- (i) Prior to commencing work or services under this contract, said certificates shall be delivered to:

[Project Manager name and title]

[Municipality Name]

[Street Address]

[City, State Zip]

- (1) **Workers' Compensation**: Statutory coverage, in compliance with the Compensation Law of the State of New York. The Contractor shall also carry Worker's Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services, as well as Employer's

Liability insurance of not less than \$1,000,000 for each accident; \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit.

- (2) **Comprehensive Commercial General Liability**: Contractor will provide the following minimum Limits of Liability for bodily injury and property damage:

- A. \$1,000,000 Each Occurrence;
- B. \$1,000,000 Personal and Advertising Injury;
- C. \$2,000,000 General Aggregate; and
- D. \$2,000,000 Products/Completed Operations Aggregate.

These limits shall provide coverage for:

- {X} Premises/Operations
- {X} Personal Injury
- {X} Products/Completed Operations
- {X} Additional Insured*

The Municipality shall be named as an "Additional Insured" on this policy. The proper name is: **[Insert Municipality's legal name for insurance purposes]**, its officers, employees and agents.

GTCS, Inc. shall be named as an "Additional Insured" on this policy. The proper name is: Rochester-Genesee Regional Transportation Authority and its subsidiaries, GTCS, Inc., its officers, employees and agents.

- (3) **Professional Liability Insurance** \$1,000,000
- (4) **Disability Benefits**: Contractor shall provide proof of compliance with the Disability Benefits Law.

Location of operation shall be "all locations served by Municipality or GTCS, Inc."

- (5) If automobiles are to be used in the performance of any work under this Agreement, **Automobile Liability Insurance** with the following minimum limits of liability per occurrence:

- A. \$1,000,000 for bodily injury, and
- B. \$1,000,000 for property damage, unless otherwise indicated in a "Special Conditions" of the contract specifications.

This insurance shall include for bodily injury and property:

- A. Owned automobiles;
- B. Hired automobiles; and
- C. Non-owned automobiles.

- (j) All policies and certificates of insurance shall be approved by Municipality prior to

the inception of any work.

- (k) Upon failure of the Contractor to furnish, deliver and maintain such insurance as above provided, this Agreement, at the election of Municipality, may be forthwith declared suspended, discontinued or terminated upon ten (10) days written notice. Failure of the Contractor to take out and/or maintain, or the taking out and/or maintenance of any required insurance, shall not relieve the Contractor from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the Contractor concerning indemnification.
- (l) In the event that claims in excess of the insured amounts provided herein are filed by reason of any operations under this Agreement, the excess amount of such claims, or any portion thereof, may be withheld from payment due or to become due the Contractor until such time as the Contractor shall furnish such additional security covering such claims as may be determined by Municipality.
- (m) Contractor also agrees that:
 - (i) Insurers shall have no right of recovery or subrogation against Municipality or GTCS, Inc. (including its agents and agencies as aforesaid), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance;
 - (ii) The insurance companies issuing the policy or policies shall have no recourse against Municipality or GTCS, Inc. (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form or policy; and
 - (iii) Any and all deductibles in the above-described insurance policies shall be assumed by, for the account of, and at the sole risk of the Contractor.

17. **Indemnification Clause:** In addition to the insurance required to be procured and maintained pursuant to Section 16, Contractor agrees to indemnify Municipality and GTCS, Inc. against and to hold Municipality and GTCS, Inc. harmless from claims, suits, actions, damages and costs including, without limitation, court costs and reasonable attorney fees, resulting from the negligent, grossly negligent or willful act or failure to act of Contractor

and Contractor's subcontractors under this Agreement including, without limitation, Contractor's failure to meet reasonable professional standards.

18. **Assistance with Claims:** In the event any claim is made or any action brought in any way relating to the design or construction of the Project, Contractor shall diligently render to Municipality any or all architectural and engineering assistance which Municipality may require of Contractor, including, but not limited to, the making of analyses and reports. If the claim is one for which indemnification is owed under Section 17, Contractor shall provide such assistance for no additional compensation. If the claim is not for one for which indemnification is owed under Section 17, Contractor shall render the first four (4) hours of such assistance for no additional consideration and Municipality shall compensate Contractor for assistance in excess of such four hours at an hourly rate mutually agreed upon by the parties.
19. **Code of Ethics:** Contractor agrees that this Agreement may be terminated if any work under this Agreement is in conflict with the provisions of Section 74 of the New York State Public Officers' Law, which establishes a Code of Ethics for New York State officers and employees.
20. **Disposition of Plans and Other Data:** Contractor shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and make such materials available at its office at all reasonable times during the term of this Agreement and for three (3) years from the date of Final Payment under this Agreement, for inspection by authorized representatives of Municipality or GTCS, Inc. and copies thereof shall be furnished if requested at Municipality's or GTCS, Inc.'s expense.
21. **Delays:** Contractor agrees that no charges or claim for damages shall be made by it for any delays or hindrances from any cause during the progress of any portion of the services specified in this Agreement. Such delays or hindrances, if any, shall be compensated for by an extension of time for such "reasonable period" as Municipality may decide, it being understood, however, that the permitting of Contractor to proceed to complete any service or any part of them after the Completion Date or after the date to which the Completion Date may have been extended, shall in no way operate as a waiver on the part of

Municipality or GTCS, Inc. of any of its rights hereunder. For purposes of this section only, the term "reasonable period" shall not exceed six (6) months from the originally-scheduled Completion Date of the Project.

22. **Termination:**

- (a) Upon written notice to Contractor, Municipality shall have the right to terminate this Agreement at any time during the term hereof, with or without cause. Upon fifteen (15) days written notice to Municipality, Contractor shall have the right to terminate this Agreement for any material breach by Municipality that is not cured by Municipality during such fifteen-day period. In the event of a termination hereunder, Municipality shall reimburse Contractor on an equitable basis, as determined by Municipality, for all services performed by Contractor prior to the date of such termination. Municipality shall consider the following factors.
 - (i) The ratio of work performed by Contractor prior to the termination of this Agreement to the total amount of work contemplated hereunder, less any payments made prior to such termination.
 - (ii) The amount of the actual costs and expenses which Contractor incurred in performing the work prior to the termination of this Agreement in proportion to the total costs and expenses which total amount of work contemplated hereunder, less any payments made prior to such termination, provided that if this Agreement is terminated as a result of Contractor's unsatisfactory performance hereunder, the factor set forth in this subdivision 22.(a)(ii) shall not be considered by GTCS, Inc.
 - (iii) The actual costs incurred by Contractor, as verified by audit.
- (b) In the event of a termination hereunder, Contractor shall cancel all outstanding commitments hereunder, including without limitation personal services and the procurement of materials, supplies and equipment. In addition, Contractor shall incur no new commitments of any nature whatsoever with respect to this

Agreement.

23. **Default:** The following shall be events of default under this Agreement:
- (a) Failure by Contractor to perform in a timely and satisfactory manner any or all of its obligations under this Agreement;
 - (b) Any representation or warranty made by Contractor in its bid response or this Agreement proves to have been false or misleading in any respect;
 - (c) Failure by Contractor to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, unless Municipality shall agree in writing to an extension of such time to perform prior to its expiration; or
 - (d) In the event of such failure or default as set forth in clause (a) (b) or (c) above, the Owner shall provide written notice to Contractor of such default, together with a direction to cure the same. The Contractor covenants and agrees to make the necessary cure within seventy-two (72) hours of the receipt of such written notice from the Owner. Such notice will be delivered in accordance with Section 27 hereof.
24. **Covenant Against Contingent Fees:** Contractor warrants that it has not employed or retained any company or person other than a bona fide employee working for Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, Municipality shall have the right to annul this Agreement without liability, or, in its discretion, to deduct from the compensation to be paid Contractor hereunder, or otherwise recover the full amount of percentage, brokerage fee, gift or contingent fee.
25. **Ownership of Documents:** Any letters, documents, reports, and other products and data, which are originally conceived, developed and produced during the course of this

Agreement specifically for the purpose of completing the Scope of Work, shall become the property of Municipality. Copies of this material may be made for Contractor's records, but shall not be furnished to others without written authorization from Municipality, which Municipality may withhold at its sole discretion. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by Municipality. Municipality recognizes that in the course of performing the requested services, Contractor may use standard documentation, manuals, specification paragraphs, drawings and other technical data that Contractor has previously developed.

26. **Ownership and Use of Construction Documents:** Municipality acknowledges Contractor's construction documents as instruments of professional services. Nevertheless, the plans, specifications and other documents prepared under this Agreement shall become the property of Municipality upon completion of the work and payment in full of all monies due to Contractor. Municipality shall not reuse or make any modification to the plans and specifications without the prior written authorization of Contractor. Municipality agrees, to the fullest extent permitted by law, to indemnify and hold Contractor harmless from any claim, liability or cost (including reasonable attorneys' fees and defense costs) arising or allegedly arising out of any unauthorized reuse or modification of the construction documents by Municipality or any person or entity that acquires or obtains the plans and specifications from or through Municipality without the written authorization of Contractor.
27. **Notices:** Any notice or demand upon Municipality or Contractor shall be deemed to be sufficient for all purposes hereunder if given personally or mailed to the other party hereto at such party's address as set forth above or to such other address as may be furnished in writing by such party. Any notice that is mailed shall be effective when deposited in the United States mail, duly addressed and with first class postage affixed.
28. **Conflicting Provisions:** The various documents that comprise this Agreement shall prevail in accordance with the precedence established below in the event of any inconsistencies among them:
 1. Agreement

2. Request for Proposals
3. All Other Appendices
4. Contractor Proposal Forms

Further, should the Successful Proposer's bid be incorporated by reference herein following contract award, such proposal shall have the least precedence amongst the documents in resolving any inconsistencies contained in them.

29. **Laws and Regulations:** Contractor shall comply with all applicable federal, state and local laws and regulations including, without limitation, those relating to wages, hours, fair employment practices, equal opportunity, anti-discrimination, safety and working conditions.
30. **Qualifications and Licenses:** Contractor represents and warrants to Municipality that it and its employees are duly and fully qualified under the laws of the state of its incorporation and of the State of New York, to undertake the activities and obligations set forth in this Agreement, that it possesses as of the date of its execution of this Agreement, and it will maintain throughout the term hereof, all necessary approvals, consents and licenses from all applicable government agencies and authority and that it has taken and secured all necessary board of directors and shareholders action and approval.
31. **Miscellaneous:**
 - (a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
 - (b) The captions to the sections of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of this Agreement.
 - (c) This Agreement and its attachments constitute the entire understanding between Municipality and Contractor and supersede all prior agreements and understandings relating to the subject matter hereof.

- (d) This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York.
- (e) This Agreement may be executed in two or more counterparts, all of which together shall constitute one and the same instrument.
- (f) Both parties hereto warrant and represent that they have full right, power and authority to execute this Contract.
- (g) This Agreement is subject to GTCS, Inc. Procurement Policies, including but not limited to legal review and audit.

32. **Protection of Trade Secrets:** Many of Municipality's and GTCS, Inc.'s records are subject to disclosure to the public following the filing with Municipality or GTCS, Inc. of appropriate requests. Trade Secrets can be excepted from disclosure under the New York Freedom of Information Law, but will only be excepted by Municipality and GTCS, Inc. if Contractor identifies in writing the records or parts of records considered to be trade secrets when those records are submitted to Municipality or GTCS, Inc. giving the reasons for the need for the exception from disclosure, and specifically requesting that such information be held confidentially. Contractor shall stamp all such documents as "Confidential" and identify them as such in a transmittal letter. Without such identification and designation, such records may be subject to disclosure by Municipality or GTCS, Inc. without liability to Contractor.

33. **Payment Terms:** Municipality reserves the right not to pay a properly submitted invoice until 30 days after it (Municipality) has received such invoice.

IN WITNESS WHEREOF, the respective parties have caused this Contract to be executed by their duly authorized representatives and their seals, if any, to be affixed hereto the day and year first above written.

[Insert Contractor Name]

[Insert Municipality Name]

By: _____

By: _____

(Print Name)

(Print Name)

Title: _____

(Print Title)

Title: _____

(Print Title)

EXHIBIT A

TO AGREEMENT BETWEEN
[Insert Name of Municipality]
AND
[Insert Name of Contractor]

DATED: _____

SCOPE OF SERVICES

[Insert Name of Study]

[Insert Negotiated (final) Scope of Services]

EXHIBIT D

TO AGREEMENT BETWEEN
[Insert Name of Municipality]
AND
[Insert Name of Contractor]

DATED: _____

PAYMENT TERMS

[Insert Name of Study]

[Insert the payment terms from the Proposal. These are usually presented as the fee for each major task and a total fee in a tabular format.]

Invoices will be prepared no more frequently than monthly for work completed and submitted in the format provided by Municipality. Proper documentation of Direct Expenses (e.g., itemized receipts, mileage logs, etc.) must be submitted with the Invoice.

GTCS, Inc. operates on an April 1 to March 31 fiscal year. Any services rendered or other expenses incurred on or before March 31 of a given fiscal year must be invoiced in that same year. Failure to invoice for such services rendered or other expenses incurred in a timely manner will result in the inability of GTCS, Inc., and therefore Municipality, to pay these expenses.

EXHIBIT E

TO AGREEMENT BETWEEN
[Insert Name of Municipality]
AND
[Insert Name of Contractor]

DATED: _____

NEW YORK STATE REQUIRED CLAUSES
(LABELED AS APPENDIX A BY NEW YORK STATE)

[Insert Name of Study]

EXHIBIT F

TO AGREEMENT BETWEEN
[Insert Name of Municipality]
AND
[Insert Name of Contractor]

DATED: _____

FEDERAL REQUIRED CLAUSES

[Insert Name of Study]

All references to the Federal Transit Administration (FTA) in the attached Federal Required Clauses shall be understood to also refer to the Federal Highway Administration (FHWA) and/or the U.S. Department of Transportation.

Federal Clauses

Fly America Requirements

Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$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. 104-65 [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 close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

Government Wide Debarment and Suspension (Non Procurement)

The Recipient agrees to the following: (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will

not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," <http://https.www.sam.gov,.proxy1.semalt.design> if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <http://https.www.sam.gov,.proxy1.semalt.design> if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

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) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,

c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer".

(3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note,

d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of MAP-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding \$250,000 in a Federal fiscal year must: 1 Have a DBE

program meeting the requirements of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq.,

(2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under MAP-21 and previous legislation,

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

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

g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of "employer," (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37, (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27, (c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, "Nondiscrimination

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

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

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

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

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

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

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

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

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

Prompt payment

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

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

Incorporation of Federal Transit Administration (FTA) Terms

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

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

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 SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

**APPENDIX A - Standard Clauses for New York State Contracts
(January 2014)**

EXECUTORY CLAUSE

In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

NON-ASSIGNMENT CLAUSE

In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

COMPTROLLER'S APPROVAL

In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

WORKERS' COMPENSATION BENEFITS

In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

NON-DISCRIMINATION REQUIREMENTS

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or

subsequent violation.

WAGE AND HOURS PROVISIONS

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

NON-COLLUSIVE BIDDING CERTIFICATION

In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

INTERNATIONAL BOYCOTT PROHIBITION

In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

SET-OFF RIGHTS

The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

RECORDS

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for

the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION

(a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union,

or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

CONFLICTING TERMS

In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

GOVERNING LAW

This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

LATE PAYMENT

Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

NO ARBITRATION

Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

SERVICE OF PROCESS

In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS

The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law,

(Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

MACBRIDE FAIR EMPLOYMENT PRINCIPLES (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS)

(Non-Federal Aid New York State Contracts) In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

OMNIBUS PROCUREMENT ACT OF 1992 (APPLICABLE ONLY IN Non-Federal Aid New York State Contracts)

(Non-Federal Aid New York State Contracts). It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
Email: opa@esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
Telephone: 212-803-2414
Email: mwbecertification@esd.ny.gov
<http://esd.ny.gov/MWBE/directorySearch.html>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

RECIPROCITY AND SANCTIONS PROVISIONS (APPLICABLE ONLY IN Non-Federal Aid New York State Contracts)

Non-Federal Aid New York State Contracts). Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

COMPLIANCE WITH CONSULTANT DISCLOSURE LAW

If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

PROCUREMENT LOBBYING

To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the

agreement, if the covered agency determines that such action is in the best interest of the State.

IRAN DIVESTMENT ACT

By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

APPENDIX A-1: SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

Compliance with Regulations:

The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

Nondiscrimination:

The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

Solicitations for Subcontractors, Including Procurements of Materials and Equipment:

In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.

Information and Reports:

The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.

Sanctions for Noncompliance:

In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

- (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
- (b.) cancellation, termination or suspension of the contract, in whole or in part.

Incorporation of Provisions:

The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The contractor shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however,

that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.