



# **Request for Proposal**

**RFP 701-2021**

# **Information Technology (IT) Roadmap**

**Date Issued: August 31, 2021**

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## 1 INTRODUCTION

### 1(A) BACKGROUND

TCAT, Inc. (Tompkins Consolidated Area Transit, Inc.) is a not-for-profit corporation that provides public transportation for Tompkins County, a rural county in upstate New York of approximately 105,000 residents. TCAT serves all parts of the county; frequent service is centered in the densely populated Ithaca Urbanized Area (UZA), with a population of approximately 53,000. TCAT serves over 4.1 million passenger trips every year, traveling more than 1.66 million miles over 135,000 hours in revenue service. The fleet currently consists of 54 buses, 7 of which are battery-electric buses, two 16-passenger vans, and the remaining 45 vehicles are primarily 40 ft diesel buses. TCAT also offers complimentary ADA Paratransit services through a subcontractor, Gadabout. TCAT exhibits relatively lean staffing levels, with 28 Administrative Staffers, 86 Bus Operators, and 21 Maintenance Mechanics and Bus Handlers.

TCAT, Inc.'s facility is located at 737 Willow Avenue, Ithaca, New York 14850 (on the outskirts of the City of Ithaca) and encompasses approximately two acres of property inclusive of approximately 50,000 square foot Administrative Wing, Bus Storage Area, Bus Wash, Dispatch & Transit Supervisor Office, Employee Lounge, Fuel Storage Area, Maintenance Bays, and Parts Storage Area. Constructed in 1992 TCAT, Inc.'s facility is utilized year-round to conduct transportation orchestration, on average, 20 hours per day 7 days per week.

### 1(B) REQUESTS FOR PROPOSAL (RFP) PURPOSE

**Definition Note: Supplier, Contractor, Counsel, and Firm all are referring to the proposer of the RFP.**

The scope of this project includes assessing and analyzing the current state of IT initiatives within TCAT, followed by developing a 3-5-year IT Strategic Roadmap and Implementation Plan, deliverables must include: a Project Plan, Current IT State Assessment, Stakeholder Assessment, Gap Analysis, an IT Roadmap, and Implementation Plan, with details listed in section 3.

## 2 RFP INSTRUCTIONS AND INFORMATION

### 2(A) RFP TIMELINE

Day/Date	Description
<b>August 30, 2021 (Week of)</b>	Announcements of RFP are also placed with area newspapers, New York State Contract Reporter, and TCAT, Inc. websites.
<b>August 31, 2021</b>	RFP copies are available to suppliers via e-mail and websites.
<b>September 15, 2021</b>	Virtual pre-bid meeting at 1:30 PM – Sent email to <a href="mailto:rl1@tcatmail.com">rl1@tcatmail.com</a> for Zoom meeting invite.
<b>October 1, 2021</b>	Written questions due
<b>October 5, 2021</b>	Written replies to questions distributed to all known parties.
<b>October 15, 2021 No later than 4 PM EST Late bids will not be accepted.</b>	RFP responses are email, <a href="mailto:rl1@tcatmail.com">rl1@tcatmail.com</a> The subject line of the email should contain “RFP 701-2020 Proposal” <b>Submittals Due By 4:00 PM EST</b>
<b>October 29, 2021</b>	Responses will be analyzed and scored by TCAT, Inc. evaluation team. Total scores will factor heavily into TCAT, Inc.’s decision as to which parties are considered finalists
<b>November 1-5, 2021</b>	Schedule virtual presentations with finalists
<b>No later than December 3, 2021</b>	TCAT, Inc. project award is made (subject to successful negotiations of terms and conditions).

### 2(B) SELECTION AND EVALUATION TEAM

Scot Vanderpool TCAT, Inc. General Manager	Team Member
Matt Yarrow TCAT, Inc. Asst. GM / Service Development Mgr.	Team Member
Gian Fountain TCAT, Inc. IT Support	Team Member
Tom Clavel TCAT, System Analyst	Team Member
Megan Pulver TCAT, Project Manager	Team Member
Raymond Lalley TCAT, Inc. Purchasing Manager	Single Source of Contact though RFP Process

### 2(C) RFP CONTACT

Raymond Lalley	TCAT, Inc. Purchasing and Projects Manager	737 Willow Avenue Ithaca, New York 14850 Phone: 607-277-9388 (X-540) Fax: 607-277-9551 E-mail: <a href="mailto:rl1@tcatmail.com">rl1@tcatmail.com</a>
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### 2(D) RFP Evaluation Criteria

An evaluation team listed in Section 2(B) and others will analyze the RFP responses received from each Contractor. Before the selection of the award, TCAT, Inc. reserves the right to conduct on-site visits of any of the respondents' facilities and require each Contractor to present items contained in the RFP response and any other items deemed appropriate by TCAT, Inc.

If an award is made as to the result of this RFP, it shall be awarded to the respondent whose proposal is most advantageous to TCAT, Inc. with price and other factors including - but not limited to - responses to the RFP questions; demonstrated technical ability and expertise; financial stability; reference calls and/or recommendations; memberships and licenses or any other applicable membership or certifications; presentations to TCAT, Inc.'s Evaluation Team (if applicable); on-site visits at supplier's site (if applicable); product samples which TCAT, Inc. may – at our discretion – request as part of the RFP process; and any additional criteria deemed appropriate by TCAT, Inc. that would lend itself to establishing the Service Provider's viability to perform the work as outlined in this RFP.

When determining whether a respondent is responsible, or when evaluating a respondent's proposal, the following factors, any one of which will suffice to determine if a respondent is either not responsible or the proposal is not the most advantageous to TCAT, Inc., will be considered:

1. The ability, capacity, and skill of the respondent to perform the contract or provide the service required.
2. The character, integrity, reputation, judgment, experience, and efficiency of the respondent.
3. Whether the respondent can perform the contract within the time specified.
4. The quality of performance of previous public and private contracts – or services – including, but not limited to, the respondent's failure to perform satisfactorily or complete any written contract. TCAT, Inc.'s termination for default of a previous contract, with a respondent, shall be deemed as a failure.
5. The previous and existing compliance by the respondent with laws relating to the contract and services.
6. Evidence of collusion with any other respondent, in which case colluding respondents will be restricted from submitting further bids on the subject project or future tenders.
7. The respondent is not qualified for the work to the full extent of the RFP.
8. There is uncompleted work with TCAT, Inc. or others, or an outstanding dispute on a previous or current contract that might hinder, negatively affect or prevent the prompt completion of the work bid upon.
9. The respondent failed to settle bills for labor or materials on past or current public or private contracts.
10. The respondent has been convicted of a crime arising from a previous public contract, excepting convictions that have been pardoned, expunged, or annulled.
11. The respondent has been convicted of a crime of moral turpitude, or any felony, excepting convictions that have been pardoned, expunged, or annulled, whether in this state, in any other state, by the United States, or in a foreign country, province or municipality. Respondents shall affirmatively disclose to TCAT, Inc. all such convictions, especially of management personnel or the respondent as an entity before notice of award or execution of a contract, whichever comes first. Failure to make such affirmative disclosure shall be grounds, in TCAT, Inc.'s sole option and discretion, for termination for default subsequent to award or execution of a contract.

12. More likely than not, the respondent will not be able, financially or otherwise, to perform the work.
13. At the time of RFP opening, the respondent is not authorized to do business in New York State, is not registered as a contractor in New York, or otherwise lacks a required license, registration, or permit.
14. Such other information as may be secured having a bearing on the decision to award the contract.
15. Any other reason deemed proper by TCAT, Inc.

## 2(E) EVALUATION CRITERIA

Evaluation Criteria	Percentage
1. Capability, Capacity, and Qualifications	15
2. Staffing Plan and Staff Qualifications	15
3. Approach / Methodology	20
4. Work Plan and Timeline	15
5. Presentation	10
6. Pricing	25
Total	100

## 2(F) NOTICES AND RESPONSE CRITERIA

This RFP has been compiled in good faith. The information contained within is selective and subject to TCAT, Inc.'s updating, expansion, revision, and amendment.

TCAT, Inc. reserves the right to change at any time any aspect of, terminate, or delay the RFP, the RFP process, and/or the program, which is outlined within this RFP. Notice shall be given in a timely manner thereafter.

Recipients of this RFP are advised that nothing stated herein, or any part thereof, or any communication during this evaluation and selection process, shall be construed as constituting, offering, or awarding a contract, representation, or agreement of any kind between TCAT, Inc. and any other party, save for a formal written contract that is properly executed by both parties.

Responses to this RFP will become the property of TCAT, Inc., and will form the basis of negotiations for an agreement between TCAT, Inc. and the successful supplier.

TCAT, Inc. is not liable and will not be responsible for any costs incurred by any supplier(s) for the preparation and delivery of the RFP responses, nor will TCAT, Inc. be liable for any costs incurred before the execution of an agreement, including but not limited to, presentations by RFP finalists to TCAT, Inc.

During the review of this document please note TCAT, Inc.'s emphasis on the expectations, and qualities, and requirements necessary to be positioned as an RFP finalist and successful supplier.

Questions from respondents regarding this RFP must be submitted in writing (MS Word) on the question submittal form provided in Section 6 and returned via an attachment to an email sent to the RFP Contact shown in Section

2(C). Questions from respondents pertinent to this RFP will be answered so long as they are received by the day/time indicated in the RFP Timeline, Section 2(A), and in the specified format. Answers to all pertinent questions will be sent to all known respondents.

Note: Please review the following additional criteria

1. WAIVER OF MINOR ADMINISTRATIVE IRREGULARITIES  
TCAT, Inc. reserves the right, at its sole discretion, to waive minor administrative irregularities contained in any proposal.
2. SINGLE RESPONSE  
A single response to the RFP may be deemed a failure of competition and, in the best interest of TCAT, Inc., the RFP may be canceled.
3. PROPOSAL REJECTION  
TCAT, Inc. reserves the right to reject any or all proposals at any time without penalty.
4. WITHDRAWAL OF PROPOSALS  
Suppliers may withdraw a proposal that has been submitted at any time up to the proposed closing date and time. To accomplish this, a written request, signed by an authorized representative of the supplier, must be submitted to the RFP Contact. The supplier may submit another proposal at any time up to the proposed closing date and time.
5. NON-ENDORSEMENT  
As a result of the selection of a supplier of products and/or services to TCAT, Inc., TCAT, Inc. is neither endorsing nor suggesting that the supplier's product is the best or only solution. The supplier agrees to make no reference to TCAT, Inc. in any literature, promotional material, brochures, sales presentation, or the like without the express written consent of TCAT, Inc.
6. PROPRIETARY PROPOSAL MATERIAL  
Any information contained in the proprietary proposal must be designated. Marking the entire proposal as proprietary will be neither accepted nor honored. If a request is made to view a supplier's proposal, TCAT, Inc. will comply according to applicable Open Public Records Acts. If any information is marked as proprietary in the proposal, such information will not be made available until the affected supplier has been provided an opportunity to seek a court injunction against the requested disclosure.
7. RESPONSE PROPERTY OF TCAT, INC.  
All materials submitted in response to this request become the property of TCAT, Inc. Selection or rejection of a response does not affect this right.
8. NO OBLIGATION TO PROCURE

TCAT, Inc. reserves the right to refrain from contracting with any supplier. The release of this RFP does not compel TCAT, Inc. to procure. TCAT, Inc. may elect to proceed further with this project by interviewing suppliers well suited to our project, conducting site visits, or proceeding with an award.

9. COST OF PREPARING PROPOSALS

TCAT, Inc. is not liable for any costs incurred by suppliers in the preparation and presentation of proposals and demonstrations submitted in response to its RFP.

10. ERRORS IN PROPOSALS

TCAT, Inc. will not be liable for any errors in supplier proposals. Suppliers will not be allowed to alter proposal documents after the deadline of proposal submission.

TCAT, Inc. reserves the right to make corrections or amendments due to errors identified in proposals by TCAT, Inc. or the supplier. This type of correction or amendment will only be allowed for such errors as typing, transposition, or any other obvious error. Suppliers are liable for all errors or omissions contained in their proposals.

When, after the opening and tabulation of proposals, a respondent claims error and requests to be relieved of an award, said respondent will be required to promptly present certified worksheets. The RFP Contact will review the worksheets and if the RFP Contact is convinced by clear evidence that an honest, mathematically excusable error or critical omission of costs has been made, the respondent may be relieved from the said proposal.

After opening and reading proposals, TCAT, Inc. will check all for accuracy of extensions of the prices per unit and the total price. If a discrepancy exists between a price per unit and the extended amount of any proposal item the price per unit will control, TCAT, Inc. will use the total of extensions corrected where necessary.

11. BID BOND

Refer to Federal and State Requirements

12. PERFORMANCE BOND

Refer to Federal and State Requirements.

13. RESPONSE INFORMATION

Information regarding this RFP, including any addenda, is available at [www.tcatbus.com](http://www.tcatbus.com) (see News & Procurement → TCAT Projects→ Current and Future Projects) or contact Raymond Lalley at (607) 277-9388 Extension 540 or email [rl1@tcatmail.com](mailto:rl1@tcatmail.com).

14. ADDENDA

Suppliers are responsible for checking TCAT, Inc.'s website for the issuance of any addenda before submitting a response. Our website address is [ww.tcatbus.com](http://ww.tcatbus.com) (see News → Procurement).

15. CONTRACT AWARD AND EXECUTION

TCAT, Inc. will select the proposal that, in its sole discretion, is the most advantageous to TCAT, Inc. TCAT, Inc. reserves the right to make an award without further discussion of the proposal submitted; there may be no best and final offer procedure, therefore, all proposals should be initially submitted on the most favorable terms the supplier can offer.

TCAT, Inc. shall attempt to negotiate a contract with the respondent who offered the most advantageous proposal at a price which TCAT, Inc. determines is fair and reasonable. If TCAT, Inc. is unable to negotiate a satisfactory contract with the firm selected at a price TCAT, Inc. determines to be fair and reasonable, negotiations with that firm shall be formally terminated and TCAT, Inc. shall select the next best proposal, and continue until an agreement is reached or the process is terminated.

### 3 REQUIREMENTS FOR PROPOSAL

#### SPECIFIC REQUIREMENT

The IT Strategic Planning vendor will conduct the following activities with guidance from TCAT:

- 1) Project Plan: Develop a finalized project plan outlining the steps and timeline for accomplishing the activities listed below.
- 2) Current IT State Assessment
- 3) Stakeholder Assessment
- 4) Gap Analysis
- 5) IT Strategic Roadmap
- 6) Implementation Plan

#### PROJECT PLAN

Develop a finalized project plan outlining the steps and timeline.

#### CURRENT IT STATE ASSESSMENT

Describe the current IT environment at TCAT, including major IT initiatives, their governance, financing, policy/legal, and business operations.

Identify federal initiatives that may have an impact on the TCAT's vision and efforts.

The deliverables for this section should include a description of IT initiatives that exist, are under development, or are being planned, and include the following information at a minimum:

- A suitable framework for analyzing TCAT's capacity to use IT in making business decisions. Identify TCAT's position with respect to that framework.
- The capabilities and vulnerabilities of TCAT's IT infrastructure, server hardware, and network systems.
- Business Operations/Project Plans: Describe how the business operations are carried out, what the strengths and limitations of the current business operations are about in achieving TCAT's goals, and what if any changes are being contemplated. Describe any planned short-term (1-year) and longer-term (2-3 years) activities.
- User: Describe current and/or proposed end-users.
- Legal and Policy Considerations: Identify statutory, regulatory, and policy requirements related to this requirement, including how this enables and/or serves as a barrier to achieving goals. Identify any changes that are being contemplated.

- Describe the process of overseeing the control and direction of the current IT structure (governance), if there is one, and how effective the governance has been.
- Describe whether the governance is viewed by internal and external stakeholders as enabling or constraining IT initiatives?
- Costs and Financing: Identify current project costs, how these costs are being financed, immediate, and throughout the project length. (capital and operating breakout)
- Comparative Costs: Compare how costs relate to similar initiatives at other agencies.

The assessment should also describe the state and federal landscape that may impact IT efforts at TCAT over the next 3-5 years. Including a description of existing and anticipated federal/state laws, regulations, programs, and policies.

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## STAKEHOLDER ASSESSMENT

Obtain stakeholder input from employees and the TCAT board to help identify IT priorities, needs, barriers, and successes. The vendor will work with TCAT to determine the list of stakeholders to be included in this process and to finalize a plan to obtain stakeholder feedback and input. Stakeholder examples: Federal and State regulators, local transportation-related offices, board, and executive team, operations managers, department managers including IT, front-line data-entry keyboarders, riders, and rider app producers, farecard sponsors.

Staff members should represent multiple departments of the organization (i.e. Human Resources, Marketing, Operations, IT, Finance, etc.) The deliverable for this section should minimally include a comprehensive report which:

- Presents a synopsis of stakeholder responses including:
  - What IT initiatives are considered beneficial
  - What additional IT infrastructure is desired
  - Current enablers and barriers to using IT infrastructure
- Identifies trends in stakeholder feedback
- Identifies where the input received aligns with the IT initiatives being developed
- Identifies areas of desired change (technical, governance, policy, financing, legal, operations, etc.) based on the feedback obtained.
- Identifies gaps in stakeholder knowledge of IT systems and use of data in business decisions. This can be used to recommend training for particular roles or individuals.

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## GAP ANALYSIS

Complete a gap analysis, including any legislation or regulations (i.e. length of storage, encryption, security measures.) that may be needed or need to be amended in company procedures and policies. The deliverable for this section should minimally include a report that:

- Identifies barriers to the progression along with the framework.
- Identifies critical gaps as a result of stakeholder feedback and the assessment of current initiatives
- Identifies what gaps exist based on federal/state directions and policy.

## IT ROADMAP

Based on a review of the current IT state, the stakeholder assessment (including desired areas of change), and the gap analysis, develop the IT strategic roadmap. Working iteratively, facilitate discussions with stakeholders within TCAT, TCAT management, and the board, to establish priorities, and a shared vision. Then develop a 3-5-year IT Strategic Roadmap, including a proposed governance structure.

The deliverable for this section should include a minimum:

- Overall vision and goals for TCAT
- Impact of existing and emerging federal/state policies and funding and opportunities for TCAT
- Impact of the current TCAT funding models and any suggested changes needed to support the vision and goals.
- Identification of existing and/or new IT infrastructure needed to support the vision and goals
- Current and proposed IT staffing plan and organizational chart to support IT operations, governance, and vendor management
- Current state and proposed state of technical schematics for IT functions and components necessary to support business needs. These schematics should illustrate how initiatives align and/or connect.
- Prioritization of efforts by quarter/year and description of dependencies among recommended initiatives.

## IMPLEMENTATION PLAN

Work collaboratively with involved stakeholders and board members to develop an implementation/ action plan that will accomplish the vision and goals outlined in the IT Strategic Roadmap. The deliverable for this section should at a minimum include a detailed, action-oriented plan which identifies:

- Specific objectives to align with the goals of the roadmap.
- Specific suggested strategies and/or activities to implement the objectives
- A timeline with interim milestones is needed for meeting the objectives
- Lead individuals responsible for implementing each component of the plan, as well as necessary internal and external partners to accomplish the vision as outlined in the roadmap.
- Recommended technology or software required at each milestone.
- Initial budget estimates for technology or software are required at each milestone.

## SUBMITTAL REQUIREMENTS

### TECHNICAL PROPOSAL

Narrative and format: The proposal should address specifically each of the following elements:

1. Capability, Capacity, and Qualifications of the Offeror –

Please provide a detailed description of the vendor's organization including what unique strengths, skills, capabilities, and experiences the vendor would bring to this project. Please describe any specific experience the vendor has with developing IT strategy and implementation plans for transit agencies, and any similar or related work for private organizations.

Additionally, please provide at least three relevant client references. Client references should include the name of the client, contact information for the individual(s) overseeing the project such as the project manager (addresses, phone numbers, emails), a brief description of the project, project start and end dates (or whether it is still underway) and total contract value.

Please include a list of any current and past contracts over the last 5 years, the timeframe of the contract.

## 2. Staffing Plan and Staff Qualifications –

Please provide a proposed staffing plan for this project. The staffing plan should include the name of all staff members who will be working on this project, their role(s), and the % FTE/time allocated to each staff member. Please identify a lead staff member for this project. The staffing plan should also include the qualifications and experience of key staff who will be involved in this project, including their experience in the field. Resumes/CVs for key staff should be included as appendices, as well as an organizational chart for members of the staff team.

## 3. Approach/Methodology –

Please define the general approach and specific methodology the vendor will take to conducting IT Roadmap. Please discuss if this methodology has been used in the past, whether there have been difficulties or challenges in using the proposed approach and if so how has the vendor overcome those. Please identify what the vendor thinks are the biggest risks to this project and discuss what approaches the vendor plans to use to identify, address and mitigate any risks.

## 4. Work Plan and Timeline–

Please describe in detail the framework within which the requested IT Roadmap and Implementation Plan will be developed and provide a proposed work plan with timelines for carrying out this work.

In addition to the work plan, the vendor should discuss the specific processes and activities they will undertake to complete the following work:

- a. Stakeholder engagement- the work plan should include details about how the vendor will engage with stakeholders (number and types of stakeholders, the method for gathering stakeholder feedback, etc.);
- b. Gap analysis- the work plan should include the types of gaps that will be included in this analysis and how the vendor will identify those gaps;
- c. IT roadmap- the work plan should address specifically how the roadmap will be developed, including how the vendor intends to work iteratively with stakeholders to establish priorities and garner consensus to the extent possible; and

e. Implementation plan- the work plan should include how the vendor plans to develop the implementation plan, including the process used to develop specific objectives, activities, timeframes, as well as identifying and getting buy-in on who the lead responsible organization should be.

#### 5. Presentation -

Vendors will be contacted by TCAT to set up an on-site or virtual vendor presentation of the technical proposal. The identified lead staff member in the Staffing Plan should present the technical proposal. The vendor should present each component of the technical proposal but plan to focus most of the time on Approach/Methodology and Work Plan and Timeline. Any information the vendor would like to present during the presentation must be included within the written technical proposal.

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## PRICING CONSIDERATIONS

### DETAILED BUDGET AND BUDGET NARRATIVE

The cost proposal must include a detailed budget for developing each of the six work products listed below. The budget should reflect as accurately as possible, specific costs associated with developing each deliverable and should include estimated costs broken down in detail by personnel, fringe, travel, and other costs. This should be accompanied by a budget narrative that explains in more detail how the vendor arrived at the estimated costs.

Section 5 contains the budget spreadsheet which the vendor is required to fill out. The attached spreadsheet has a separate worksheet/tab for each type of expense across the deliverables listed below as well as a linked worksheet that tabulates all of the projects and provides the entire project budget. The final submission should include all five (5) budget forms and the budget narrative. Budgets must be provided for the following six tasks:

- 1) Project Plan
- 2) Current State Assessment
- 3) Stakeholder Assessment
- 4) Gap Analysis
- 5) 3-Year IT Roadmap
- 6) Implementation Plan

## INSURANCE REQUIREMENTS

The Contractor and any subcontractors shall procure and maintain throughout the term of this Agreement, and beyond the term of this Agreement where explicitly required below, insurance of the following types of coverage and limits of liability:

- 1) Commercial General Liability (CGL) with limits of Insurance of not less than \$1,000,000 each occurrence and \$2,000,000 Annual Aggregate.
  - a) If the CGL coverage contains a General Aggregate Limit
  - b) CGL coverage shall be written on ISO Occurrence form CG 00 01 1093 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury.
  - c) Contractor, TCAT, City of Ithaca, Tompkins County, Cornell University, and all other parties required of the Contractor, shall be included as insured on the CGL, using ISO Additional Insured Endorsement CG2010 (11/85) or CG2010 (04/13) AND CG2037 (04/13) or CG2037 (04/13) AND CG2038 (04/13) or an endorsement providing equivalent coverage to the additional insureds. This insurance for the additional insureds shall be as broad as the coverage provided for the named insured Contractor/subcontractor. It shall apply as Primary and non-contributing Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insureds.
  - d) Contractor/subcontractor shall maintain CGL coverage for itself and all additional insureds for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least 3 years after completion of the Work.
- 2) Automobile Liability
  - a) Business Auto Liability with limits of at least \$1,000,000 for each accident.
  - b) Business Auto coverage must include coverage for liability arising out of all owned, leased, hired, and non-owned automobiles.
  - c) Contractor, TCAT, City of Ithaca, Tompkins County, Cornell University, and all other parties required of the Contractor, shall be included as insureds on the auto policy.
- 3) Commercial Umbrella
  - a) Umbrella limits must be at least \$5,000,000.
  - b) Umbrella coverage must include as insureds all entities that are additional insureds on the CGL.
  - c) Umbrella coverage for such additional insureds shall apply as primary before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insureds, other than the CGL, Business Auto Liability, and Employers Liability coverages maintained by the Contractor/subcontractor.

4) Workers' Compensation and Employer's Liability - Statutory coverage complying with the New York Workers' Compensation Law. Contractor and any subcontractors must submit one of the following forms:

- CE-200 - Certificate of Attestation of Exemption from NYS Workers' Compensation, OR
- C-105.2 - Certification of NYS Workers' Compensation Insurance, OR
- U-26.3 - State Insurance Fund version, OR
- SI-12 - Certificate of NYS Workers' Compensation Self Insurance, OR
- GSI-105.2 - Certificate of NYS Workers' Compensation Group Self-Insurance.

5) Disability Benefits Coverage - Statutory coverage complying with the NYS Workers' Compensation Law. Contractor and any subcontractors must submit one of the following forms:

- CE-200 - Certificate of Attestation of Exemption from NYS Disability Benefits Coverage, OR
- DB120.1 - Certification of Disability Benefits Insurance, OR
- DB155 - Certificate of Disability Self-Insurance.

6) Waiver of Subrogation

a) Contractor waives all rights against TCAT, City of Ithaca, Tompkins County, Cornell University and their agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by Commercial General Liability, Commercial Umbrella Liability, Business Auto Liability or Workers' Compensation and Employer's Liability insurance maintained per the requirements stated above.

b) Contractor shall assure that all subcontractors execute a waiver of all rights against Contractor, TCAT, City of Ithaca, Tompkins County, Cornell University and their agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by Commercial General Liability, Commercial Umbrella Liability, Business Auto Liability or Workers' Compensation and Employer's Liability insurance maintained per the requirements stated above. The contractor shall provide the subcontractors' executed subrogation waivers to TCAT before the commencement of work under this Agreement.

7) Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Contractor/subcontractor's policies. These certificates and the insurance policies shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least 30 days before written notice has been given to the Contractor.

8) Contractor acknowledges that failure to obtain the insurance described in this constitutes a material breach of contract and subjects it to liability for damages, indemnification, and all other legal remedies available to TCAT, City of Ithaca, Tompkins County, and Cornell University. The Contractor is to provide TCAT with certificates of insurance and any other documentation requested by TCAT, evidencing the above requirements have been met, before the commencement of work or use of facilities. The failure of TCAT to object to the contents of the

certificates, forms, or endorsements, or the absence of same, shall not be deemed a waiver of any and all rights held by TCAT, City of Ithaca, Tompkins County, or Cornell University.

#### SINGLE POINT OF RESPONSIBILITY

TCAT, Inc. expects to have a single point of contact consisting of a single point of authority and a single contract entity for this project. TCAT, Inc. will not enter into any agreement that does not provide a single point of accountability.

#### 4 QUESTIONS

Please respond in the text blocks underneath each question.

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#### 4(C) SINGLE POINT OF RESPONSIBILITY/ACCOUNTABILITY

1. TCAT, Inc. expects to have a single point of contact, i.e. a single point of responsibility/accountability and a single contracting entity for this project.

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#### 4(D) GENERAL QUESTIONS

1. How many years has your company been in business? How long have you been in IT services? What is your company's primary line of business?
2. Provide a brief overview of your company (furnish your business philosophy, mission statement, Management Structure, Organizational Chart, etc.).
3. How many employees do you have? What are the total years' of experience your employees possess providing transit consulting services?
4. State the type of ownership of your company. Provide the state and date of your incorporation if applicable. List Headquarters and Regional/Full-Service office locations and website address.
5. Please provide the status of any current, or pending, litigation **against your company** that may directly affect your ability to deliver the services you offer.

## 5 PROPOSAL

## PRICING

Please see the excel spreadsheet ("IT Roadmap Pricing Sheet") for ease of completing the attached.

Task	Labor, Direct	Subcontractor	Fringe	Travel	Other	Total cost (per task)
1. Project Plan						\$0.00
2. Current IT State Assessment						\$0.00
3. Stakeholder Assessment						\$0.00
4. Gap Analysis						\$0.00
5. IT Roadmap						\$0.00
6. Implementation Plan						\$0.00
<b>TOTAL COST OF ALL TASK</b>						<b>\$0.00</b>

## 6 QUESTION SUBMITTAL PROCESS

Questions regarding this RFP may be submitted via email to the RFP Contact listed in Section 2(C), only during the allotted timeframe detailed in the timeline, Section 2(A)

Answers to all pertinent questions, from all Suppliers, will be returned to all known RFP participants without identifying the Supplier submitting the inquiry.

## 9. REQUIRED FORMS FOR SUBMITTAL

### 9 (A) DISADVANTAGED BUSINESS ENTERPRISE (DBE)

#### CERTIFICATION FOR NON-ROLLING STOCK MATERIALS OR SERVICES

As a recipient of funding under Section 1101(b) of TEA-21, 23 U.S.C. Section 101, our transit system must identify Disadvantaged Business Enterprise participation in all contracts which can be used to meet our overall obligation. For this reason, we require all Contractors, as a condition of being authorized to bid on this project, to certify the level of Disadvantaged Business Enterprise participation which will be involved if he/she is awarded the contract for the project.

Accordingly, the following certification must be completed and submitted with your bid:

I \_\_\_\_\_, hereby  
(Name and Title)

certify that DBE participation in the items offered shall not be less than \_\_\_\_\_ percent,

\$ \_\_\_\_\_ U.S. dollars of the final purchase price.

I understand that the Disadvantaged Business Enterprise participation levels indicated will be a material factor in the public agency's decision to award a contract for the items offered.

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Title

Attach a listing of the DBE firms from whom purchase of components or services is anticipated, pending award of this contract for items covered, in this procurement. Please indicate the type of items to be purchased, an address, phone number and contact person for each Disadvantaged Business Enterprise as well as the amount of purchases anticipated.

## 9 (B) ANTI-DISCRIMINATION CLAUSE

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

- (a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination because of race, color, creed or national origin. Such action shall be taken with reference, but not be limited, to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
- (b) The contractor will send to each labor union or representative of workers with which he has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Commissioner for Human Rights, advising such labor union or representative of the contractor's agreement under clauses (a) through (f) hereinafter called "non-discrimination clauses". If the contractor was directed to do so by the contracting agency as part of the bid or negotiation of this contract, the contractor shall request such labor union or representative to furnish him with as written statement that such labor union or representative either will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment and the terms and conditions of employment under this contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnishes such a statement, the contractor shall promptly notify the State Commission for Human Rights of such failure or refusal.
- (c) The contractor will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commission for Human Rights setting forth the substance of the provisions of clauses (a) and (b) and such provisions of the State's Laws against discrimination as the State Commission for Human Rights shall determine.
- (d) The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color or national origin.
- (e) The contractor will comply with the provisions of Sections 291-299 of the Executive Law and the Civil Rights Law, will furnish all information and reports deemed necessary by the State Commission for Human Rights under these non-discrimination clauses and such sections of the Executive Law, and will permit access to his books, records and accounts by the State Commission for Human Rights, the Attorney General and the Industrial Commissioner for purposes of investigation to ascertain compliance with these non-discrimination clauses and such sections of the Executive Law and Civil Rights Law.
- (f) This contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the contracting agency upon the basis of a finding made by the State Commission for Human Rights that the Contractor may be declared ineligible for future contracts made by or on behalf of the State or a public authority or agency of

the State, until he satisfies the State Commission for Human Rights that he has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commission for Human Rights after conciliation efforts by the Commission have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the Commission, notice thereof has been given to the Contractor and opportunity has been afforded him to be heard publicly before three members of the Commission. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law. The Contractor will include the provisions of clauses (a) through (f) in every subcontract or purchase order in such a manner that such provisions be performed within the State of New York. The Contractor will take such action in enforcing such provisions of such subcontract or purchase order as the contracting agency may direct, including sanctions or remedies for non-compliance. If the Contractor becomes involved in or is threatened with litigation with a subcontractor or Contractor as a result of such direction by the contracting agency, the Contractor shall promptly so notify the Attorney General, requesting him to intervene and protect the interests of the State of New York.

GENERAL CONDITIONS ACCEPTED BY:

Firm: \_\_\_\_\_ By: \_\_\_\_\_

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

9 (C) FEDERAL TRANSIT ADMINISTRATION CERTIFICATIONS AND ASSURANCES

Name of Proposer: \_\_\_\_\_

Name of Authorized Person: \_\_\_\_\_

Title of Authorized Person: \_\_\_\_\_

By endorsing this signature page, \_\_\_\_\_ (authorized person) declares that he or she is duly authorized to make the certifications and assurances on behalf of the Proposer and bind the Proposer to comply with them. Thus, when its authorized person signs this document, the Proposer agrees to comply with all Federal statutes, regulations, and executive orders required for Third Party Contracts (Part 2 Terms & Conditions).

The Proposer affirms the truthfulness and accuracy of the certifications and assurances it has made in this statement herein and acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801, et seq. apply to any certification, assurance or submission made to TCAT, Inc. and the FTA.

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances and other statements made by me on behalf of the Proposer are true and correct.

Date: \_\_\_\_\_

Signature - Authorized Person

State of \_\_\_\_\_

COUNTY of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me came \_\_\_\_\_

\_\_\_\_\_, known to me to be the person who executed the foregoing certification. In witness whereof, I hereto set my hand and seal.

\_\_\_\_\_ (Seal)

Notary Public

My Commission Expires: \_\_\_\_\_

**ACKNOWLEDGEMENT OF PROPOSER, IF A CORPORATION**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me personally came and appeared \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that he/she resides at \_\_\_\_\_, that he/she is the \_\_\_\_\_ of \_\_\_\_\_ the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation, that one of the seals affixed to said instrument is such seal; that it was so affixed to said instrument by order of the Directors of said corporation; and that he/she signed his/her name thereto by like order.

(Seal) \_\_\_\_\_

ACKNOWLEDGEMENT OF PROPOSER, IF A PARTNERSHIP

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me personally came and appeared \_\_\_\_\_, to me known, and known by me to be one of the members of the firm of \_\_\_\_\_, described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed the same as and for the act and deed of said firm.

(Seal) \_\_\_\_\_

ACKNOWLEDGEMENT OF PROPOSER, IF AN INDIVIDUAL

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me personally came and appeared \_\_\_\_\_, to me known, and known by me to be the person described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed same.

(Seal) \_\_\_\_\_

**9 (D) NON-COLLUSION CERTIFICATION****701-2021 IT Roadmap****NON-COLLUSION CERTIFICATION**

I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting an offer for this bid/quote, and is in all respects fair and without collusion or fraud.

The below signed respondent has not divulged to nor discussed or compared his/her bid with other suppliers and has not colluded with any other respondent or parties to bid whatsoever. Note: No premiums, rebates or gratuities to any employee or agent are permitted either with, prior to, or after any delivery of materials and/or services. Any such violation will result in the cancellation and/or return of material as applicable.

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

Mailing Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Date: \_\_\_\_\_

Authorized Signature (written): \_\_\_\_\_

Authorized Signature :( printed): \_\_\_\_\_

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

9 (E) CERTIFICATION OF COMPLIANCE



**CERTIFICATION OF COMPLIANCE  
WITH PROPOSAL SPECIFICATIONS**

I hereby certify that all items, which may be delivered under attached bid proposal, shall meet or exceed the minimum specifications dated \_\_\_\_\_

(date)

issued by \_\_\_\_\_

(Procurement Administrator)

as amended by responses to requests for clarifications, approved equals or exceptions issued on or before

\_\_\_\_\_ (Date)

By:

\_\_\_\_\_

(Name)

(Date)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Company)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City, State, Zip)

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

**10. ADDENDA ACKNOWLEDGEMENT**

The Undersigned, hereinafter called "PROPOSER", having become familiar with the local conditions, nature and extent of the work, and having examined carefully the Request for Proposals and having fulfilled their requirements, proposes to sublease and utilize the premises and timely furnish all required services as described in this RFP, in full accordance with the proposal documents and all other documents related thereto on file with TCAT, Inc., and if awarded the agreement, to occupy and utilize the subleased premises and provide the required services within the time limits specified.

The above proposal shall remain in full force and effect for a period of 90 calendar days after the time of the opening of this proposal and it shall not be revoked, withdrawn or canceled within that time frame.

Acknowledgment is hereby made of receipt of the following Addenda issued during the proposal period:

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_ Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_ Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

TCAT, Inc. department head, employee or officer has a direct interest in the proposal. This proposal is genuine and not collusive or a sham; the person, firm or corporation named herein has not colluded, conspired, connived nor agreed directly or indirectly with any Proposer or person, firm or corporation, to put in a sham proposal, or that such other person, firm or corporation, shall refrain from proposing, and has not in any manner directly or indirectly, sought by agreement or collusion, or communication or conference with any person, firm or corporation, to fix the unit prices of said proposal or proposals of any other Proposer, or to secure any advantage against TCAT, Inc. or any person, firm or corporation interested in the proposed contract; all statements contained in the proposal or proposals described above are true; and further, neither the undersigned, nor the person, firm or corporation named herein, has directly or indirectly submitted said proposal or the contents thereto, to any association or to any member or agent thereof. In witness whereof, the PROPOSER has hereunto set his signature and affixed his seal this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

ATTEST: \_\_\_\_\_ (Seal)

By: Printed \_\_\_\_\_

By: Signature \_\_\_\_\_

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

\_\_\_\_\_  
Company Name Contact Person

\_\_\_\_\_  
Mailing Address Phone Number

\_\_\_\_\_  
City, State, and Zip Fax Number

## 11. PROTEST INFORMATION

Parties have the right to appeal a proposed solicitation or award of contract issued by TCAT pursuant to the following procedural steps:

### Who May Protest or Appeal

Any parties showing a substantial economic interest in the award of a contract under a procurement who claims to be aggrieved in connection with the solicitation or proposed award of a contract under this procurement may protest to TCAT in accordance with the procedures set forth herein.

### Timing of Protest

Protests based on the contents of a procurement shall be submitted no later than seven (7) business days prior to the date and time designated for submittal of bids or proposals. A protest of a proposed award or of an award shall be filed within five (5) business days after the award of a contract or notice of apparent successful proposer/bidder, whichever is sooner.

### Contents of Protest

A protest shall be in writing and shall include: (1) the procurement title and/or number under which the protest is made; (2) the name, address, fax number and/or e-mail of the allegedly aggrieved party; (3) a detailed description of the specific grounds for the protest and all supporting documentation; and (4) the specific ruling or relief requested. The written protest shall be addressed to: TCAT, Attn: Purchasing Manager, 737 Willow Ave, Ithaca, NY 14850.

### Determination of Non-Responsibility (FOR PUBLIC WORKS/CONSTRUCTION ONLY)

If TCAT determines a bidder to be not responsible, TCAT shall provide, in writing, the reasons for the determination. The bidder may appeal the determination within three (3) business days by presenting additional information to TCAT. TCAT shall consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, TCAT may not execute a contract with any other bidder until two (2) business days after the bidder determined to be not responsible has received the final determination.

### Protest Procedure

Upon receipt of a timely written protest, the Purchasing Manager, or his/her designee, will consider the protest in accordance with established procedures and promptly issue a written decision stating the reasons for the action taken and informing the allegedly aggrieved person of his/her right to appeal the decision to the General Manager. A copy of the decision shall be mailed by U.S. mail, faxed and/or emailed to the allegedly aggrieved.

### Appeal Procedure

The decision made by the Purchasing Manager, or his/her designee, shall be final and conclusive unless appealed in writing to the General Manager within five (5) business days of receipt by the Purchasing Manager's, or his/her designee's decision. The General Manager, or his/her designee, will consider the appeal and promptly issue a

written decision, which shall be final and conclusive. A copy of the decision shall be mailed by U.S. mail, faxed and/or emailed to the allegedly aggrieved.

#### Failure to Comply with Requirements

Failure to comply with these protests and appeal requirements will render a protest or an appeal untimely or inadequate and may result in rejection thereof by TCAT.

#### Exhaustion of Administrative Remedies

A Protester may not commence litigation prior to exhausting all administrative remedies. Failure to exhaust all administrative remedies shall constitute an absolute waiver of the Protester's right, if any, to commence litigation.

#### Protests at the FTA Level

When the award is funded in part by Federal Transit Administration (FTA) funds, the vendor may appeal to the FTA pursuant to FTA Regulations. Protests made to the FTA will be limited to TCAT's failure to have followed its protest procedures, TCAT's failure to review a complaint or protest, or violations of Federal law or regulation. Any protest to the FTA must be made in accordance with the following guidelines:

A. A protest must be filed with the FTA no later than five (5) business days after the protester learns or should have learned of an adverse decision by TCAT or other basis of appeal to FTA.

B. A protest to FTA must be filed in accordance with FTA Circular 4220.1F, as amended.

#### Notify FTA

Agency staff must notify FTA of protests involving FTA funded contracts in accordance with FTA Circular 4220.1F and must keep FTA informed about the status of the protest.

## 12. RFP RESPONSE SUBMITTAL CHECKLIST

Supplier shall submit a proposal in the following format:

1. The contractor shall provide an email of the proposal. Where signatures are required, a digital signature is acceptable, or a scanned copy of the signature pages.
2. TCAT, Inc.'s RFP name and number, associated with this project, must be easily identified in the submitted documentation.
3. The proposal shall contain following, in this order:

- |  |                          |
|--|--------------------------|
| RFP Cover Sheet  | <input type="checkbox"/> |
| Introduction, Instructions and Information   | <input type="checkbox"/> |
| Technical Proposal   | <input type="checkbox"/> |
| General Questions  | <input type="checkbox"/> |
| Pricing Plan   | <input type="checkbox"/> |
| Required Forms / Bonds for Submittals  | <input type="checkbox"/> |
| <input type="checkbox"/> Disadvantaged Business Enterprise (DBE)                           |                          |
| <input type="checkbox"/> Anti-Discrimination Clause  |                          |
| <input type="checkbox"/> Federal Transit Administration Certifications and Assurances      |                          |
| <input type="checkbox"/> NON-COLLUSION CERTIFICATION                                       |                          |
| <input type="checkbox"/> CERTIFICATION OF COMPLIANCE                                       |                          |
| <input type="checkbox"/> Government Wide Debarment and Suspension (within Federal Clauses) |                          |
| Compliance with Proposal Specifications  | <input type="checkbox"/> |

**Note: TCAT, Inc.'s checklist is intended, primarily, as an aid to Suppliers in responding to this RFP. Proposer retains the sole responsibility for accuracy and conformance of response submittals.**

**13 STATEMENT OF NO PROPOSAL**

TOMPKINS CONSOLIDATED AREA TRANSIT PURCHASING  
 737 Willow Avenue, Ithaca, NY 14850  
 (607) 277-9388 (Extension 540), Fax (607) 277-9551

**TO OUR BIDDERS LIST SUPPLIERS: Failure to respond to this request for proposal may result in the suspension of your firm's participation from the solicited item(s)/service. If your firm does not wish to propose a price for the solicited items/service, the "Statement of No Proposal" must be signed and returned to TCAT Purchasing office by the proposal due date to remain on the bidder's list.**

STATEMENT OF NO PROPOSAL

**NAME OF PROPOSAL:** \_\_\_\_\_ **OPENING DATE:** \_\_\_\_\_

1. \_\_\_\_\_ Specifications too "tight", i.e. geared toward one (1) brand or manufacturer only
2. \_\_\_\_\_ Specifications are unclear. (Explain below)
3. \_\_\_\_\_ We are unable to meet specifications.
4. \_\_\_\_\_ Insufficient time to respond to the Request for Proposal.
5. \_\_\_\_\_ Our schedule would not permit us to perform within the required time.
6. \_\_\_\_\_ We do not offer this product or service.
7. \_\_\_\_\_ Remove us from your bidders list for this particular commodity or service.
8. \_\_\_\_\_ Please keep our name on your bidder's list for future reference.
9. \_\_\_\_\_ Other (specify below).

**FURTHER REMARKS:** (e.g. name change, address, phone, or FAX change)

\_\_\_\_\_

**COMPANY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**NAME:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

STATE AND FEDERAL CLAUSES

*STARTS ON THE FOLLOWING PAGE*

## STANDARD CLAUSES FOR NYS CONTRACTS

(Rev. October 2019)

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. 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.
2. 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.
3. 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 \$25,000, 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 § 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.
4. 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.
5. 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, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. 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.
6. 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.

7. 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.

8. 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 (2 NYCRR § 105.4).

9. 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.

10. 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.

11. 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.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR Part 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 clause. The 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.

13. **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.

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

15. **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.

16. **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.

17. **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.

18. **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.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. 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.

20. OMNIBUS PROCUREMENT ACT OF 1992. 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](mailto: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

212-803-2414

email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)–(p)) 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.

21. RECIPROCITY AND SANCTIONS PROVISIONS. 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, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) ) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

23. 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.

24. **PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 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.

25. **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 § 5-a, if the contractor fails to make the certification required by Tax Law § 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.

26. **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: <https://ogs.ny.gov/list-entities-determined-benon-responsive-biddersofferers-pursuant-nys-iran-divestmentact-2012>

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.

27. **ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

## PROFESSIONAL SERVICES LESS THAN \$150,000

### **GOVERNMENT WIDE DEBARMENT AND SUSPENSION (NON PROCUREMENT)**

Applicability – all contracts more than \$25,000.

The Recipient agrees to the following:

1. It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," <http://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://www.sam.gov.proxy1.semalt.design> if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200.
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.

CONTRACTOR / COMPANY NAME
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### **NAME, TITLE AND SIGNATURE OF CONTRACTOR'S AUTHORIZED OFFICIAL:**

TYPE OR PRINT NAME	TITLE
SIGNATURE	DATE

### **PATENT AND RIGHTS IN DATA**

Applicability – all contracts involving experimental, developmental, or research work except micro-purchases (\$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) Nonexclusive, 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,
- F. 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,

- G. 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
- H. 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.

### **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**

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

Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

**ACCESS TO RECORDS AND REPORTS**

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

The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a) 1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$150,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11). FTA does not require the inclusion of these requirements in subcontracts.

**FEDERAL CHANGES**

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

Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

**NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

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

1. The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

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

1. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.
2. If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.
3. Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**TERMINATION**

Applicability – all contracts more than \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$150,000.

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

- of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.
- c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.
  - d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
  - e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
  - f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.
  - g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.
  - h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. the recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work. Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if: (1). Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts

of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and (2). Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses. If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.

- i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.
- j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract closeout costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

### **CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS**

Applicability – when a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$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):

- a. 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.

### **DISADVANTAGED BUSINESS ENTERPRISE**

Applicability – 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, and Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient’s overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.
- b. The contractor shall not discriminate on the basis of race, color, religion, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this

contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

- c. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.
- d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.
- f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

#### **PROMPT PAYMENT**

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

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

#### **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

Applicability – 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.