

REQUEST FOR QUALIFICATIONS

LAKWAY AREA METROPOLITAN TRANSPORTATION PLANNING ORGANIZATION (LAMTPO), IN CONJUNCTION WITH THE EAST TENNESSEE HUMAN RESOURCE AGENCY (ETHRA) AND LAKWAY TRANSIT, TRANSIT CENTER PLANNING FEASIBILITY STUDY

December 6, 2022

Proposals are due January 13, 2023 1:00 P.M.

LAMTPO, in conjunction ETHRA and Lakeway Transit, with in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat., 252.42 U.S.C. 2000d to 2000-4 and Title 49, Code of Federal Regulations Department of Transportation, subtitle A, of the Secretary, Part 21, nondiscrimination in federally assisted programs of the DOT issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color or national origin in consideration for an award.

LAMTPO, ETHRA, and Lakeway Transit reserve the right to reject any and all Proposals without cause and to waive any informalities or irregularities.

Grant Funded:



Federal Transit Administration

This project is within the LAMTPO FFY2022-2023 UPWP and will be using FTA section 5303 residual funds (80%), state funds (10%), and local funds (10%) to pay for this study. This study must be done in compliance with any applicable state and/or federal regulations. The contract amount shall not exceed \$100,000.00. **The proposed Cost of Study is based on studies of similar nature that are posted online, from various cities**

throughout the country. The Contract Type shall be a Firm Fixed Price, as this is a planning document, and information for reimbursement should be based on employee(s) hourly rate. Consultant reimbursement shall be done on a monthly basis and shall describe the percentage of work completed. This is a competitive procurement procedure, all interested TDOT prequalified consulting firms, including minority-own firms are encouraged to submit an RFQ.

Bidder's Checklist

Solicitation Number: LAMTPO
Solicitation Name: Transit Center Planning Feasibility Study
Due Date and Time: January 13, 2023 @ 1:00 PM

The following checklist is provided as a guide to all documents and exhibits that **MUST** be submitted with your Bid to be considered responsive and complete. Failure to provide **ANY** of these documents could render your Bid nonresponsive and may cause it to be rejected.

Letter of Transmittal	
Firms Background	
Project Approach and Methodology with Schedule	
Technical Capacity	
Past Experience (3)	
Key Personnel	
Exhibit A: Bidder's Affidavit	
Exhibit B: Acknowledgement of Federal Clause and Certifications	
Exhibit B: Lobbying Certification	

I, the below signee, have reviewed this checklist and have provided all of the requested documents. I understand that failure to provide the requested documents could render my Bid non-responsive and may cause its rejection.

Signature: _____ Date: _____

Printed Name and Title: _____

Section 1: Announcement

Advertisement Post Date: December 6, 2022

Request for Qualifications Transit Center Feasibility Planning Study

Background: The Lakeway Transit is a fixed route system within the central core of Morristown, TN. Future plans for expanded services are transit routes to

1. Other parts of Morristown / Hamblen County
2. Jefferson City
3. White Pine
4. Other areas of Jefferson County

The Lakeway Transit system began operations on February 16, 2021. It currently runs 3 fixed routes, along with ADA paratransit services. ETHRA operates outside of the Lakeway Transit service area.

Scope of Work: LAMTPO, in conjunction with ETHRA and Lakeway Transit, is soliciting proposals from qualified Consultants to analyze and determine a feasibility plan for a multimodal public transportation center within the LAMTPO metropolitan planning area. This study will complete an alternatives analysis, initial environmental overview, required space study, vehicle flows, warehouse storage needs. This Request For Qualifications (RFQ) is to find a suitable location for a transit center that would benefit the Lakeway Transit fixed route service, as well as demand response services for Hamblen and Jefferson Counties. Finding a location within US Census Tract boundaries of 1003 and 1008 in Hamblen County would be a good starting point.

The transit center building would need to be large enough to have at least two (2) garage bays for vehicle maintenance, as well as parking areas, office spaces, conference/ training room, restrooms, and counter for walk-in customer service. The building must be ADA compliant (or if a vacant lot is recommended, then the lot must be large enough to be able to accommodate a building as described, as well as parking for several buses. It should be noted that ETHRA/ Lakeway Transit are in the process of partnering with Greyhound Bus Lines, thus the need for a large lot to accommodate the larger buses that Greyhound uses.

Bidding Documents: Plans, specifications and addenda for this project are available on-line through LAMTPO's website www.lamtpo.com or by emailing Rich DesGroseilliers at richd@mymorristown.com.

Pre-Proposal Meeting: A Pre-Proposal conference is not being offered.

Questions and Request for Clarifications: All questions, requests for information, and Pre-Bid material substitutions, must be submitted in writing and received by **5:00 PM January 5, 2023** at richd@mymorristown.com.

Plan Holder's List: Email Rich DesGroseilliers at richd@mymorristown.com to have your firm added to the Plan Holder's List to automatically receive updates, addenda and other project information.

Time for Completion: It is anticipated that the Contractor shall work diligently on the completion of the scope of work. The proposed schedule should reflect a completion date not later six (6) months after receipt of a

Notice to Proceed. Contractors are advised that schedules should be realistic and attainable. The Contractor's level of performance will be measured against their proposed schedule.

Proposal Due Date: Emailed Proposals will be received at richd@mymorristown.com until **1:00 PM on January 13, 2023**. When the official clock reads 1:00:01 PM, Proposals are considered late and will not be considered for award.

Anticipated Procurement Schedule: The activities and dates listed below represent the anticipated procurement schedule. LAMTPO will provide changes to the Pre-Bid date and Bid Due date via Addenda. Dates preceded by an asterisk (*) are estimated.

Date	Action
December 9, 2022	RFQ Release/ advertised
January 13, 2023	RFQ submittal deadline to LAMTPO
February 24, 2023	Consultant Selected
March 21, 2023	Consultant Contract approved
April 6, 2023	Stakeholders/ Kickoff meeting
May 1, 2023	Monthly update
June 1, 2023	Monthly update/ public workshops
July 1, 2023	Monthly update
August 1, 2023	First draft of Document/ presentations
September 1, 2023	Revisions, if any
October 2023	Final Document submittal/ presentations

EQUAL OPPORTUNITY: It is LAMTPO's policy to ensure full compliance with Title VI of the Civil Rights Act of 1964 by prohibiting discrimination against any person on the basis of race, color, national origin or sex in the provision of benefits and services resulting from Federally assisted programs of the Department of Transportation and in the Award and administration of all Contracts. Small and women or minority owned Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26 are encouraged to submit Proposals.

End of Section 1

Section 2: Instructions to Proposers

2.1 Introduction:

Interested parties are encouraged to submit a Proposal in accordance with the requirements set forth in the **RFQ NO LATER THAN 1:00 p.m., January 13, 2023**. When the official clock reads 1:00:01 PM, submissions are considered late and will not be considered.

Proposers must be fully insured and registered to conduct business in the State of Tennessee prior to Contract execution date and licensed for business in their state of residence. Policies of insurance, as outlined in the RFQ shall be obtained and kept in force for the duration of the Contract.

By submitting a Proposal in response to this solicitation, Proposers agree to be bound by all legal requirements and contract terms and conditions contained in this RFQ. Failure to include any of the requested information, properly completed forms, and/or documents may be cause for immediate rejection of the proposal.

Except as otherwise provided for herein, Proposals that are incomplete or that are conditioned in any way or contain erasures, alterations, or items not called for in the proposal or that are not in conformance with the law, may be rejected as non-responsive.

In cases where **there are not** at least two (2) proposals submitted, then a sole source procurement may be done due to only one adequate bidder result.

LAMTPO reserves the right to accept or reject any and all submitted proposals, portions or parts thereof; to waive informalities and minor irregularities in proposals; to decline award based on available funding for the Contract; and to award in whole or in part to the most “highly qualified” and responsible Proposer.

In consideration for LAMTPO’s review and evaluation of its proposal, the Proposer waives and releases any claims against LAMTPO arising from any rejection of any or all proposals, including any claim for costs incurred by Proposers in the preparation of proposals submitted in response to this solicitation.

If LAMTPO determines that collusion has occurred among Proposers, none of the proposals of the participants in such collusion will be considered; LAMTPO’s determination shall be final.

LAMTPO may obtain clarification of any point in submitted proposals or request additional information, if necessary, to properly evaluate proposals. Proposers must be prepared to present necessary evidence of experience, ability, service facilities and financial standing to satisfactorily meet the requirements set forth or implied in the Proposal. Failure of a Proposer to respond to such a request for additional information or clarification may result in rejection of that proposal.

This RFQ provides details on what is required when submitting a Proposal for this Work, how LAMTPO will evaluate the Proposals, and what will be required of the Consultant in performing the Work. This RFQ also gives the estimated dates for the various events in the submission process. While these dates are subject to change, prospective Proposers must be prepared to meet them as they currently stand.

Other sections of the RFQ will cover general submission instructions, project overview, proposal schedule, consultant qualifications and experience, evaluation criteria, and contract terms.

LAMTPO shall use qualifications-based competitive proposal procedures (i.e., Brooks Act procedures) when contracting for A&E services as defined in 40 U.S.C. Section 1102 and U.S.C. Section 5325(d). Services subject to this requirement are program management, construction management, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services.

2.2 Definitions:

Addenda: A written or graphic document issued to all Bidders and identified as an Addendum prior to Bid opening, which modifies or supplements the Bid Documents and becomes a part of the Contract.

Contract: The written agreement between LAMTPO and the Contractor. The Contract includes, Contract Agreement, these solicitation documents, any and all Addenda issued, various certifications and affidavits, Proposers submitted Proposal and agreed upon Cost Proposal.

Contractor: means the Successful Bidder who is awarded the Contract and has subsequently executed the Contract with LAMTPO.

Cost Proposal: A document requested from the “most highly” qualified Proposer outlining the hourly rates, Overhead, G&A and profit to complete the scope of work.

ETHRA: East Tennessee Human Resource Agency

FTA: Federal Transit Administration

LAMTPO: Lakeway Area Metropolitan Transportation Organization

Proposal: The offer of a Proposer in response to this RFQ

Proposer: means a person, firm or corporation that has made an offer in response to the RFQ

Solicitation Documents: means the solicitation in its entirety

RFQ: is an abbreviation meaning Request for Qualifications.

Subcontractor: An individual, partnership, firm, corporation, or joint venture who is sublet part of the Contract by the Contractor.

Successful Bidder: means the “most highly” qualified Proposer that provides a “fair and reasonable” Cost Proposal

2.3 Basis for Contract Negotiations:

This RFQ, the Proposers submission and the subsequent Cost Proposal shall be used for Contract Negotiations

2.4 Proposal Due Date:

Emailed proposals must be delivered to richd@mymorristown.com NO LATER THAN **1:00 P.M.** on **January 13, 2023** when the official clock read 1:00:01 PM submissions are considered late and will be rejected.

LAMTPO may refuse to consider a Proposer who it determines to have an unsatisfactory record of performance and/or integrity in connection with the proposal/bidding or performance phase of any previous contract.

Proposals will not be publicly opened and the information contained in all proposals will be kept strictly confidential until a Contract is fully executed.

2.5 Requests for Information (RFI), Communications and Addenda:

Proposers who seek to obtain information, clarification, or interpretations from contacts other than the LAMTPO Coordinator are advised that such material is used at the Proposer's own risk. LAMTPO will not provide binding oral interpretations, explanations, or instructions as to the meaning or interpretation of the solicitation documents. This process will be the only opportunity for Proposers to ask questions. LAMTPO staff will not answer questions regarding this RFQ verbally. All questions must be submitted in writing via email.

Proposers should carefully review this solicitation for defects and questionable or objectionable matter. Comments concerning defects and objectionable material must be made in writing and submitted to Rich DesGroseilliers at richd@mymorristown.com by **January 5 2023, 1:00 PM**. This will allow issuance of any necessary amendments. It will also help prevent the opening of a defective solicitation and exposure of offeror's proposals upon which award could not be made.

Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of LAMTPO, in writing at least five days before the time set for opening.

Submitted Proposals shall be conclusive evidence to LAMTPO that the Proposer has thoroughly examined and understands all requirements of the solicitation and the Work to complete the Contract. The failure or neglect of a Proposer to receive or examine any solicitation document or any part thereof, work site, statutes, regulations, ordinances or resolutions shall in no way relieve the Proposer from the obligations with respect to its Proposal or to the Contract. No claim for additional compensation shall be allowed which is based upon a lack of knowledge thereof.

To be given consideration, any and all communications requesting information, material substitutions, clarifications, and inquiries concerning this solicitation must be submitted in writing and received **NO LATER THAN 1:00 P.M.** on **January 5, 2023** to be considered in an Addendum.

2.6 Plan Holders List:

All prospective Proposers are required to register as "Plan Holders" to receive addenda or clarifications regarding the solicitation. It is recommended that Proposers notify Rich DesGroseilliers of their intent to submit a proposal and register with LAMTPO's Plan Holders List in order to receive electronic notification of issued Addenda. Proposers that do not register will not be notified of Addenda and will need to periodically check for Addenda on LAMTPO's website at www.lamtpo.com.

2.7 Right of Rejection:

Proposers must comply with all of the terms of the RFQ, and all applicable local, state, and Federal laws and regulations. LAMTPO may reject any proposal that does not comply with all of the material and substantial terms, conditions, and performance requirements of the RFQ.

Minor informalities, that do not affect responsiveness, that are merely a matter of form or format; that do not change the relative standing or otherwise prejudice other offers; that do not change the meaning or scope of the RFQ; that are trivial, negligible, or immaterial in nature; that do not reflect a material

change in the work; or, that do not constitute a substantial reservation against a requirement or provision may be waived by LAMTPO.

LAMTPO reserves the right to refrain from making an award if it determines that to be in its best interest of the agency or if funding becomes unavailable.

2.8 Cancellation or Extension:

LAMTPO reserves the right to cancel this solicitation or extend the Proposal Due Date and time, by written Addendum, at any time *prior to* the set Proposal Due Date and time, or in the event only a single proposal or no proposals are received. If a Proposer pursues a protest or a request for reconsideration, its proposal is deemed extended until LAMTPO executes the Contract, or until the protest or request for reconsideration is withdrawn by the Proposer.

2.9 Modification:

Proposers will not be allowed to alter proposals *after* the Proposal Due Date and time. Submitted proposals may only be changed if a written request is received by LAMTPO *before* the set Proposal Due Date and time. Such requests must be signed by an individual authorized to submit proposals on behalf of the firm. All proposal modifications shall be made in writing, executed and submitted in the same form and manner as the original proposal. Nothing in this section shall be construed to permit the Proposer to alter its Proposal *after* it has been submitted pursuant to the terms of this solicitation.

2.10 Withdrawal:

Proposers will not be allowed to withdraw proposals *after* the Proposal Due Date and time unless the award is delayed for a period exceeding ninety (90) days. Any Proposal not so timely withdrawn shall constitute an irrevocable offer, for a period of ninety (90) days, to provide LAMTPO the services described herein, or until one or more of the proposals have been approved by LAMTPO, whichever occurs first.

2.11 Disclosure of Proposal Contents:

By submitting a proposal, the Proposer has thereby agreed to the provision of Tennessee State public disclosure laws. LAMTPO will regard proposals as public records which will be available for public inspection and/or copying following contract award, regardless of any markings or notices contained in the proposal documents. Information will not be released by LAMTPO *prior to* contract award in order to protect the integrity of the procurement process, unless otherwise required by law. All proposals will remain confidential until a contract is awarded and fully executed by all parties involved.

If a Proposer considers portions of its proposal to be protected under Tennessee State law, the Proposer shall clearly identify and mark such portions as "CONFIDENTIAL" or "PROPRIETARY" and submit such portions in a sealed envelope separate from the rest of the proposal. It is not usually reasonable or legally defensible to mark an entire proposal as "confidential" or "proprietary". Marking the entire proposal as such will not be honored and the proposal may be rejected as non-responsive. LAMTPO shall not release or divulge such information to third parties without the consent of the Proposer, unless required to do so by applicable law or order of a court of competent jurisdiction. If a member of the public demands to review portions of a proposal marked "Confidential", LAMTPO will notify the affected Proposer of the request and the date that such records will be released unless the Proposer obtains a court order enjoining that disclosure.

It will be the responsibility of the Proposer to protect the confidentiality of any information submitted in the Proposal and the Proposer shall take such legal actions as it may determine to be necessary to protect its interest. If the Proposer has not commenced such action within five (5) calendar days after

receipt of the notice, LAMTPO will make the requested portions available to the Requestor. The Proposer, asserting that portions of its proposal are legally protected, will assume all liability and responsibility for any information declared confidential and shall defend and hold LAMTPO harmless for any cost, penalties, and/or fees (including reasonable attorney fees) incurred in any action regarding the disclosure of said information. LAMTPO assumes no responsibility or liability for any losses or damages which may result from the information contained in the proposal.

After the Proposal due date and until a Contract is awarded, no information will be discussed with the competitors or anyone outside the Evaluation Committee. No Proposer or other member of the public will be told of the rankings among Proposers, nor the number of firms within the competitive range. Proposers will only be told that their proposal was ranked within the competitive range. Names of firms, cost data, or other information from Proposers submitted in response to this RFQ shall remain strictly confidential until after contract award.

2.12 Non-Collusion Affidavits:

Proposer shall submit, with its Proposal, an affidavit (EXHIBIT A) stating that neither Proposer nor its agents, nor any other party on its behalf, has paid or agreed to pay, directly or indirectly, any person, firm, or corporation, any money or valuable consideration for assistance in procuring or attempting to procure the contract that will result from this RFQ, and further agrees that no such money or consideration will be hereafter paid.

2.13 Conflicts of Interest

- a. **Current and Former Employees:** LAMTPO seeks to eliminate and avoid actual or perceived conflicts of interest and unethical conduct by current and former LAMTPO employees in transactions with LAMTPO. Consistent with this policy, no current or former LAMTPO employee may contract with, influence, advocate, advise, or consult with a third party about a LAMTPO transaction, or assist with preparation of bids submitted to LAMTPO while employed by LAMTPO or after leaving LAMTPO's employment, if he/she was substantially involved in determining the Work to be done or process to be followed while a LAMTPO employee.
- b. **Organizational Conflicts of Interest:** An organizational conflict of interest is a situation in which, because of other activities, relationships, or contracts, a contractor or subcontractor is unable, or potentially unable, to render impartial assistance or advice to LAMTPO; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage. LAMTPO will evaluate future procurements related to this Contract to determine if there is an organizational conflict of interest. If an organizational conflict of interest exists, LAMTPO may prohibit the contractor and any of its subcontractors from participating in such related procurements/projects.

2.14 Subcontractors:

Any Subcontractors and outside associates or consulting firms or individuals, including any substitutions thereof, required by the Contractor in connection with work to be provided under this Contract will be subject to prior authorization by LAMTPO. Each subcontract and a cost summary, therefore, shall be subject to review by LAMTPO prior to the Subcontractor proceeding with the work. The Contractor shall be responsible for the professional standards, performance, and actions of all persons and firms performing subcontract work. The Contractor shall be responsible for the completion and submission of any federally required forms that may be required of the Subcontractor. The Contractor, at the request and direction of LAMTPO, will provide copies of any written agreements showing their contractual relationship.

A Proposer's failure to provide this information, within the time set, may cause LAMTPO to consider their proposal non-responsive and reject the proposal.

The substitution of one subcontractor for another must be approved, in writing from LAMTPO, before the substitution is made.

2.15 Personnel:

In submitting their proposals, Proposers are representing that the personnel described in their proposals shall be available to perform the services described, barring illness, accident or other unforeseeable events of a similar nature. Furthermore, all personnel shall be considered to be, at all times, the sole employees of the service provider, under his or her sole discretion, and not employees or agents of LAMTPO.

2.16 Debarment and Suspended

Contractor must not be debarred or suspended in order to conduct business with LAMTPO. Upon the Proposal Due Date and for the full duration of the Contract, the Contractor will not be debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or State department or agency or from bidding on any public contract; and shall not be presently indicted for, or otherwise criminally or civilly charged by, a governmental entity (federal, State or local) with commission of any of the offenses enumerated in below.

Within a three (3) year period preceding this proposal, Contractor shall not have been convicted of or had a civil judgment rendered against them for: Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State or local) transaction or contract; Violation of federal or State anti-trust statutes; Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; or had one or more public transactions (federal, State or local) terminated for cause or default. If it is later determined that the Contractor knowingly rendered an erroneous certification under the Affidavit submitted with its proposal, or failed to notify LAMTPO immediately of circumstances which made the original certification no longer valid, LAMTPO may immediately terminate the Contract.

2.17 Disadvantaged Business Enterprise Goal:

The purpose of the Disadvantaged Business Enterprise (DBE) overall goal is to achieve a "level playing field" for ready, willing and able DBEs seeking to participate in federally-assisted contracts. LAMTPO's DBE goal for federal fiscal year 2023 is 2.20%.

It is the policy of LAMTPO to assure that no person shall, on the grounds of race, color, national origin and sex, as provided by Title VI of the Civil Rights Act of 1964, be excluded from participation in, be denied the benefits of, or otherwise be discriminated against under any of its federally funded programs and activities.

2.18 Discussions with Proposers:

LAMTPO may conduct discussions with proposers for the purpose of clarification. The purpose of these discussions will be to ensure full understanding of the requirements of the RFQ and proposal. If modifications are made as a result of these discussions, they will be put in writing.

2.19 Evaluation of Proposals:

An evaluation committee made up of LAMTPO staff, their designees, and/or subject matter experts will evaluate all responsive proposals. The evaluation will be based solely on the evaluation criteria set out in this RFQ. Proposals will be evaluated on the merits of the information provided not in comparison to other proposals received.

2.20 Contract Type:

It is anticipated that the contract resulting from this solicitation will be a firm-fixed price agreement, based on the successful proposer's Cost Proposal. The final fixed price of the contract may or may not reflect price negotiation between LAMTPO and the successful proposer.

2.21 Contract Documents:

The successful Proposer will receive an award package from LAMTPO that includes the Final Award Notice, two original duplicates of the Contract for signature, and other documents as required. Contractor must immediately sign and return all requested documents to LAMTPO within ten (10) calendar days, unless indicated otherwise, or LAMTPO may utilize their right to cancel the award and go to the next highest scoring Proposer. Proposers should already have preparations in place to notify their insurance broker and/or bonding agent to immediately obtain the required documents. *A sample contract for services is provided to inform submitters of the expected terms and conditions required by LAMTPO. The contract is provided for information and Proposer should note any exception to the Contract language in their Proposal.*

2.22 Failure to Execute Contract:

Should the awarded Contractor fail to execute the Contract within ten (10) days from the Final Award Notice date, LAMTPO may withdraw the award and present the award to the next highest scoring Proposer. Should events give rise to this instance, the Proposer failing to execute a contract may be removed from LAMTPO's bid list for any future contracting opportunities.

2.23 Defective Materials or Services:

When and as often as LAMTPO determines that the products or services furnished under the Contract are not fully and completely in accordance with any requirement of the Contract, LAMTPO may give written notice and description of such non-compliance to the Contractor. Within seven (7) calendar days of receiving such written notification, Contractor must supply LAMTPO with a written detailed plan of action that indicates the time and methods needed to bring the products or services within acceptable limits under the Contract. LAMTPO may reject or accept this plan at its discretion.

In the event this plan is rejected or the defect has not been remedied within thirty (30) days of Contractor's receipt of notice, the products or services will be deemed not accepted and returned to the Contractor at the Contractor's expense. LAMTPO, in its sole discretion, may purchase a replacement from another source and charge-back the cost for such warranty replacement to the Contractor. This procedure to remedy defects is not intended to limit or preclude any other remedies available to LAMTPO by law.

2.24 Insurance Requirements:

The Contractor shall, at its sole cost and expense, obtain and maintain during the entire term of this Contract the minimum insurance set forth below. In the event the Contractor is a Joint Venture, these

insurance requirements shall apply to each Joint Venture member separately. By requiring such minimum insurance, LAMTPO shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. The fact that insurance is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor, including without limitation, liability under the indemnity provisions of this Contract. Damages recoverable by LAMTPO shall not be limited to the amount of the required insurance coverage.

- Worker's Compensation Insurance in compliance with the laws of the State of Tennessee covering all CONSULTANT's employees who perform under this Agreement.
- Comprehensive Auto Liability Insurance on all vehicles used in connection with this Agreement whether owned, non-owned, or hired; with limits for bodily injury or death not less than \$100,000.00 per person and \$300,000.00 per occurrence, and property damage limits of not less than \$50,000.00; or in the alternative, not less than \$300,000.00 combined single limit coverage.
- Comprehensive General Liability Insurance with limits for bodily injury and property damage of not less than \$300,000.00 per incident and \$600,000.00 aggregate. A certificate of such insurance or a copy of such insurance policy or policies shall be provided to LAMTPO within one week after the execution of this Agreement. CONSULTANT' shall agree to give LAMTPO thirty (30) days written notice of cancellation in coverage below the limits set forth herein.
- Professional liability insurance appropriate to the Consultant's profession with limits of no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit.

Coverage in the minimum amount set forth herein shall not be construed to relieve Contractor from liability in excess of such coverage. LAMTPO, its employees, and its agents shall be specifically included as an additional insured in the insurance coverage required by this section.

Notwithstanding, LAMTPO reserves all claims or rights of action against Contractor as if LAMTPO were not named in the subject policy or policies.

Taking into account the Scope of Work and Services to be performed by a Subcontractor, the Contractor shall prudently determine whether, and in what amounts, each Subcontractor shall obtain and maintain public liability, professional liability, and any other insurance coverage. Any insurance required of Subcontractors shall, where appropriate and/or applicable, name LAMTPO as an additional insured.

The Contractor and its insurers shall endorse the required insurance policy (ies) to waive their right of subrogation against LAMTPO. The Contractor and its insurers also waive their right of subrogation against LAMTPO for loss of its owned or leased property or property under its care, custody and control.

No provision in this Section shall be construed to limit the liability of the Contractor for services not done in accordance with the Contract, or express or implied warranties. The Contractor's liability for the services shall extend as far as the appropriate periods of limitation provided by law and up to any legal limits.

The Contractor may obtain any combination of coverage or limits that effectively provides the same or better amounts and types of coverage as stipulated above, subject to review and approval by LAMTPO.

The Contractor warrants that this Contract has been thoroughly reviewed by the Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Contract.

2.25 Limitation of Liability

A. Non-conforming Services – For any services which fail to conform to the scope of the Contract and such failure is caused solely by the negligence of the Contractor, no charge will be invoiced to LAMTPO. If both parties are negligent, they agree to apportion between them the damage attributable to the actions of each.

B. Damages – Neither party will seek damages, either direct, consequential, or otherwise against the other in addition to the remedies stated herein.

C. Third Party Claims – In the event that either party is found liable for damages to third parties as a result of the performance of services under this Contract, each party will be financially responsible for the portion of damages attributable to its own acts and responsibilities under this Contract

2.26 Taxes:

Any Contract wholly for professional or other applicable services is generally not subject to Retail Sales Tax and therefore, the Consultant shall not collect Retail Sales Tax from LAMTPO on those Contracts. Any incidental taxes paid as part of providing the services shall be included in the payments under the contract.

No adjustments will be made in the amount to be paid by LAMTPO under the Contract because of any misunderstanding or any lack of knowledge of the Proposer as to liability for, or the amount of, any taxes or assessments which the Proposer may be liable or responsible for by law.

2.27 Protest and Appeals Policy:

Proposers are advised that to be considered a valid protest, subject matter can only address issues associated with this Proposal process. Accordingly, the protest cannot be associated with, or challenge the recommendations of, LAMTPO staff or its Evaluation Committee. A protest can only be put forth that LAMTPO staff did not follow their own policies or procedures that govern procurement and, accordingly, a Proposer was unfairly treated. The protest cannot challenge LAMTPO staff or the Evaluation Committee's recommendation of a potentially successful Proposer.

END OF SECTION 2

Section 3: General Scope of Work

Introduction:

Project Understanding: Work will be used to analyze and determine a plan to guide the development of the downtown center for a future Multi-modal Transit Center. This study will complete an alternatives analysis, initial environmental overview, required space study, vehicle flows, warehouse storage needs. The location for a future multimodal transit center shall be within the LAMTPO metropolitan planning area.

Purpose: The purpose of this award is to fund a feasibility transit center study that will be used to analyze and determine a plan to guide the development of the downtown center for a future Port Orchard Multi-modal Transit Center.

Activities to be performed: Complete an alternatives analysis, initial environmental overview, required space study, vehicle flows, and warehouse storage needs to plan for a Multimodal Transit Center.

Expected outcomes: A useable guide to assist LAMTPO understand our needs and ensure proper location and development for a future Multi-modal Transit Center.

Intended beneficiaries: LAMTPO and its riders will have enhanced multimodal connections to transit. The safe transit center will allow customers to transfer between various bus services. The transit hub will provide adequate space to house additional staff and limited supplies while providing riders multi-modal connections to available transportation services

Assumptions

- The Study portion of this Scope of Work (**Tasks 1 – 6**) will be completed using FTA, state, and local funds. LAMTPO will provide any information or resources necessary for completion of the study within 3 business days of request.
- LAMTPO will obtain all rights of entry for study purposes.
- Consultant will identify the property needs for the Multimodal Transit Center alternative sites and any additional mitigation areas.
- Provide a layout of the two alternative sites selected for advancement for a maximum of two (2) bus bays along with a shelter(s) design yet to be specified.
- Identify a bus layover space
- Stormwater management consider below grade facilities dependent upon feasibility for the site
- Consultant will coordinate directly with LAMTPO as defined in this scope of work.
- The study is estimated to be completed within six (6) months.
- All deliverables will be submitted electronically; formats will include PDF, Word, Excel, and GIS shapefiles.

PLANNING/STUDY PHASE

The following list of Tasks is a general overview of the Work that is to be completed. The list of Tasks is not to be considered exhaustive and Consultants will be expected to perform all work necessary to provide LAMTPO with a comprehensive set of deliverables.

1. Public Participation

A comprehensive public participation process with corresponding activities will be developed and implemented by the consultant. This shall be done by a context sensitive approach when developing the study. This can be accomplished by, but not limited to:

1. Public meetings/ workshops
2. Online surveys and engagement.
3. Social media content
4. Project notecards/mailers.

Interim reports shall include monthly progress reports and written summaries of any working meetings held with staff, other government agencies, stakeholders, or the general public. The consultant is required to attend a minimum of four (4) meetings.

1. Stakeholders/ Kickoff meeting
2. Initial Recommendation meeting with the LAMTPO Technical Advisory Committee (TAC)
3. After revisions, Final document presentation to the LAMTPO TAC
4. Final document presentation to the LAMTPO Executive Board

Meetings

1. Kickoff/ Stakeholders meeting to discuss the Transit Center Study project. **LAMTPO and/or ETHRA** staff will help in developing a stakeholders meeting, and to inform the local agencies, TDOT personnel, staff, and from the general public when and where the meeting will take place. The kickoff/ stakeholders meeting is to get information on goals and objectives of the study. Meeting is to include a Powerpoint presentation of findings by the consultant and a consultant-led discussion focusing on examples of transit center projects in environments similar to the LAMTPO area and a methodology for developing goals and policies for a transit center. The consultant is to identify issues and priorities that emerge in the discussion with staff and potential stakeholders. After the meeting, update draft report to include feedback received in the meeting and draft goals and policies.
2. Draft documentation presentation to the **ETHRA Board**. Powerpoint presentation of the plan, showing potential locations, cost estimates to build and/or renovate a transit center, cost estimates to operate and maintain a transit center, and potential funding sources. Discuss potential issues and how to resolve the issues

(if any). Discussion of goals, objectives and/or policies to implement. Update the draft document as needed.

3. Conduct public workshop(s) to present the updated draft report and gather feedback.
4. Presentation (powerpoint) of final document to the **ETHRA Board**.

2. Analyze the Characteristics of Potential Transit Center Site(s)

The consultant will present at least two potential sites for the Multimodal Transit Center. In addition, a no-action alternative must also be considered and evaluated.

Projected land use patterns and environmental elements affecting transportation planning should be identified and should be considered when making the final recommendation.

The various characteristics that should be identified and analyzed are:

Soils and Geology

Topography

Floodplains and Impervious Areas

Land-Use and Zoning (existing and future conditions)

Population (existing and future conditions)

Employment (existing and future conditions)

Development patterns (existing and future conditions)

Existing and Future Traffic conditions

Potential Funding sources to be used for a transit center?

Examine the multi-modal access for each alternative site

Examine the transit operational needs of each alternative site

Explore the connectivity to the surrounding community

Document the space needs for bus parking, warehouse operations, bus operator rest facilities, and public facilities

Identify known engineering constraints mitigation measures necessary for success at alternative sites.

3. Questions to be answered

- a. Potential site(s) for a transit center?
- b. Is it better to renovate an existing structure, or to build a new transit center?

- c. Cost estimate to either build a new transit center, or renovate an existing structure?
- d. Cost estimate to run and maintain a transit center?

4. Survey and Base Mapping

Consultant will provide the necessary survey base mapping services to support the Multimodal Transit Center. The following activities are associated with this task:

- Coordinate locations of various utilities
- Collect necessary field boundary evidence to accurately calculate parcel boundaries and rights-of-way affected or adjacent to this project, including possible mitigation areas.
- Complete survey will include adjacent roads for design of access and mobility.
- Create a color conceptual design visualization of the selected project site(s)

5. Recommendations / Implementation

Recommendation will be provided based on data collection and inventorying all transportation, land use, demographic, environmental, and cultural elements for a transit center. The data from the inventory will be analyzed to provide the most accurate depiction of existing conditions. This includes traffic counts, development trends, socioeconomic data, infrastructure and other elements necessary to provide a clear understanding of what is needed for a transit center. The study must include actionable recommendations (based upon costs).

The recommendations shall include, but not limited to:

1. Complete a high-level cost estimate for each phase of the project including but not limited to: planning, design, land acquisition, right of way, permitting and construction.
2. Conceptual design(s) and renderings for selected location(s)
3. Show aerial photos with potential transit center site location(s);
4. Show recommended multimodal improvements, if any;
5. Identify all transportation system solutions that meet the challenges in conjunction with the land use vision along the corridor. Some of the solutions may include, but are not limited to:
 - a. Reflect community values and guiding principles supported by the public, stakeholder groups, and policy/decision-makers through the public participation process.
 - b. Be economically feasible and conform to applicable laws and regulations.
 - c. Outline opportunities and incentives for community investment.

6. Deliverables:

1. High Resolution PDF files suitable for hardcopy printing
2. Standard resolution PDF files suitable for posting online
3. All materials created for steering committee meetings, public meetings, and elected official meetings.
4. Meeting summaries, sign-in sheets, comment sheets, monthly project status reports, field work inventories, GIS data, PowerPoint presentations, graphics, illustrations, maps, handouts, photos, and documentation developed and/or generated throughout the planning process.
5. Innovative planning document formats that encourage public involvement and review.
6. **Draft Transit Center Study document.** The consultant will develop a draft report and plan document integrating all of the components listed in the scope of services. This report will document all comments received from the steering committee, general public, staff, and LAMTPO TAC and/or Executive Board.
7. **Final Transit Center document.** The consultant will develop a final report and plan document that reflects comments collected by the project manager in response to the draft document

END OF SECTION 3

Section 4: Proposal Content

Content and completeness are most important. Clear and effective presentations are preferred, with elaborate, decorative or extraneous materials strongly discouraged. The proposal shall be submitted in an 8 ½” by 11” format with foldouts from this basic size utilized as necessary. Proposal submittal requirements are described below.

All proposals must be submitted as specified on the proposal pages, which follow. Any attachments must be clearly identified. To be considered, the proposal must respond to all parts of the RFQ. Any other information thought to be relevant, but not applicable to the enumerated categories, should be provided as an appendix to the proposal. If publications are supplied by a proposer to respond to a requirement, the response should include reference to the document number and page number. Proposals not providing this reference will be considered to have no reference material included in the additional documents.

Proposal Requirements

This section describes mandatory descriptions and submittals that must be addressed in or included with each proposal. Failure to address or include all items discussed in this section may subject the proposal to immediate rejection. LAMTPO will be the final authority in determining the responsiveness of a proposal. The RFQ will be evaluated based on the criteria listed in the evaluation criteria.

Emailed proposals must be submitted in accordance with **Section 2.4**. All submission must have the following in the subject line of the email: “**Transit Center Feasibility Study**”.

To be considered a responsive submission, Proposers need to submit RFQ document in PDF or Word format. Proposals shall be submitted as an attachment. LAMTPO will not download proposals from third party sites and will not download from shared links.

Proposers must submit their Proposal without a Cost Proposal.

CONTACT AND SUBMITTAL INFORMATION:

Qualifications Submittal Due Date: Submittals will be received until **12:00 PM January 13, 2023**. Any submittal not received by the LAMTPO prior to the time set in this request shall be disqualified.

Submittal: A PDF digital format must be submitted via email to richd@mymorristown.com, with **Transit Center Feasibility Study RFQ** written in the subject line.

Contact Person

Rich DesGroseilliers, MTPO Coordinator, GISP

LAMTPO

100 W 1st N St

PO Box 1499

Morristown, TN 37816-1499

e-mail: richd@mymorristown.com

phone: (423) 581-6277

1. QUALIFICATIONS SUBMITTAL FORMAT

Any consulting firm wishing to submit a RFQ shall have a current prequalification status with the Tennessee Department of Transportation (TDOT). The consulting firm also must be in compliance with all applicable licensing and tax laws and regulations Reference: (4220.1F. Chapter VI. Section 8.b.(7)) (49 USC Section 5325(j)(2)(D))

The recipient permits potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date).

The submittals shall be on 8.5" x 11" paper. The preferred organization for the submittals is as generally indicated by the arrangement of information in this RFQ.

A. Consultant Team and Resumes

Provide a personnel summary of those individuals, including sub-Consultants, who will be participating in the project. Identify the roles, task-lead responsibility, and the percentage of the project that each person will be responsible for. Include a time estimate for each personnel, listed by task number. Experience relevant to this project should be detailed with a portfolio of similar work completed to date. Provide resumes of the project team members indicating their education and years of applicable experience. Identify relevant similar projects and the contributions of the individuals. This section should include resumes of professional planners, and licensed transportation and traffic engineers employed by the firm who are available to commit to this project. Do not include resumes of individuals that are not expected to have a role in the project.

B. Consultant's Experience

Describe experience with Transit Center Plans and similar work. Identify previous project work experience that is relevant to this project. Highlight the key features and benefits produced by the Consultant in that project. Identify which of the team members proposed for this project also worked on the example project. Provide contact names, phone number and e-mail addresses for at least four (4) representative example projects so that MPO staff may contact the team's references.

C. Other Consultant Requirements

The Consultant Team is expected to include Disadvantaged Business Enterprise (DBE) participation and the percentage participation is to be described in the submittal of qualifications. The Consultant, when selected, will be expected to enter a contract that meets all State and Federal requirements with respect to Civil Rights and all other standard requirements for consulting contracts involving the expenditure of State and Federal funds.

The Consultant must show proof of financial resources that is adequate to perform the contract or the ability to obtain them (4220.1F. Chapter VI. Section 8.b.(7)) (49 USC Section 5325(j)(2)(D))

D. In addition, the following information from Federal Transit Administration (FTA) and or Tennessee Department of Transportation (TDOT) must be included and addressed:

1. Incorporation of Federal Transit Administration (FTA) Terms

Incorporation of Federal Transit Administration (FTA) Terms - The provisions within include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the current FTA Circular 4220 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 Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

2. Federal Changes

49 CFR Part 18 Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

3. Civil Rights Laws and Regulations

The following Federal Civil Rights laws and regulations apply to all contracts.

1. **Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:
 - a. Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.

- b. Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
- 2. **Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
- 3. **Nondiscrimination on the Basis of Age.** The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.
- 4. **Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

Civil Rights and Equal Opportunity

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

- 1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- 2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- 3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R.

part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any Implementing requirements FTA may issue.

4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
5. **Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

4. Disadvantaged Business Enterprise (DBE)

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. 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 Agency deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, each FTA Recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency's written consent; and that, unless the Agency's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

It is the policy of the Agency and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

5. No Government Obligation to Third Parties

The Agency and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Agency, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed

in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

6. Program Fraud and False or Fraudulent Statements and Related Acts

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract."

7. Prompt Payment

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. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify the Agency, 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 Agency.

8. Access to Records and Reports

- a) Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-Contracts, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records.
- b) Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c) Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d) Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

9. Energy Conservation

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

10. Safe Operation of Motor Vehicles

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles.

The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or Agency.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

11. Termination

Termination for Convenience (General Provision)

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency’s best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the 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 the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

Opportunity to Cure (General Provision)

The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency 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 Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach

In the event that Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

Termination for Convenience (Professional or Transit Service Contracts)

The Agency, by written notice, may terminate this contract, in whole or in part, when it is in the Agency's interest. If this contract is terminated, the Agency shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

Termination for Default (Supplies and Service)

If the 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 Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will 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 the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

Termination for Default (Transportation Services)

If the 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 the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will 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 the Contractor has possession of Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Agency 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. The Contractor and its sureties shall be liable for any damage to the Agency resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Agency in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if:

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.
3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

Termination for Convenience or Default (Architect and Engineering)

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Agency's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the Agency, the Agency's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Agency.

Termination for Convenience or Default (Cost-Type Contracts)

The Agency may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of Agency or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Agency, or property supplied to the Contractor by the Agency. If the termination is for default, the Agency may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Agency, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a Notice of Termination for Default, the Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

12. Debarment and Suspension

a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs for a contract in the amount of at least \$25,000

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) The accompanying certification is a material representation of fact relied upon by the subrecipient. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency and subrecipient, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

13. Notification to FTA

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

- (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
- (3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil

investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

14. Byrd Anti-Lobbying Amendment

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Agency.”

15. Contract Work Hours and Safety Standards Act

- a) Applicability: This requirement applies to all FTA grant and cooperative agreement programs.
- b) Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.
- c) Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- d) The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- e) The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

Compliance with the Contract Work Hours and Safety Standards Act.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. Withholding for unpaid wages and liquidated damages. The agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or

any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

16. Clean Air Act and Federal Water Pollution Control Act

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387).

Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.”

17. Buy America Requirements

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR § 200.322 Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements The bidder or offeror must submit to the Agency the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

18. Violation and Breach of Contract

Rights and Remedies of the Agency

The Agency shall have the following rights in the event that the Agency deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

For purposes of this Contract, breach shall include.

Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the Agency, the Contractor expressly agrees that no default, act or omission of the Agency shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the Agency directs Contractor to do so) or to suspend or abandon performance.

Remedies

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Contract will be a default of this Contract. In the event of a default, the Agency will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Contract by the Contractor before the Agency takes action contemplated herein, the Agency will provide the Contractor with sixty (60) days written notice that the Agency considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

Disputes

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by an authorized representative of Agency. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Agency's authorized representative. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Agency's authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the Agency's direction or decisions made thereof.

Performance during Dispute

Unless otherwise directed by Agency, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Agency and the Contractor arising out of or relating to this Contract or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Agency is located.

Rights and Remedies

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

19. Simplified Acquisition Threshold

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America’s eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).)

20. Davis Bacon Act and Copeland Anti-Kickback Act

- a) In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.
- b) The Non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

“Compliance with the Copeland Anti-Kickback” Act.

1. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
2. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FTA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
3. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

21. Contract Work Hours and Safety Standards Act

- f) Applicability: This requirement applies to all FTA grant and cooperative agreement programs.
- g) Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.
- h) Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- i) The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- j) The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

Compliance with the Contract Work Hours and Safety Standards Act.

- 5. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- 6. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- 7. Withholding for unpaid wages and liquidated damages. The agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- 8. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

22. Seismic Safety

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in

compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

23. Special DOL EEO Clause

Applies to construction contracts > \$10,000; This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60- 741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

24. Veterans Hiring Preference

Veterans Employment - Recipients of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

25. Bond Requirements

Bid Guarantee. Bidders shall furnish a bid guaranty in the form of a bid bond, or certified treasurer's or cashier's check issued by a responsible bank or trust company, made payable to the Agency. The amount of such guaranty shall be equal to the value or a percentage of the total bid price.

In submitting this bid, it is understood and agreed by bidder that the Agency reserves the

right to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [90] days subsequent to the opening of bids, without the written consent of Agency.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of their bid within [90] days after the bid opening without the written consent of the Agency, or refuse or be unable to enter into this Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guaranty to the extent Agency's damages occasioned by such withdrawal, or refusal, or inability to enter into a Contract, or provide adequate security thereof.

It is further understood and agreed that to the extent the defaulting bidder's bid guaranty shall prove inadequate to fully recompense Agency for the damages occasioned by default, then the undersigned bidder agrees to indemnify Agency and pay over to Agency the difference between the bid guarantee and Agency's total damages so as to make Agency whole.

The undersigned understands that any material alteration of any of the above or any of the material contained herein, other than that requested will render the bid unresponsive.

Performance Guarantee. A Performance Guarantee in the amount of 100% of the Contract value is required by the Agency to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Contract. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to the Agency within ten (10) business days from Contract execution. The Agency requires all Performance Bonds to be provided by a fully qualified surety company acceptable to the Agency and listed as a company currently authorized under 31 C.F.R. part 22 as possessing a

Certificate of Authority as described hereunder. Agency may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Agency may secure additional protection by directing the Contractor to increase the amount of the existing bond or to obtain an additional bond.

If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish with its bid, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide a statement from the banking institution certifying that an Irrevocable Stand-By Letter of Credit for the action will be provided if the Contract is awarded to the Bidder. The Irrevocable Stand-By Letter of Credit will only be accepted by the Agency if:

1. A bank in good standing issues it. The Agency will not accept a Letter of Credit from an entity other than a bank.
2. It is in writing and signed by the issuing bank.
3. It conspicuously states that it is an irrevocable, non-transferable, "standby" Letter of Credit.
4. The Agency is identified as the Beneficiary.
5. It is in an amount equal to 100% of the Contract value. This amount must be in U.S. dollars.
6. The effective date of the Letter of Credit is the same as the effective date of the Contract
7. The expiration date of the Letter of Credit coincides with the term of the contract.
8. It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the Agency and the Contractor the work stipulated herein.

The issuing bank's obligation to pay will arise upon the presentation of the original Letter of Credit and a certificate and draft to the issuing bank's representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.

Payment Bonds. A Labor and Materials Payment Bond equal to the full value of the contract must be furnished by the contractor to Agency as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. The bond may be issued by a fully qualified surety company acceptable to (Agency) and listed as a company currently authorized under 31 C.F.R. part 223 as possessing a Certificate of Authority as described thereunder.

26. Cargo Preference Requirements

The contractor agrees:

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

27. Fly America

- a) Definitions. As used in this clause—
 - 1) “International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
 - 2) “United States” means the 50 States, the District of Columbia, and outlying areas.
 - 3) “U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S. – Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403.

[State reasons]:

- e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

28. Patent Rights and Rights in Data

Intellectual Property Rights

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the Agency intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 C.F.R. part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by FTA or U.S. DOT.

The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions:

Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution.

For purposes of this Contract, the term “subject data” means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of “subject data” include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets,

manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Federal Government Purposes,” any subject data or copyright described below. For “Federal Government Purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.

- a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
- b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.

2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.

6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

29. Procurement of Recovered Materials

- (1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—
 - i. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - ii. Meeting contract performance requirements; or
 - iii. At a reasonable price.
- (2) Information about this requirement, along with the list of EPA-designate items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.”

30. Conformance with its National Architecture

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

31. Prohibition on certain telecommunications and video surveillance services or equipment

Recipients and sub recipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Tennessee State Clauses

Conflicts of Interest.

The Grantee warrants that no part of the total Grant Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Grantee in connection with any work contemplated or performed relative to this Grant Contract

Lobbying.

The Grantee certifies, to the best of its knowledge and belief, that:

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352

Nondiscrimination.

The Grantee hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Grantee on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Grantee shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

Public Accountability.

If the Grantee is subject to Tenn. Code Ann. § 8-4-401 et seq., or if this Grant Contract involves the provision of services to citizens by the Grantee on behalf of the State, the Grantee agrees to establish a system through which recipients of services may present grievances about the operation of the service program. The Grantee shall also display in a prominent place, located near the passageway through which the public enters in order to receive Grant supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454.

The sign shall be on the form prescribed by the Comptroller of the Treasury. The Grantor State Agency shall obtain copies of the sign from the Comptroller of the Treasury, and upon request from the Grantee, provide Grantee with any necessary signs.

Public Notice.

All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Grantee in relation to this Grant Contract shall include the statement, "This project is funded under a grant contract with the State of Tennessee, Department of Transportation." All notices by the Grantee in relation to this Grant Contract shall be approved by the State.

Records.

The Grantee and any approved subcontractor shall maintain documentation for all charges under this Grant Contract. The books, records, and documents of the Grantee and any approved subcontractor, insofar as they relate to work performed or money received under this Grant Contract, shall be maintained in accordance with applicable Tennessee law. In no case shall the records be maintained for a period of less than five (5) full years from the date of the final payment. The Grantee's records shall be subject to audit at any reasonable time and upon reasonable notice by the Grantor State Agency, the Comptroller of the Treasury, or their duly appointed representatives.

The records shall be maintained in accordance with Governmental Accounting Standards Board (GASB) Accounting Standards or the Financial Accounting Standards Board (FASB) Accounting Standards Codification, as applicable, and any related AICPA Industry Audit and Accounting guides.

In addition, documentation of grant applications, budgets, reports, awards, and expenditures will be maintained in accordance with U.S. Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Grant expenditures shall be made in accordance with local government purchasing policies and procedures and purchasing procedures for local governments authorized under state law.

The Grantee shall also comply with any recordkeeping and reporting requirements prescribed by the Tennessee Comptroller of the Treasury.

The Grantee shall establish a system of internal controls that utilize the COSO Internal Control -Integrated Framework model as the basic foundation for the internal control system. The Grantee shall incorporate any additional Comptroller of the Treasury directives into its internal control system.

Any other required records or reports which are not contemplated in the above standards shall follow the format designated by the head of the Grantor State Agency, the Central Procurement Office, or the Commissioner of Finance and Administration of the State of Tennessee.

Environmental Tobacco Smoke.

Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the "Children's Act for Clean Indoor Air of 1995," Tenn Code Ann. §§39-17-1601 through 1606, the Grantee shall prohibit smoking of tobacco products within any indoor premises in which services are provided to individuals under the age of eighteen (18) years. The Grantee shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Grant Contract."

To facilitate a uniform review process and obtain the maximum degree to comparability, respondents are required to organize proposals in the following manner. Proposals that deviate from this organizational structure or are missing key information elements may be considered non-responsive.

DIRECTIONS FOR SUBMITTAL OF QUALIFICATIONS

1. Letter of Transmittal addressed to the LAMTPO Coordinator as follows:

The letter of transmittal should be written in the form of a standard business letter and must be signed by an individual authorized to legally bind the Proposer's firm to LAMTPO. The letter of transmittal must include:

- Project title
- Name of respondent
- Location of the respondent
- Brief description of respondent's proposal
- Identify Proposer's Project Manager
- Identify the Point of Contact for the Proposal
- Acknowledgment of all Addenda
 - Statement of the firm's Affirmative Action Policy and identification of participation by Disadvantaged Business Enterprises.
 - Statement that the firm is pre-qualified with TDOT.

The letter of transmittal must also outline any language that the Proposer takes exception with in the provided Sample Agreement. If the Proposer takes no exceptions, this must be stated as well. Failure to state exceptions relieves LAMTPO of any obligation to negotiate terms and conditions.

2. Firms Background – 2 page maximum (this section not scored)

The Proposer shall provide a brief narrative description of their firm. The narrative should outline how the firm's capabilities, capacity, and how long the firm has been actively engaged in providing the services outlined in the Scope of Services section of this solicitation.

3. Project Approach and Methodology with Project Schedule

The Proposal shall address the Scope of Work outlined in the RFQ and describe how the Proposer intends to carry out the tasks. A project schedule shall be provided outlining specific tasks to be performed, key milestones, and individuals responsible for each task. Describe the Proposer's project management techniques for ensuring that the work is accomplished in accordance with established standards and schedules.

The Proposer shall provide a detailed proposed Project Schedule. All major milestones, tasks, and deliverables should be listed. The schedule should start from the RFQ submittal deadline date. Schedules should be realistic and achievable, the Awarded Consultant will be held to their proposed schedule.

The Contractor should be aware that the schedule presented in their Proposal will be used to measure Contractor's performance and compliance. Assumptions used to assemble the proposed schedule should be

clearly articulated including any information or resources that LAMTPO will need to provide to maintain the schedule.

3. Technical Capacity:

Proposer shall provide a narrative summary of the overall qualifications of the proposed team and how those skills will be used to complete the project. The narrative shall include specific examples from past projects demonstrating these qualifications. Proposer should demonstrate how the team will be arranged and how specific roles and responsibilities will be assigned and managed.

Proposer shall demonstrate how proposed team member's specific skills will lead to a positive outcome for LAMTPO. Provide sufficient detail to convey to members of the Evaluation Committee, the firm's knowledge of the subjects and skills necessary for the completion of the contract and any other services necessary to complete the Project.

If the Proposer plans to use any sub-consultants, they should be identified in the narrative and their roles should be outlined as well.

Articulation of a plan for performing the scope of work, including key work elements and a timetable schedule for performance of the work to be completed. This plan for work should incorporate the general and specific requirements for the work outlined herein as well as the project deliverables. The plan for work should evidence a clear understanding of the work product that is desired and it should indicate the firm's ability to complete the work in a timely and professional manner.

4. Past Experience

Proposer shall provide three (3) references for similar projects that the team has completed in the past five (5) years; past LAMTPO work is not desired. For each reference, provide a narrative description of the services provided and how these services relate to LAMTPO's project. These references should also contain examples of challenges that were encountered during the project and how the Proposers team managed these challenges. The reference should contain a summary of the satisfaction level of the client at the end of the project. Each reference should name a primary point of contact including: name of agency, name and title of the point of contact, phone number, and email address. LAMTPO reserves the right to contact these references.

5. Key Personnel:

Proposer shall provide a brief resume or similar description for the key staff members who will be assigned to this project, including their specific responsibilities and individual qualifications. The resume shall include a minimum of two (2) similar projects that each team member has worked on and a description of their roles and responsibilities. Proposer shall also provide similar information for all sub-consultants that will be utilized for this project.

Proposers must identify a Project Manager, who may not be removed/substituted from the project without written approval from LAMTPO. The Proposer will describe the Project Manager's experience, expertise, knowledge, capabilities and resources as they pertain to managing this project's scope of work. The Proposer shall provide a description of three (3) similar projects that the Project Manager acted as either the Project Manager or was a key team leader; including the name of the client organization, primary client contact information, description of the project and time period the work was completed.

6. Required Forms:

- **Exhibit A: Bidder's Affidavit; signed**
- **Exhibit B: Acknowledgement of FTA Clauses**
- **Exhibit B: Lobbying Certification; signed**

END OF SECTION 4

Section 5: Evaluation of Proposals

EVALUATION OF QUALIFICATIONS AND CONSULTANT SELECTION

A Consultant Evaluation Committee (CEC) shall be established, and will evaluate the qualifications of firms based at a minimum on the following factors:

- i. Work experience in the required disciplines with TDOT, the Agency, and/or other clients
- ii. Specialized expertise;
- iii. Professional licensure;
- iv. Staff capabilities of prime consultant
- v. Size of project and limited or unlimited prequalification status; and,
- vi. Workload capacity; including amount of work under contract with the Agency, if applicable
- vii. Past performance on Agency Projects;
- viii. Technical approach (e.g., project understanding, innovative concepts or alternatives, quality control procedures);
- ix. Other factors including interviews and demonstrations, as approved by the Agency; and
- x. Participation of qualified and certified Disadvantaged Business Enterprise (DBE) (can be consultant or sub-consultants) (or at least show good faith efforts in obtaining DBE).

Submittals that are late or which the review team determines have shown a severe disregard for submittal instructions will be disqualified. The review team will consider the Consultant's resumes and experience in relation to the corridor study. The review team will consider how well the Consultant's submittal addresses the various Federal, State, and MPO requirements for the corridor study that were outlined in the RFQ. Based upon the evaluation process just described, the review team will rank the submittals that were received and recommend the top-ranked Consultant with which to

begin negotiations. If negotiations are unsuccessful with the top-ranked Consultant, then negotiations would commence with the next highest ranked Consultant, and so forth, until a contract is reached.

East Tennessee Human Resource Agency (ETHRA) relies on its coordination with the LAMTPO public participation process outlined in the PPP to ensure public awareness and outreach of the agency's Program of Projects (POP). LAMTPO's public involvement activities, public notices, and public comment periods on the TIP will satisfy the POP requirement of the Urbanized Area Formula Program (Section 5307 and 5339) administered by FTA.

It is the policy of LAMTPO not to discriminate on the basis of race, color, national origin, age, sex, or disability in operation of its programs, services, and activities. With regard to all aspects of this contract, contractor certifies and warrants it will comply with this policy.

5.2 Interviews

If the Evaluation Committee deems it necessary, all vendors in the competitive range will be invited to participate in interviews. Proposers will receive an invitation to the interview along with an agenda covering the information, schedule and presentation format. The Evaluation Committee will score each interview to determine the most highly qualified Proposer.

5.3 Evaluation Committee Recommendations

The Evaluation Committee shall consist of qualified LAMTPO staff or other persons selected by LAMTPO to conduct evaluations of proposals. The committee will evaluate all responsive proposals based upon the information and references contained in the proposals as submitted.

5.3 Pre-Award Conference

If deemed necessary, in LAMTPO's sole discretion, the Proposer determined to be the most highly qualified firm shall participate in a pre-award conference conducted by LAMTPO to clarify and discuss issues of concern and interest to both parties.

5.4 Rejection of Proposals

LAMTPO may reject any Proposal that is not in the required format, does not address all the requirements of this RFQ, or that LAMTPO believes is not in the interest of the Agency to consider or to accept. In addition, LAMTPO may cancel this RFQ, reject all the Proposals, and seek to do the Work through a new RFQ or by other means.

END OF SECTION 5

Exhibits and Attachments

Exhibit A: Bidder's Affidavit

Exhibit B: Federal Contract Clauses and Certifications

Attachment A: Protest and Appeal Policy

Attachment B: Sample Contract

END OF SECTION 6

EXHIBIT A

BIDDERS AFFIDAVIT

NON-COLLUSION

The Bidder affirms that, in connection with this Bid, the prices or cost data have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition and that the proposal herewith submitted is a genuine and not a sham or collusive Bid, or made in the interest or on behalf of any person not therein named; and further says that the said Bidder has not directly, or indirectly, induced or solicited any Bidder on the above Work or supplies to put a sham Proposal, or any other person or corporation to refrain from Bidding; and that said Bidder has not in any manner sought by collusion to secure to himself/herself an advantage over any other Bidders.

CONFLICTS OF INTEREST & ANTI-KICKBACKS

In regards to any performance of the Work or the provision of services or materials under the Contract resulting from this solicitation the Bidder affirms that:

1. It has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, which conflicts in any manner or degree with the services required to be performed under this Contract and that it shall not employ any person or agent having such interest. In the event that the Bidder, as Contractor, or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such interest to LAMTPO and take immediate action to eliminate the conflict or to withdraw from said Contract as LAMTPO may require.
2. No officer, employee, Board member, agent of LAMTPO, or family member of same shall have or acquire any personal interest in this submittal, or have solicited, accepted or granted a present or future gift, favor, service, or other thing of value from or to any person involved in this submittal and that no such gratuities were offered or given by the Bidder or any of its agents, employees or representatives, to any official, member or employee of LAMTPO or other governmental agency with a view toward securing a Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the Award or performance of this Contract.

CONTINGENT FEES AND GRATUITIES

The Bidder affirms that in connection with this Bid:

1. No person or selling agency, except bona fide employees or designated agents or representatives of the Bidder, has been employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid.
2. No gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any of its agents, employees or representatives, to any official, member or employee of LAMTPO or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.

SEGREGATED FACILITIES

The Bidder certifies that their company does not and will not maintain or provide for their employees any segregated facilities at any of their establishments, and that they do not and will not permit their employees to perform their services at any location under its control where segregated facilities are maintained. The Bidder agrees that a breach of this certification will be a violation of the Equal Opportunity or Civil Rights clause in any Contract resulting from acceptance of this Bid. As used in this Certification, the term "segregated facilities" means any waiting rooms, Work areas, restrooms and washrooms, restaurants and other eating areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin because of habit, local custom, or otherwise.

DEBARMENT AND SUSPENSION

The Proposer shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment” 2 C.F.R part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)”, 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the bidder shall verify that its principles, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participating in any federally assisted Award;
- f) Disqualified from participating in any federally assisted Award.

By signing and submitting its bid, the bidder certifies as follows:

The certification in this clause is a material representation of fact relied upon by LAMTPO. If it is later determined by LAMTPO that the bidder knowingly rendered an erroneous certification, in addition to remedies available to LAMTPO, the Federal Government may pursue available remedies afforded by 31 U.S.C. § 3802, including but not limited to suspension and/or debarment. The bidder agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from the offer. The bidder further agrees to include a provision requiring such compliance in its lower tier covered transactions.

If Bidder is unable to certify to any of the statements in this certification, the Bidder shall attach an explanation to this Section.

Note: The penalty for making false statements in offers is described in 18 U.S.C. 1001.

THE BIDDER CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 USC SECTIONS 3802, ET SEQ., ARE APPLICABLE THERETO.

_____ Date

Authorized Signature

Printed Name & Title _____

Company Name _____

Subscribed and sworn to before me this _____ day of _____, 2023.

****THIS FORM MUST BE SUBMITTED WITH YOUR BID****

EXHIBIT B

**Contractors Certification of Acknowledgment
Federal Transit Administration Contract Clauses and Certifications**

Source: FTA Master Agreement (26), October 1, 2019
fta-master-agreement-fy-20201

The Contractor, _____, certifies, to the best of its knowledge and belief, that it:

- A. **Has** ____ **Has not** ____ read and understood the attached Federal Transit Administration Contract Clauses as they pertain to project _____, and;

- B. **Has** ____ **Has not** ____ read and understood the attached Federal Transit Administration Contract Certifications as they pertain to project _____.

Signature of Contractor's Authorized Official

Date

Name & Title of Contractor's Authorized Official

FEDERAL TRANSIT ADMINISTRATION CONTRACT CLAUSES

NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD-PARTIES BY USE OF A DISCLAIMER

Except as the Federal Government expressly consents in writing, the Recipient agrees that:

- (1) The Federal Government shall not have any obligation or liability related to:
 - (a) The Project,
 - (b) Any Third Party Participant at any tier, or
 - (c) Any other person or entity that is not a party (Recipient or FTA) to the Underlying Agreement for the Project, and
- (2) Notwithstanding that the Federal Government may have concurred in or approved any solicitation or third party agreement at any tier that has affected the Project, the Federal Government shall not have any obligation or liability to any:
 - (a) Third Party Participant, or
 - (b) Other entity or person that is not a party (Recipient or FTA) to the Underlying Agreement.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

- (1) Civil Fraud. The Recipient acknowledges and agrees that:
 - (a) Federal laws and regulations apply to itself and its Project, including:
 1. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq., and
 2. U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31,
 - (b) By executing its Underlying Agreement, the Recipient certifies and affirms to the truthfulness and accuracy of any of the following that the Recipient provides to the Federal Government:
 1. Claim,
 2. Statement,
 3. Submission,
 4. Certification,
 5. Assurance, or
 6. Representation, and
 - (c) The Recipient acknowledges that the Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended and other applicable penalties if the Recipient:
 1. Presents, submits, or makes available any information in connection with any:
 - a. Claim,
 - b. Statement,
 - c. Submission,
 - d. Certification,
 - e. Assurance, or
 - f. Representation, and
 2. That information is false, fictitious, or fraudulent.
- (2) Criminal Fraud. The Recipient acknowledges that 49 U.S.C. § 5323(l)(1), authorizes the Federal Government to impose the penalties authorized by 18 U.S.C. § 1001 if the Recipient:
 - (a) Presents, submits, or makes available any information in connection with any:
 1. Claim,
 2. Statement,
 3. Submission,
 4. Certification,
 5. Assurance, or

6. Representation, and
- (b) That information is false, fictitious, or fraudulent.

ACCESS TO RECORDS

The Recipient agrees that:

- (1) As required by 49 U.S.C. § 5325(g), 49 C.F.R. § 18.36(i)(10), and 49 C.F.R. § 19.53(e), it will provide, and require its Third Party Participants at each tier to provide, sufficient access to inspect and audit records and information pertaining to the Project to the:
 - (a) U.S. Secretary of Transportation or the Secretary's duly authorized representatives,
 - (b) Comptroller General of the United States, and the Comptroller General's duly authorized representatives, and
 - (c) Recipient and Subrecipient,
- (2) The Recipient will permit and assures that its Third Party Participants will permit the individuals listed above in (1) to do the following:
 - (a) Inspect all:
 1. Project work,
 2. Project materials,
 3. Project payrolls, and
 4. Other Project data, and
 - (b) Audit any information related to the Project under the control of the Recipient or Third Party Participant within:
 1. Books,
 2. Records,
 3. Accounts, or
 4. Other locations.

FEDERAL CHANGES

Changes to Federal Requirements and Guidance:

- (1) Requirements and Guidance. New Federal Requirements and Guidance may:
 - (a) Become effective after the FTA Authorized Official signs the Recipient's Underlying Agreement awarding funds for the Project, and
 - (b) Apply to the Recipient or its Project.
- (2) Modifications. Federal requirements and guidance that apply to the Recipient or its Project when the FTA Authorized Official awards Federal funds for the Recipient's Underlying Agreement may:
 - (a) Be modified from time to time, and
 - (b) Apply to the Recipient or its Project.
- (3) Most Recent Provisions. The latest Federal requirements will apply to the Recipient or its Project, except as FTA determines otherwise in writing using a:
 - (a) Special Condition in the Recipient's Underlying Agreement,
 - (b) Special Requirement in the Recipient's Underlying Agreement,
 - (c) Special Provision in the Recipient's Underlying Agreement,
 - (d) Condition of Award in the Recipient's Underlying Agreement,
 - (e) Letter to the Recipient signed by an authorized FTA official, or
 - (f) Change to FTA or Federal guidance.

CIVIL RIGHTS REQUIREMENTS

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. Specifically:

- (1) 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:
 1. Race,
 2. Color,
 3. Religion,
 4. National origin,
 5. Sex (including gender identity),
 6. Disability, or
 7. Age, and
 - (b) The FTA "Nondiscrimination" statute's prohibition against discrimination includes:
 1. Exclusion from participation,
 2. Denial of program benefits, or
 3. Discrimination, including discrimination in employment or business opportunity.
- (2) Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will:
 - (a) Prohibit discrimination based on:
 1. Race,
 2. Color, or
 3. National origin,
 - (b) Comply with:
 1. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.*,
 2. 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 23, and
 3. Federal transit law, specifically 49 U.S.C. § 5332, as stated in section V.(1) of this document, and
 - (a) Except as FTA determines otherwise in writing, follow:
 1. 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.
 2. U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and
 3. Other applicable Federal guidance that may be issued.
- (3) Equal Employment Opportunity.
 - (a) 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:
 1. Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*,
 2. 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, and as further amended by

Executive Order 13672, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," July 21, 2014,

3. Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section V.(1) of this document, and
4. FTA Circular 4704.1 "Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients," and
5. 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.

(b) Specifics. The Recipient agrees to:

1. Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their:
 - a. Race,
 - b. Color,
 - c. Religion,
 - d. National Origin,
 - e. Disability,
 - f. Age,
 - g. Sexual Origin,
 - h. Gender identity, or
 - i. Status as a parent, and
2. Take affirmative action that includes, but is not limited to:
 - a. Recruitment advertising,
 - b. Recruitment,
 - c. Employment,
 - d. Rates of pay,
 - e. Other forms of compensation,
 - f. Selection for training, including apprenticeship,
 - g. Upgrading,
 - h. Transfers,
 - i. Demotions,
 - j. Layoffs, and
 - k. Terminations.

(c) 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:

1. U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and
2. 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

(4) 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:

(a) Requirements. The Recipient agrees to comply with:

1. Section 1101(b) of MAP-21, 23 U.S.C. § 101 note,
2. U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and
3. Federal transit law, specifically 49 U.S.C. § 5332, as stated in section V.(1) of this document.

- (b) Assurance. As required by 49 C.F.R. § 26.13(a), the Recipient provides assurance that:
 - 1. It shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract.
 - 2. It 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.
- (5) Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including:
 - (a) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 *et seq.*,
 - (b) 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
 - (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section V.(1) of this document.
- (6) Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including:
 - (a) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § § 621 – 634, which prohibits discrimination on the basis of age,
 - (b) 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,
 - (c) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § *et seq.*, which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds,
 - (d) 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
 - (e) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section V.(1) of this document.
- (7) 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:
 - (a) Federal laws, including:
 - 1. 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,
 - 2. 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,
 - 3. 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,
 - 4. Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and
 - 5. Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities.
 - (b) Federal regulations, including:
 - 1. U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.F. part 37,
 - 2. 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,
 - 3. U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39,
 - 4. 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,

5. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35,
 6. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36,
 7. U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630,
 8. 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,
 9. U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194, and
 11. FTA Circular 4710.1, “Americans with Disabilities Act: Guidance,” and
 12. Other applicable Federal civil rights and nondiscrimination guidance.
- (8) Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of:
- (a) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 *et seq.*,
 - (b) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 *et seq.*, and
 - (c) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2.
- (9) 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:
- (a) 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
 - (b) U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 Fed. Reg. 74087, December 14, 2005.
- (10) Environmental Justice. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following:
- (a) Executive Order No. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and
 - (b) DOT Order 5610.2, “Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,” 62 Fed. Reg. 18377, April 15, 1997, and
 - (c) The most recent and applicable edition of FTA Circular 4703.1, “Environmental Justice Policy Guidance for Federal Transit Administration Recipients,” August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance.
- (11) Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to:
- (a) Comply with other applicable Federal nondiscrimination laws and regulations, and
 - (b) Follow Federal guidance prohibiting discrimination.

PROMPT PAYMENT OF SUBCONTRACTORS

The Contractor shall ensure that all Subcontractors and suppliers under this Contract are promptly paid to the fullest extent required by RCW 39.04.250, as may be amended. The Contractor is required to pay each Subcontractor performing Work under this prime Contract for satisfactory performance of that Work no later than thirty (30) days after the Contractor’s receipt of payment for that Work from LAMTPO. In addition, the Contractor is required to return any retainage payments to those Subcontractors within thirty (30) days after the Subcontractor’s Work related to this Contract is satisfactorily completed and any liens have been

secured. Any delay or postponement of payment from the above time frames may occur only for good cause following written approval of LAMTPO.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS FTA Circular 4220.1F

The Recipient agrees not to use FTA funds for third party procurements unless there is satisfactory compliance with Federal requirements. Therefore:

- (1) Federal Laws, Regulations, and Guidance. The Recipient agrees:
 - (a) To comply with the requirements of 49 U.S.C. chapter 53 and other applicable Federal laws and regulations now in effect or later that affect its third party procurements,
 - (b) To comply with U.S. DOT third party procurement regulations, specifically 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 – 19.48, and other applicable Federal regulations that affect its third party procurements in effect now and as may be later amended,
 - (c) To follow the most recent edition and any revisions of FTA Circular 4220.1F, “Third Party Contracting Guidance,” to the extent consistent with applicable Federal laws, regulations, and guidance, except as FTA determines otherwise in writing, and
 - (d) That although the FTA “Best Practices Procurement Manual” provides additional third party contracting guidance, the Manual may lack the necessary information for compliance with certain Federal requirements that apply to specific third party contracts at this time.

ENERGY CONSERVATION

The Recipient agrees to, and assures its Subrecipients will:

- (1) State Energy Conservation Plans. Comply with the mandatory energy standards and policies of its State energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321 *et seq.*, except as the Federal Government determines otherwise in writing, and
- (2) Energy Assessment. Perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds required under FTA regulations, “Requirements for Energy Assessments,” 49 C.F.R. part 622, subpart C.

TERMINATION PROVISIONS

The Recipient agrees to all of the following:

- (1) Justification. After providing notice, the Federal Government may suspend, suspend then terminate, or terminate all or any part of the Federal funding awarded for the Project if:
 - (a) The Recipient has violated the Underlying Agreement or FTA Master Agreement (26), especially if that violation would endanger substantial performance of the Project,
 - (b) The Recipient has failed to make reasonable progress on the Project, or
 - (c) The Federal Government determines that continuing to provide Federal funding for the Project does not adequately serve the purposes of the law authorizing the Project,
- (2) Financial Implications.
 - (a) In general, termination of Federal funding for the Project will not invalidate obligations properly incurred before the termination date to the extent the obligations cannot be canceled, and
 - (b) The Federal Government may:
 1. Recover Federal funds it has provided for the Project if it determines that the Recipient has willfully misused Federal funds by:
 - a. Failing to make adequate progress,
 - b. Failing to make appropriate use of the Project property, or
 - c. Failing to comply with the Underlying Grant Agreement or FTA Master Agreement (26), and

2. Require the Recipient to refund:
 - a. The entire amount of Federal funds provided for the Project, or
 - b. Any lesser amount as the Federal Government may determine, and
- (3) Expiration of Project Time Period. Except for a Full Funding Grant Agreements, expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Underlying Agreement.

DEBARMENT AND SUSPENSION

The Recipient agrees that:

- (1) It will not engage Third Party Participants that are debarred or suspended except as authorized by:
 - (a) U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. Part 1200,
 - (b) U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)," 2 C.F.R. part 180, including any amendments thereto, and
 - (c) Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note,
- (2) It will review the "Excluded Parties Listing System" at <https://epls.gov> (to be transferred to <https://www.sam.gov>), if required by U.S. DOT regulations, 2 C.F.R. part 1200, and
- (3) It will include, and require its Third Party Participants to include a similar condition in each lower tier covered transaction, assuring that all lower tier Third Part Participants:
 - (a) Will comply with Federal debarment and suspension requirements, and
 - (b) Review the "Excluded Parties Listing System" at <https://www.epls.gov> (to be transferred to <https://www.sam.gov>), if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200.

PROVISIONS FOR RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

The Recipient understands and agrees that:

- (1) FTA Interest. FTA has a vested interest in the settlement of any disagreement involving the Project including, but not limited to:
 - (a) A major dispute,
 - (b) A breach,
 - (c) A default, or
 - (d) Litigation,
- (2) Notification to FTA. If a current or prospective legal matter that may affect the Federal Government emerges:
 - (a) The Recipient agrees to notify immediately:
 1. The FTA Chief Counsel, or
 2. The FTA Regional Counsel for the Region in which the Recipient is located,
 - (b) The types of legal matters that require notification include, but are not limited to:
 1. A major dispute,
 2. A breach,
 3. A default,
 4. Litigation, or
 5. Naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason, and
 - (c) The types of matters that may affect the Federal Government include, but are not limited to:
 1. The Federal Government's interests in the Project, or
 2. The Federal Government's administration or enforcement of Federal laws or regulations,

- (3) Federal Interest in Recovery
 - (a) General. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the Federal share for the Project, but
 - (b) Liquidated Damages. Notwithstanding the preceding section XI.(1) of this document, the Recipient may return all liquidated damages it receives to its Project Account rather than return the Federal share of those liquidated damages to the Federal Government,
- (4) Enforcement. The Recipient agrees to pursue its legal rights and remedies available under:
 - (a) Any third party agreement,
 - (b) Any Federal law or regulation,
 - (c) Any State law or regulation, or
 - (d) Any local law or regulation,

BYRD ANTI-LOBBYING AMENDMENT

The Recipient agrees that, as provided by 31 U.S.C. § 1352(a):

- (1) Prohibition on Use of Federal Funds. It will not use Federal funds:
 - (a) To influence any:
 1. Officer or employee of a Federal agency,
 2. Member of Congress,
 3. Officer or employee of Congress, or
 4. Employee of a Member of Congress,
 - (b) To take any action involving the Project or the Underlying Agreement for the Project, including any:
 1. Award,
 2. Extension, or
 3. Modification,
- (2) Laws and Regulations. It will comply, and will assure that each Third Party Participant complies with:
 - (a) 31 U.S.C. § 1352, as amended,
 - (b) U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. part 20, to the extent consistent with as necessary by 31 U.S.C. § 1352, as amended, and
 - (c) Other applicable Federal laws and regulations prohibiting the use of Federal funds for any activity concerning legislation or appropriations designed to influence:
 1. The U.S. Congress, or
 2. A State legislature, but
- (3) Exception. The prohibitions of (1)-(2) above do not apply to an activity that is undertaken through proper official channels, if permitted by the underlying law or regulations.

CLEAN AIR & CLEAN WATER

The Recipient agrees to include adequate provisions in each third party agreement exceeding \$150,000 to ensure that each Third Party Participant will agree to:

- (1) Report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities,"
- (2) Refrain from using any violating facilities,
- (3) Report violations to FTA and the Regional U.S. EPA Office, and
- (4) Comply with the inspection and other requirements of:
 - (a) Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7606, and other requirements of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7671q, and

- (b) Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 – 1388.

FLY AMERICA

The Contractor agrees to comply with 49 USC 40118 (the Fly America Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. 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.

RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If the federal award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

SOLID WASTES

A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

SOLID WASTES

The Consultant agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations, 49 C.F.R Part 41, and will certify to compliance to the extent required by the Regulation. The Consultant also agrees to ensure that all work performed under this Contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

SIMPLIFIED ACQUISITION THRESHOLD

Contracts for more than the simplified acquisition threshold, currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.326. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America's eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).)

FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

The following transactions are prohibited and Third-Party Participant certifies that -

- (1) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- (2) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

LOBBYING CERTIFICATION

The Proposer certifies, to the best its knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of a federal department or agency, a member of the U.S. Congress, an officer or employee of the U.S. Congress, or an employee of a member of the U.S. Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification thereof.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal Contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction, as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, USC § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

Name of the Proposer's authorized official: _____

Title: _____

Signature

Date

THIS FORM MUST ACCOMPANY PROPOSAL

ATTACHMENT A

PROTEST AND APPEAL POLICY

A. Purpose

To establish policies for vendor or service provider complaints and protests to ensure fair and open competition.

B. Complaint Policy

Who May Submit a Complaint

A potential bidder demonstrating a substantial economic interest in LAMTPO's competitive bid process.

Timing of Complaint

Complaints must be received five business days prior to bid response deadline.

Basis of Complaint

Complaints must be based on the following criteria:

1. The solicitation unnecessarily restricts competition
2. The solicitation evaluation process is unfair or flawed
3. The solicitation requirements are insufficient to prepare a response

Complaint Form and Content

1. Complaints must be in writing
2. Complaints must be addressed to the Purchasing Coordinator
3. Complaints must clearly articulate the basis for the complaint
4. Complaints must include proposed remedy

LAMTPO Response to Complaint

LAMTPO will respond to complaints in writing within three business days of receipt.

C. Protest and Appeal Policy

Who May Protest or Appeal

A potential bidder demonstrating a substantial economic interest in LAMTPO's competitive bid process.

Timing of Protest

A protest must be filed within five business days of the award of a contract or notice of apparent successful proposer/bidder, whichever is sooner.

Basis of Protest

Protests must be based on the following criteria:

1. A matter of bias, discrimination, or conflict of interest.
2. Non-compliance with procedures described in the procurement documents
3. Error in computing scores

Protest Form and Content

1. Protests must be in writing
2. Protests must be addressed to the LAMTPO Coordinator
3. Protests must clearly articulate specific grounds for the protest and include supporting documentation
4. Protests must include proposed remedy

Protest Procedure

A protest must be filed with LAMTPO's Coordinator within five business days of the award of a contract or notice of apparent successful proposer/bidder, whichever is sooner. Upon receipt of a timely written protest, the LAMTPO Coordinator will consider the protest in accordance with established procedures and issue a written decision within five business days stating the reasons for the action taken and informing the allegedly aggrieved vendor or service provider (Protesting Vendor) of his/her right to appeal the decision.

Appeal Procedure

An appeal must be filed within five business days of the LAMTPO Coordinator decision. The Finance Director and the procurements originating Department Director will consider the appeal and issue a written decision within five business days informing the Protesting Vendor of his/her right to further appeal the decision.

In the event the Protesting Vendor elects to continue the appeal process, a request for a second appeal must be filed within five business days of the decision of the first appeal. The Executive Director and general counsel will consider the appeal and issue a written decision within ten business days. The decision of the second appeal will be final and conclusive.

Failure to Comply with Requirements

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

Exhausted Administrative Remedies

A Protesting Vendor may not commence litigation prior to exhausting all administrative remedies. Failure to exhaust all administrative remedies shall constitute an absolute waiver of the Protesting Vendor rights, if any, to commence litigation.

ATTACHMENT B

***SAMPLE
LAMTPO***

**CONSULTANT
AGREEMENT**

LAMTPO # XX-XXX

{Project Name}

LAMTPO

100 W 1st N St

PO Box 1499

Morristown, Tennessee 37816-1499

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LAMTPO

SAMPLE CONSULTANT AGREEMENT

THIS AGREEMENT, made and entered into in duplicate this ___day of _____, 20___, by and between LAMTPO, a Tennessee metropolitan planning organization, hereinafter referred to as "TRANSIT", and _____, hereinafter referred to as "CONSULTANT."

WITNESSETH:

WHEREAS, TRANSIT desires to have certain services and/or tasks performed as hereinafter set forth requiring specialized skills and other supportive capabilities, hereinafter referred to as the "Project," and

WHEREAS, CONSULTANT represents that CONSULTANT is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, to perform the services and/or tasks set forth in this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, TRANSIT and CONSULTANT agree as follows:

ARTICLE 1
OVERALL PROJECT

1.1 RELATIONSHIP OF PARTIES

The CONSULTANT covenants with TRANSIT to furnish the CONSULTANT’s reasonable skill and judgment in furthering the interests of TRANSIT. The CONSULTANT shall furnish memos, reports, spreadsheets or other appropriate documents, and use the consultant’s best effort to perform the work in this Agreement in an expeditious and economical manner consistent with the interest of TRANSIT. The CONSULTANT shall endeavor to promote harmony and cooperation with the other governmental parties and agencies involved with the Project, TRANSIT, and other persons or entities essential to the Project.

1.2 GENERAL SCOPE OF SERVICES

CONSULTANT shall perform such services and accomplish such tasks, including the furnishing of all materials, documentation, and equipment necessary for full performance thereof, as are identified and designated as CONSULTANT responsibilities throughout this Agreement and as detailed in exhibits attached hereto and incorporated herein.

Exhibit X: Request for Qualification, Project LAMTPO #XX-XXX

Released: xx/xx/20xx

Exhibit X: Addenda X, Project LAMTPO #XX-XXX

Released: xx/xx/20xx

Exhibit X: Consultant’s Response to RFQ

Issued: xx/xx/20xx

1.3 TERM OF THE AGREEMENT

CONSULTANT shall not begin work under the terms of this Agreement until authorized by the signing of this Agreement. The services under this Agreement are directly related to and shall be coordinated with the Project Schedule. The time for completion is _____.

The established completion time shall not be extended because of any delays attributable to CONSULTANT, but may be extended by TRANSIT in the event of a delay attributable to TRANSIT or because of unavoidable delays caused by an Act of God, governmental actions or other conditions beyond the control of CONSULTANT.

ARTICLE 2

GENERAL PROVISION

2.1 ASSIGNMENT/SUBCONTRACTING

- A. CONSULTANT shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of TRANSIT, and it is further agreed that said consent must be sought in writing by CONSULTANT not less than seven days prior to the date of any proposed assignment. TRANSIT reserves the right to reject without cause any such assignment.
- B. TRANSIT permits subcontracts for those items of work as shown in EXHIBIT (X) attached hereto and made a part hereof. The parties understand that subconsultants may be added or deleted during the course of the Agreement. EXHIBIT (X) may be amended as the need arises, upon mutual agreement of the parties, without a formal amendment to this Agreement. All terms, conditions, covenants and performances contained herein by and between the CONSULTANT and TRANSIT shall be required of the subconsultant and made part of any subconsultant agreement.

2.2 ATTORNEYS FEES AND COSTS

If any legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the covenants, terms, conditions, OR provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and costs incurred in such action or proceeding.

2.3 CHANGES

Either party may request changes to the scope of services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing, and signed by both parties. Such amendments shall be attached to and made a part of this Agreement.

CONSULTANT shall not incur additional cost which would modify the amount of the compensation established in EXHIBIT (X), except as TRANSIT may specifically authorize in writing.

CONSULTANT shall make all such changes and revisions in the completed work of this Agreement as are necessary to correct errors appearing therein, when required to do so by TRANSIT, without additional compensation therefore.

2.4 COMMUNICATIONS

Communications in connection with this Agreement shall be in writing and shall be delivered personally; or by facsimile, or by regular, registered, or certified mail addressed to the TRANSIT Representative designated to receive such communications. Communications shall be considered received at the time actually received by the addressee. Telephone calls may be used to expedite communications but shall not be official communication unless confirmed in writing. All telephone communication shall be directed to the Project Manager (designated representative) as appropriate.

2.5 DISPUTE RESOLUTION

TRANSIT's Protest and Appeal Procedures (ATTACHMENT C of the RFQ) are to be used for the resolution of disputes.

2.6 JURISDICTION

- A. This Agreement has been and shall be construed as having been made and delivered within the State of Tennessee, and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Tennessee, both as to interpretation and performance.
- B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Hamblen County, Tennessee.

2.7 RESERVED

2.8 MEDIATION

As a condition precedent to the hearing of any trial or arbitration, the Parties shall submit any and all disputes between them to non-binding mediation with the assistance of an experienced mediator. The Parties shall each designate a representative with full settlement authority who will participate for at least four hours in mediation. The Parties shall share equally all expenses, exclusive of attorney's fees, associated with the mediation.

2.9 NOTICE

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the parties on the last page of this Agreement.

2.10 REQUESTS FOR ARBITRATION

Requests for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A request for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the request for arbitration be made after the date when institution of legal or equitable proceedings based on such claims, dispute or other matter in question would be barred by the applicable statutes of limitations.

The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

2.11 SEVERABILITY

- A. It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is held by the courts to be illegal, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- B. If it should appear that any provision hereof is in conflict with any statutory provision of the State of Tennessee, said provision, which may conflict therewith, shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

2.12 TERMINATION

- A. **TERMINATION FOR CONVENIENCE:** The performance of work under this Agreement may be terminated by TRANSIT in accordance with this clause in whole, or from time-to-time in part, whenever TRANSIT shall determine that such termination is in its best interests. Any such termination shall be effected by delivery to the CONSULTANT of a Notice of Termination specifying the extent to which performance of service under the Agreement is terminated, and the date upon which such termination will become effective.

After receipt of a Notice of Termination, and except as otherwise directed by TRANSIT, the CONSULTANT shall stop work under the Agreement on the date and to the extent specified in the Notice of Termination.

Settlement of claims by the CONSULTANT under this Termination of Convenience clause shall be in accordance with the provisions set forth in the Federal Acquisition Regulations, except that wherever the word "Government" appears it shall be deleted and the words "LAMTPO" shall be substituted in lieu thereof.

- B. **TERMINATION FOR DEFAULT:** TRANSIT may, by written notice of default to the CONSULTANT, terminate the whole or any part of this Agreement if the CONSULTANT fails to perform the services within the time specified herein or any extension thereof; or if the CONSULTANT fails to perform any of the provisions of the contract, or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in either of these two circumstances does not cause such failure to be corrected within a period of ten (10) business days (or such longer period as TRANSIT may authorize in writing) after receipt of notice from TRANSIT specifying such failure.

If the Agreement is terminated in whole or in part for default, TRANSIT may procure, upon such terms and in such manner, as TRANSIT may deem appropriate, supplies or services similar or those so terminated. The CONSULTANT may be liable to TRANSIT for excess costs for such similar services and shall continue the performance of this Agreement to the extent not terminated under the provisions of this clause.

Except with respect to defaults of sub-consultants, the CONSULTANT shall not be liable for any excess costs if the failure to perform the Agreement arises out of cause beyond the control and without the negligence of the CONSULTANT. If the failure to perform is caused by the default of a sub-consultant, and if such default arises out of causes beyond the control of both the CONSULTANT and the sub-consultant, and without the negligence of either of them, the CONSULTANT shall not be liable for any excess costs for failure to perform, unless the services to be furnished by the sub-consultant were obtainable from other sources to provide the services required.

Payment for services and accepted by TRANSIT shall be at the price specified in the Agreement. TRANSIT may withhold from amounts otherwise due the CONSULTANT for services provided such sum as TRANSIT determines to be necessary to protect TRANSIT against loss because of outstanding liens or claims of former lien holders.

If, after Notice of Termination of this Agreement under the provisions of this clause, it is determined for any reason that the CONSULTANT was not in default under the provisions of this clause, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued pursuant to Termination of Convenience of TRANSIT.

The rights and remedies of TRANSIT provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

2.13 TREATMENT OF ASSETS

Title to all property furnished by TRANSIT shall remain in the name of TRANSIT and TRANSIT shall become the owner of the work product and other documents, if any, prepared by CONSULTANT pursuant to this Agreement unless otherwise expressly provided herein.

ARTICLE 3 COMPENSATION, PAYMENTS AND RECORDS

3.1 ACCOUNTING RECORDS

The CONSULTANT shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this agreement; the accounting and control systems shall be satisfactory to TRANSIT. The CONSULTANT shall preserve records, books, correspondence, instructions, drawings, subcontracts, purchase orders, memoranda and other data relating to this Agreement for a period of three years after final payment, or for such longer period as may be required by law.

3.2 AUDIT AND INSPECTION OF RECORDS

TRANSIT, the State Auditor, the Comptroller General for the United States, or any of their duly authorized representatives, shall, until three (3) years after final payment under this Agreement or for any shorter period specified, have access to and the right to examine any of the CONSULTANT's directly pertinent books, documents, papers or other records involving transactions related to this Agreement, and may request copies of specific documents at no charge to TRANSIT. These same requirements apply for any subconsultant.

3.3 CHANGE ORDER PROCEDURE

- A. Oral change orders are not permitted. No change in this Agreement shall be made unless LAMTPO's Project Manager (designated representative) gives his/her prior written approval thereto. The CONSULTANT shall be liable for all costs resulting from, and/or for satisfactorily correcting, any specification change not properly ordered by written modification to the Agreement and signed by LAMTPO's Capital Development Director.
- B. Exhibit (X) includes a firm fixed fee price and the schedule for the work to be performed. This proposal is accepted and may be modified by negotiations between the CONSULTANT and LAMTPO's Project Manager. At that time, both parties shall execute a detailed modification in writing.

Disagreements that cannot be resolved within negotiations shall be resolved in accordance with the Agreements Dispute Resolution Clause (ATTACHMENT C of the RFQ).

- C. Any proposed change in this Agreement shall be submitted to LAMTPO, or designated members thereof, for prior written approval. Subject to this prior approval, LAMTPO's designated representative may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this agreement, and/or the drawings, designs or specifications.

If such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Agreement, whether changed or not changed by any such order, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified in writing accordingly. Any claim by the CONSULTANT for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the CONSULTANT of the notification of change; provided, however, that LAMTPO's designated representative, if she or he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this Agreement.

3.4 COMPENSATION AND METHOD OF PAYMENT

- A. Payments for services provided hereunder shall be made following the performance of such service, unless otherwise permitted by law and approved in writing by TRANSIT. No payment shall be made for any service rendered by CONSULTANT except for services identified and set forth in this Agreement.
- B. TRANSIT shall pay CONSULTANT for work performed under this Agreement compensation on a fixed fee not-to-exceed basis as described in **EXHIBIT (X)** attached hereto and made a part hereof.
- C. Payments shall be made following presentation of CONSULTANT invoices and progress report. Invoices shall be prepared monthly on the basis of the work described in EXHIBIT A estimated to be completed that month and at a percentage of the total cost of services to be performed.

Payments are due and payable within thirty (30) days from the date the CONSULTANT's invoice is received by the TRANSIT.

3.5 OWNERSHIP OF DOCUMENTS

The original documentation and data furnished to CONSULTANT by TRANSIT shall be returned. All designs, drawings, specifications, documents, and other work products prepared by CONSULTANT are instruments of service for this Agreement, and are property of TRANSIT. Reuse by TRANSIT or by others acting through or on behalf of TRANSIT of any such instruments of service not occurring, as a part of this Agreement shall be without liability or legal exposure to CONSULTANT.

The drawings, specifications and any other design and planning documents produced by or provided to the CONSULTANT, and other key professionals employed by the CONSULTANT shall become the property of TRANSIT, but the use of these documents shall be approved in writing by the CONSULTANT and reasonable request for release from liability by the CONSULTANT shall be granted by TRANSIT.

All designs, drawings, specifications, technical data and other documents or information produced by CONSULTANT in the performance of this Agreement shall be the sole property of TRANSIT, and TRANSIT is vested with all rights therein of whatever kind and however created, provided however any design documents not stamped and signed by appropriate registered professional architects or engineers shall be deemed to be incomplete and requiring further review or design completion.

None of the funds, materials, property or services provided directly or indirectly under this Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

TRANSIT shall not reuse any documents, reports, materials, or other subject matter provided by CONSULTANT hereunder for other than the project defined by the Agreement without prior written consent of CONSULTANT, which shall not be unreasonably withheld. TRANSIT shall, in any event, indemnify, defend and hold CONSULTANT harmless from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages and liability caused by, resulting from, or arising out of such reuse. CONSULTANT is not liable for TRANSIT or third party misuse of any documents, reports, records, plans, or materials prepared, procured, or produced in the rendition of services under this Agreement.

3.6 PATENT RIGHTS

Any patentable result arising out of this Agreement, as well as all information, designs, specifications, know-how, data, and findings shall be made available to the Government for public use, unless TRANSIT shall, in a specific case where it is legally permissible, determine that it is in the public interest that it not be so made available.

3.7 INDEPENDENT CONSULTANT RELATIONSHIP

A. The parties intend that an independent CONSULTANT/TRANSIT relationship will be created by this Agreement. TRANSIT is interested primarily in the results to be achieved; subject to the provisions herein, the implementation of services will lie solely with the discretion of CONSULTANT. No agent, employee, servant or representative of CONSULTANT shall be deemed to be an employee, agent, servant or representative of TRANSIT for any purpose, and the employees of CONSULTANT are not entitled to any of the benefits TRANSIT provides to its employees. CONSULTANT will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subconsultants or representatives during the performance of this Agreement.

B. In the performance of the services herein contemplated, CONSULTANT is an independent consultant with the authority to control and direct the performance of the details of the work, however, the results of the work contemplated herein must meet the approval of TRANSIT and shall be subject to TRANSIT's general rights of inspection and review to secure the satisfactory completion thereof.

3.8 WARRANTY OF TITLE

CONSULTANT shall warranty to TRANSIT its successors and assigns, that the deliverables covered by the Agreement, when delivered to TRANSIT or to its successors or assigns, is free from all liens and encumbrances.

ARTICLE 4

TRANSIT PROVISIONS

4.1 PROCUREMENT OF, ARCHITECTURAL ENGINEERING, DESIGN, OR RELATED SERVICES

In acquiring architectural, engineering, design or related services, Transit agrees to comply with the requirements of 49 U.S.C. §5325(d), by contracting for architectural, engineering, design or related services in the same way as a contract for architectural and engineering services is negotiated under title IX of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. §§ 541 *et seq.*, or an equivalent qualifications-based requirement of the state. Provided a sufficient number of qualified firms are eligible to compete for the third party contract, geographic location may be a selection criterion. This section does not apply to the extent a state has adopted or adopts by law formal procedures for procuring those services.

4.2 INFORMATION

TRANSIT shall provide full information in a timely manner regarding the requirements of the Project, including any additional information about its program which sets forth TRANSIT's objectives, constraints and criteria, including preliminary space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

4.3 STATEMENT OF FINANCIAL ASSISTANCE

This Agreement is subject to receipt of financial assistance by TRANSIT from the Federal Transit Administration. TRANSIT shall arrange such assistance or other funding prior to authorizing the work of this Agreement to start. In the event the work of this Agreement is started and such financial assistance or other funding is not available, TRANSIT may terminate this Agreement in accordance with Article 2.12 Termination for Convenience.

4.4 TRANSIT'S DESIGNATED REPRESENTATIVE

TRANSIT shall designate a Project Manager who shall have express authority to bind TRANSIT with respect to all matters requiring TRANSIT approval or authorization. This representative shall have the authority to make decisions on behalf of TRANSIT subject to TRANSIT board approvals as required, concerning scope of work, schedules, review of budgets, and changes in the work of this Agreement without further formal TRANSIT action, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay of the CONSULTANT and the Project.

ARTICLE 5

Reserved

ARTICLE 6

SCHEDULE

6.1 SCHEDULE FOR THE WORK

The work of this Agreement shall be commenced on signing of this Agreement. The services under this Agreement are directly related to and shall be coordinated with the Project Manager.

6.2 NOTIFICATION OF DELAY

The CONSULTANT shall notify the TRANSIT designated representative as soon as the CONSULTANT has, or should have, knowledge that an event has occurred, which will delay deliveries. Within five (5) calendar days, the CONSULTANT shall confirm such notice in writing, furnishing as much detail as possible.

ARTICLE 7

LABOR PROVISIONS

7.1 SAFETY AND HEALTH STANDARDS

CONSULTANT shall be responsible for safety of CONSULTANT's employees and shall cause its Subconsultants to be responsible for the safety of its employees. CONSULTANT is not responsible for the safety of any other person working on this Project.

7.2 DISADVANTAGED BUSINESS ENTERPRISES

A. In connection with the performance of this contract, CONSULTANT will cooperate with TRANSIT in meeting its aspirational goal with regard to the maximum utilization of disadvantaged businesses and will use good faith efforts to ensure that disadvantaged businesses shall have the maximum practicable opportunity to compete for subcontract work under this contract. The agency's overall goal for DBE participation is 2.20% for 2023.

B. Further, TRANSIT and CONSULTANT agree to ensure that disadvantaged businesses as defined in 49 CFR, Part 23, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In this regard, TRANSIT and CONSULTANT shall take all necessary and reasonable steps in accordance with 49 CFR, Part 23, to ensure that disadvantaged businesses have the maximum opportunity to compete for and perform contracts. TRANSIT and CONSULTANT shall not discriminate on the basis of race, color, religion, national origin, sex, disability, or age, and in employment or business opportunity. CONSULTANT shall complete Contractor Good Faith Effort DBE Certification on the signing of this agreement **and again at its completion.**

C. The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance. The successful bidder/offeror will be required to complete a DBE participation report at the beginning of construction, completion of construction, and at times there is a change in DBE subcontractors.

D. **PROMPT PAYMENT:** 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 LAMTPO. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of the contract, the suspension of retainage of this contract or such other remedy as LAMTPO deems appropriate.

E. The contractor must report when a DBE subcontractor previously reported to LAMTPO to be 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 the work.

F. LAMTPO reserves the right to monitor reported DBE participation or the contractors required performance with respect to DBE's as LAMTPO deems appropriate.

ARTICLE 8

CONSULTANT PROVISIONS

8.1 CONSULTANT RESPONSIBILITY FOR QUALITY

- A. The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the CONSULTANT under this contract. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services which shall mean such services not meeting the standard of care as defined in Section 1.2 of this Agreement.
- B. Neither TRANSIT's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract.

8.2 COMPLIANCE WITH LAWS

- A. CONSULTANT, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs, accreditation, and licensing of individuals. The CONSULTANT shall comply with any other standards or criteria as described in this Agreement to assure quality of services.
- B. CONSULTANT specifically agrees to pay any applicable business and occupation (B&O) taxes, which may be due on account of this Agreement.
- C. This Agreement shall be governed by the pertinent requirements included in Federal Transit Administration Circular 4220.1F as amended and the attached CERTIFICATIONS

8.3 DEBARRED BIDDERS

Neither CONSULTANT, nor any officer or controlling interest holder of CONSULTANT, is currently, or has been previously, on any debarred bidders list maintained by the United States Government.

8.4 HOLD HARMLESS AND INDEMNIFICATION

CONSULTANT shall defend, protect, indemnify and hold harmless TRANSIT and its agents, employees and/or officers from and against any and all claims, suits, actions, damages, and liability whatsoever, which TRANSIT may incur by reason of any negligent act, action, neglect, omission or default on the part of CONSULTANT provided, however, that if such liability is caused by or results from the concurrent negligence of TRANSIT, its agents, employees, and/or officers, and CONSULTANT or its agents and employees, this provision shall be valid and enforceable only to the extent of CONSULTANT's negligence.

If a lawsuit subject to this hold harmless provision ensues, the CONSULTANT shall appear and defend that lawsuit at its own cost and expense to the extent of its negligence.

8.5 PAROL AGREEMENT

All prior or contemporaneous communications, representations or agreements, whether oral or written, with respect to the subject matter thereof which are inconsistent with this Agreement are hereby superseded. No amendment hereafter made between the Parties shall be binding on either Party unless reduced to writing and

signed by an authorized representative of the Party sought to be bound thereby. No provision of this Agreement is intended or shall be construed to be for the benefit of any third party.

8.6 PROHIBITED INTEREST

No member, officer or employee of TRANSIT shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

8.7 SEVERABILITY

Should any part, term, or provision of this Agreement be decided by the Courts to be illegal or in conflict with any applicable statute or regulation, the validity of the remaining portions or provision shall not be affected thereby.

8.8 SUCCESSORS

TRANSIT and CONSULTANT respectively bind themselves, their partners, successors, assigns and legal representatives to the other party in respect to covenants, agreement and obligations contained in the Agreement. Neither party to the Agreement shall assign the Agreement as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Agreement.

8.9 SURETIES

If at any time during the continuance of the Agreement, the sureties, or any of them, shall in the opinion of TRANSIT become untrustworthy, TRANSIT shall have the right to require additional and sufficient sureties, which the CONSULTANT shall furnish to the satisfaction of TRANSIT within ten (10) days after notice.

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the exoneration of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first herein above written.

LAMTPO

CONSULTANT

LAMTPO encourages women and minority owned firms to submit qualifications for the provision of the services described herein. LAMTPO does not discriminate based on race, color or national origin in federal or state sponsored programs, pursuant to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d).

In order to comply with reporting requirements pursuant to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), responding firms are asked to please voluntarily provide the following information. The information should be provided as it applies to the authorized company representative who has submitted the bid and whose signature appears on the bid request form.

Race: _____White _____African American _____Hispanic _____Asian
_____American Indian _____Other: _____

Gender: _____Male _____Female

This information is not required and if submitted, will not affect you as a bidder of services or supplies to LAMTPO. It is requested for compliance with government record keeping and reporting purposes.