



**City of Rochester**  
**Request for Proposals**  
**Monroe Avenue Parking Study**  
**July, 2015**



Prepared for:  
City of Rochester Bureau of Planning & Zoning  
Department of Neighborhood & Business Development

**City of Rochester**  
**Request for Proposals**  
**Monroe Avenue Parking Study**

**Issued:** July 15, 2015

**Due Date:** Wednesday, August 26, 2015 by 5 p.m.

**Submission:** PDF emailed to:  
[artusoj@cityofrochester.gov](mailto:artusoj@cityofrochester.gov) or

Hard copy mailed to:  
Bureau of Planning & Zoning  
Attn: Josh Artuso  
30 Church Street – Room 125 B  
Rochester, NY 14614

**Contact:** Josh Artuso  
GIS Analyst / City Planner  
(585) 428-7707

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## **I. PROJECT PURPOSE**

The objective of this study is to identify and evaluate parking issues along the Monroe Avenue Corridor in the City of Rochester. The study will develop a series of recommendations to improve the quality of parking facilities and resources for area residents, businesses, visitors and other vested stakeholders and will identify how responsible transportation management can be used to provide parking alternatives through encouraging the use of transit and enhancing accessibility for pedestrians and bicyclists.

## **II. PROJECT BACKGROUND**

Monroe Avenue is a mixed use / commercial corridor that originates on the edge of downtown Rochester, runs through the southeast quadrant of the City and continues east through the suburbs of Brighton and Pittsford. The study area for this project encompasses the 1.7 mile stretch between the former Inner Loop (adjacent to downtown) and Culver Road (near the eastern municipal boundary). This portion of Monroe Avenue can be accessed via several city streets, other minor arterials, as well as Interstate 490 for which there are on/off ramps providing direct access to and from the area's expressway system for both eastbound and westbound traffic.

Monroe Avenue, which is classified as a minor arterial, has evolved into a significant destination-oriented retail / restaurant / employment corridor with eclectic shops, lively bars & nightlife as well as a variety of cafés and restaurants that draw customers from a broad area. However, it also continues to have a significant neighborhood and community function, providing goods and services, entertainment and places of worship for nearby residents. Approximately 10,000 people live within a ten minute walk of Monroe Avenue, giving it one of the higher population densities in the City. Since Monroe Avenue is adjacent to, or directly integrated with residential neighborhoods, residents enjoy the convenience of nearby services, shops and restaurants but must compete with customers and employees for the use of parking spaces on nearby residential side streets. On the other hand, customers and visitors to the area frequently find available parking to be limited, costly, or requiring walks that are perceived to be too lengthy, especially during inclement weather.

The last complete parking analysis of Monroe Avenue was completed in 1993. Since that time, many parking lots have been re-developed and replaced with buildings. Major streetscape improvements incorporated protected on-street parking spaces in certain locations, but did not create enough new spaces to replace those lost to development. Over the past 20 years, the number of sit down restaurants and other establishments has increased significantly, adding to the parking demand. In 2003 the City revised its zoning

code to encourage shared parking and limit the hours of operation of businesses, in part to alleviate nighttime parking issues. In 2011, a Center City Circulator Study examined parking demand for a portion of the study area (closest to downtown). A Monroe Avenue Corridor Study was also completed by the City of Rochester and the Towns of Brighton and Pittsford in 1999.

Monroe Avenue continues to evolve in ways that are likely to put pressure on existing parking resources. The Inner Loop East project (currently underway) will fill in a portion of the former sunken highway, creating a new Union Street boulevard and several new development sites that will be in close proximity to the western end of the corridor.

Construction for the next phase of the Alexander Park Development near the corner of Monroe Avenue and Alexander Street is expected to begin soon and will include new offices, over 50,000 square feet of retail and restaurant space and over 200 residential units at the former Genesee Hospital site. A historic building near the I-490 interchange is currently being renovated into 49 loft apartments and it is anticipated that the conversion of other buildings to bars, restaurants and other establishments that provide goods and services will continue, putting further pressure on existing parking resources.

The City is set to begin an update of its comprehensive plan and zoning code and as such, Monroe Avenue has been identified as an area in need of more detailed analysis in order to institute appropriate transportation planning policies and regulations. The City believes that new parking policies and practices for Monroe Avenue must be developed in tandem with broader goals for downtown and the City in order to adequately address the realistic needs of residents and visitors.

The City of Rochester will work closely with the selected consultant(s) and will contribute in-kind city staff support through Project Advisory Committee (PAC) participation and general project oversight and management of the study.

### **III. PROJECT SCOPE OF SERVICES**

#### **Study Initiation**

A Project Advisory Committee (PAC), consisting of City staff from the Bureaus of Planning & Zoning, Business & Housing Development, Neighborhood Preservation and Architecture & Engineering, representatives from Monroe County and New York State Departments of Transportation and other appropriate community stakeholders will be assembled to discuss pertinent information pertaining to existing plans and projects in the area, identify neighborhood concerns relating to parking issues, and review & provide feedback on consultant work products throughout the course of the study.

The consultant team will complete the following detailed scope of services to include specific project responsibilities and task deliverables as listed below:

## **1. Inventory and Analysis of Existing and Planned Conditions**

### Current Parking Supply Inventory

- (a) Analyze existing land use and transportation plans & studies relevant to the project area.
- (b) Review and analyze current zoning regulations of the project area including permitted uses and the parking requirements associated with those uses.
- (c) Inventory the number and location of existing on-street parking spaces along Monroe Avenue and adjacent residential side streets as well as associated regulations including alternate parking hours, days of the week and parking meter rates (where applicable).
- (d) Inventory the number, location and ownership information of all existing off-street parking lots and available spaces as well as associated regulations including hour restrictions and fees (where applicable).
- (e) Inventory the existing amenities for various modes of travel including pedestrian (i.e. sidewalk and crosswalk locations and conditions), vehicular (i.e. parking space markings and regulatory sign locations / conditions), bicycle (i.e. bike lane and rack locations) and public transit (i.e. bus stop locations, signage and shelters) to determine levels of service for each.
- (f) Review existing way-finding signage

### Current Parking Demand & Usage

- (g) Observe parking patterns at various times during the week as well as the weekend to determine utilization rates and identify peak demand times and locations.
- (h) Evaluate pedestrian traffic patterns (keeping in mind that all motorists are pedestrians after they exit their cars)
- (i) Analyze current land use patterns, existing zoning district designations, associated regulations and their impact on transportation and parking within the study area.

### Future Parking Demand

- (j) Investigate private development / re-development plans and projects that are anticipated to begin in the near future and analyze their anticipated impact on the transportation and parking systems of the area.
- (k) Survey / interview property and business owners to determine future plans for expansion, relocation, etc. to help estimate future parking demand.
- (l) Identify available vacant land in the study area and analyze current zoning regulations to evaluate a future “maximum build out” scenario that gauges how much new development can take place and its potential impact on future parking demand and/or on where new parking facilities might be developed.

### **DELIVERABLES:**

- (1)** Summary of the relevant plans / study recommendations and known projects reviewed and analysis of their potential impact on parking within the study area.
- (2)** Summary of existing land uses, current zoning regulations and associated parking requirements within the study area.
- (3)** Summary of both on and off-street parking space inventory including parking lot locations, associated regulations and ownership information.
- (4)** Inventory summary of the existing amenities for various modes of transportation including pedestrian crosswalk locations, signage and conditions, bicycle infrastructure (dedicated bike lanes and racks) locations and conditions, and vehicular way-finding & regulatory signage locations and conditions.
- (5)** Summary of data collected during field work observations showing current parking patterns and utilization rates.
- (6)** Summary of key issues identified during the stakeholder interview process
- (7)** Description of a “max build out” development scenario and its implications to the existing parking system of the study area.

Use of GIS maps, charts, tables, graphs and other visual displays that graphically illustrate existing conditions, issues / areas of concern, inventory of spaces, utilization rates and other data collected as a part of task 1 are highly encouraged.

## **2. Needs and Opportunities Assessment**

Based on the data and information collected in Task 1, the consultants will conduct a needs and opportunities assessment. The components of this process will include:

- (a) Assessing the parking needs and deficiencies (i.e. surpluses and deficits) associated with activity along the Monroe Avenue corridor (both current and future).
- (b) Assessing the current quality and conditions of existing parking infrastructure (both public and private).
- (c) Evaluating existing regulatory policies and requirements and determine their impact on parking.
- (d) Evaluating current parking enforcement policies and practices
- (e) Assessing the quality of directional and regulatory signage related to parking locations and investigating potential improvements of each.
- (f) Assessing the adequacy of existing public transit service and accommodations and identify ways to potentially increase its use to help alleviate parking demand (current and future).
- (g) Identifying opportunities / locations for additional parking
- (h) Preparing maps and graphics illustrating the implications of the information collected during the Inventory and Analysis tasks.
- (i) Conducting a public meeting to present inventory findings and gather community input on parking issues, needs and opportunities.

#### **DELIVERABLES:**

- (1)** Organize and conduct public meeting #1 to present inventory findings and gather community input on parking issues, concerns, needs and opportunities.
- (2)** An interim report summarizing findings relating to parking needs and/or deficiencies based on both existing utilization rates observed during fieldwork and future calculations under the “max build out” scenario. The report should include a summary of the quality and condition of regulatory and way-finding signage as well as an evaluation of existing regulatory parking policies and enforcement practices to help identify potential opportunities for improvement. Any maps and graphics produced as a part of tasks 1 & 2 shall be included in the interim report.

### **3. Public Engagement**

A Project Advisory Committee (PAC) consisting of City staff from the Bureaus of Planning & Zoning, Business & Housing Development, Neighborhood Preservation and Architecture & Engineering, representatives from Monroe County and New York State Departments of Transportation and other appropriate community stakeholders will be convened to discuss pertinent information pertaining to existing



plans and projects in the area, identify neighborhood concerns relating to parking issues, and review & provide feedback on consultant work products throughout the course of the study.

One of the first tasks for the PAC will be to identify and inform interested parties and appropriate representatives from the study area about the project (including area neighborhood and business association leaders, Monroe Avenue Street Manager, and other vested stakeholders) for inclusion on the committee. The PAC will meet regularly throughout the course of the study.

A total of two (2) public meetings will be held as a part of this study. The first meeting for the general public will be conducted earlier in the process to seek input on the identification of goals and objectives, issues and concerns as well as future opportunities and ideas for improvement. As part of the initial public meeting, the consultant shall identify, through appropriate activities with stakeholders, the following additional items:

- What should the City's "vision" for parking in and around the Monroe Avenue Corridor be?
- What purposes does parking serve today and how should they best be accommodated?
- What are the tensions/conflicts among parking users' various goals?

The second public meeting will be held later in the process to review draft findings and recommendations and provide an opportunity for community feedback prior to finalizing the study recommendations.

A project web page containing interim work products, public meeting dates, times and locations and other relevant information will be developed, maintained and hosted on the City's website. Social media including the City's Facebook and Twitter pages as well as other mechanisms such as area newsletters will be utilized to inform citizens of the study and advertize and promote public meeting dates, times and locations. An online survey will also be developed to capture input from the broader community on issues, visitor experiences & preferences relating to parking along the corridor.

Stakeholder interviews and /or a more specific survey geared towards business and property owners along Monroe Avenue is highly recommended to ensure that issues

and opportunities from various perspectives have been adequately and accurately captured during the course of the study.

**DELIVERABLES:**

- (1) Organize and conduct four (4) PAC meetings and two (2) public meetings over the course of the project to solicit input from all involved parties, obtain feedback on interim work products produced as a part of tasks 1 & 2, and present final recommendations at the conclusion of the study. The City will assist the consultant team with scheduling, reservations of meeting space, publication and promotion of public meeting dates and locations, and production of meeting materials.

**4. Recommendations / Document Preparation**

Based on a thorough analysis of all data collected in task 1, the results of the needs and opportunities assessment in task 2, as well as input gathered from the Project Advisory Committee and the first public meeting, a series of short and long term strategies for parking management along the corridor will be developed. Recommendations are expected to include multi-modal options such as public transit, shuttle service, bike shares and other methods of alleviating parking demand.

The study findings and associated recommendations will be presented at a second public meeting (and to the PAC) to receive final feedback on the material contained within the Draft Report / Parking Management Plan. Appropriate revisions will be incorporated based on feedback received at the final PAC and public meetings so that the Parking Management Plan document can be finalized.

**DELIVERABLES:**

- (1) Conduct Public Meeting #2 to present draft recommendations / parking management concepts and incorporate any feedback received into the Final Report.
- (2) Twenty (20) printed copies and one (1) digital copy of the Final Report that explain the project background, methodology of data collection and analysis, key findings from the needs and opportunities assessment and specific recommendations for improvement into a single, cohesive document.

- (3) Twenty (20) printed copies and one (1) digital copy of an Executive Summary that summarizes the process, parking supply and utilization data / observations, issues and concerns, public input received and final recommendations for improvement.
- (4) Digital files of all GIS maps, graphics, tables, charts, etc. used throughout the process and included in the Final Report and Executive Summary.
- (5) Presentation of Final Report to Genesee Transportation Council (GTC) Planning Committee summarizing the process, parking supply and utilization data / observations, issues and concerns, public input and final recommendations at end of project for official acceptance and close-out of the study.

## 5. Follow-on Activities

Appropriate follow-on activities necessary to advance the study recommendations into reality will be proposed and should be included in the final report. Accordingly, the consultants are expected to:

- (a) Identify applicable implementation mechanisms and funding sources including the City of Rochester's Capital Improvement Program (CIP) and New York State's Consolidated Funding Application (CFA) Process and outline how the City can optimize its positioning to identify and obtain these funding sources
- (b) Identify specifically what important factors were not able to be examined within the study / scope / budget and should be addressed through further study (if necessary).

### DELIVERABLES:

- (1) List of appropriate implementation mechanisms and funding sources to advance the recommendations as well as important factors that were not able to be examined within the scope / budget of this study and should be addressed through further study shall both be included in the final report.

## IV. PROJECT SCHEDULE & BUDGET

The total budget for this study is \$60,000, consisting of \$50,000 in UPWP funds, \$5,000 in local cash match from the City of Rochester and \$5,000 worth of in-kind services from City staff assigned to work on the project. **The total funds allocated for consultant services are \$55,000.**

The anticipated project timeline is as follows:

Release RFP:	July 15th, 2015
Proposals Due Back to City:	August 26th, 2015
Review Proposals / Select Consultant:	September 9th, 2015
City Council Approval of Consultant Selection:	October 13th, 2015
Begin Monroe Avenue Parking Study:	October, 2015
Complete Consultant Work:	October, 2016

Once the study officially begins, it is anticipated that the consultant will conduct all necessary inventory work in the fall of 2015. A series of PAC meetings and analysis work will take place over the winter of 2015-2016 and the final deliverables shall be provided to the City at key dates throughout the project. The consultant will be responsible to provide the necessary deliverables to city staff and the PAC on agreed upon timeframes.

## **V. PROPOSAL SUBMISSION REQUIREMENTS**

The proposal submission shall include the following information:

- (a) General information about the consultant firm including name, address, contact information, type of business and tax ID number.
- (b) An outline (narrative statement) of the consultant's approach to the study given the overall purpose and objectives of the project and the specific work tasks and responsibilities contained in the Scope of Services. The consultant should also include a list of any assumptions made in the preparation of the proposal.
- (c) A description of the consultant's work on similar projects which specifically details work performed for other government agencies and experience with the development and facilitation of parking management studies for medium-sized cities. Specific work related to community meeting facilitation, completion of SWOT analyses, graphic presentation of transportation issues and ideas, data research and analysis, development of web sites and community surveys and knowledge and use of innovative parking management techniques, ideas or project concepts should also be highlighted. Also include any references to or examples of previous parking studies that have been prepared by the consultant. Project and staff references should be included as appropriate.
- (d) An evaluation of the Scope of Services as set forth in this Request for Proposals. If, in the opinion of the consultant and in light of the overall purpose and objectives of the study, the Scope of Services or Project Budget needs to be modified, the consultant shall prepare a list of suggested changes and/or modifications as part of the proposal.

- (e) A schedule for completion for each of the tasks contained in the Scope of Services. **The project is intended to be completed within 12 months after receipt of a Notice to Proceed.**
- (f) A Fee Proposal that includes a listing showing the estimated person hours and cost breakdowns for each task listed in the Scope of Services. Hourly charges for each level of employee shall be shown along with the total cost (including direct expenses) to perform all consultant services proposed.
- (g) Resumes of the proposed consultant project manager and those individuals who would provide additional consultant services to meet the requirements outlined in this RFP; a listing of the names and addresses of any sub-contractors (and resumes, if appropriate) to be used in completing the project.

## **VI. PROPOSAL RATING CRITERIA**

The city will evaluate and rank proposals that are received based on the following criteria:

- (a) The narrative statement, demonstrated understanding of the project and the proposed approach (30%).
- (b) The consultant's relevant experience, expertise, project personnel qualifications and references (40%).
- (c) The proposed fee, budget presentation, task cost breakdown and project schedule (30%).

Interviews will likely be held before making a final consultant recommendation to the Mayor and Rochester City Council. The contract for this project will be awarded to the most responsive proposal that exhibits the most reasonable cost. Pending City Council authorization, a professional services agreement will be executed between the city and the consultant. If the professional services agreement with the selected consultant cannot be executed in a timely manner, the city may terminate negotiations and solicit services for the project from other consultants that submitted proposals.

## **VII. ADDITIONAL PROJECT INFORMATION**

The Monroe Avenue corridor and surrounding residential areas have many active citizens and business groups that will want to be actively engaged throughout this process. The Monroe Avenue Merchants Association as well as Upper Monroe, Lock 66, Pearl/Meigs/Monroe, Park/Meigs, and Park Central Neighborhood Associations all have a vested interest and are very active in community affairs. The City of Rochester encourages

the consultant to engage residents, business owners and other community stakeholders wherever possible throughout the process to help build consensus around potential solutions for successful parking management within the area.

## **VIII. RESOURCES PROVIDED BY THE CITY**

The City will provide the selected consultant with copies of the original 1993 Monroe Avenue Parking Study, 1999 Monroe Avenue Corridor Study, a list of known development projects and related information pertinent to this study, the City Zoning Code, relevant GIS maps and data sets, the Southeast Quadrant Strategic Plan, list of community stakeholders, Center City Circulator Study, the Mayor's Priorities and Goals, and any other necessary material deemed relevant for the consultants to successfully complete the study. The City of Rochester will also be responsible for organizing the "Project Advisory Committee" and for other project coordination and contract monitoring activities.

## **IX. DEADLINE FOR SUBMISSION / MISCELLANEOUS INFORMATION**

**Eight (8) copies of the proposal should be submitted no later than close of business on Wednesday August 26, 2015 to:**

Josh Artuso, GIS Analyst / City Planner  
Room 125-B, City Hall, 30 Church Street  
Rochester, New York, 14614

Questions regarding this Request for Proposals should be directed to:

Josh Artuso, GIS Analyst / City Planner  
Room 125-B, City Hall, 30 Church Street  
Rochester, New York, 14614  
Phone (585) 428-7707 / email: [artusoj@cityofrochester.gov](mailto:artusoj@cityofrochester.gov)

**If significant questions or requests for clarification are received from potential consultants regarding the RFP, questions and answers will be compiled and posted to the project web page on the City's website two weeks prior to the deadline. We encourage prospective consultants to check the project website for updated information.**

It is the consultant's sole responsibility to assure delivery of its proposal to the designated city office by the designated time and date. After reviewing proposals, the city may request an interview(s) with a consultant prior to making a selection. No changes or substantive interpretations will be made to the RFP except by written addendum. The consultant

selection process will be coordinated by an internal city staff team made up of representatives from various city departments. A recommendation will be made by the city staff team to Rochester City Council regarding final selection of the consultant team for the project. City Council must approve the final consultant team recommendation before a professional services agreement can be written and the project can begin.

The city may reject any proposal considered to be non-responsive to this RFP. Proposals should be prepared simply and economically, providing a straightforward, concise description of the consultant's qualifications, understanding of the project and schedule/fee proposal. Upon a determination that such actions would be in the best interests of the City of Rochester, the city, in its sole discretion, reserves the right to reject and refuse to consider any or all of the submitted proposals received in response to this RFP.

**The deadline for submission will be close of business at 5:00 p.m. on Wednesday, August 26, 2015. Proposals received after this date and time will not be accepted.**

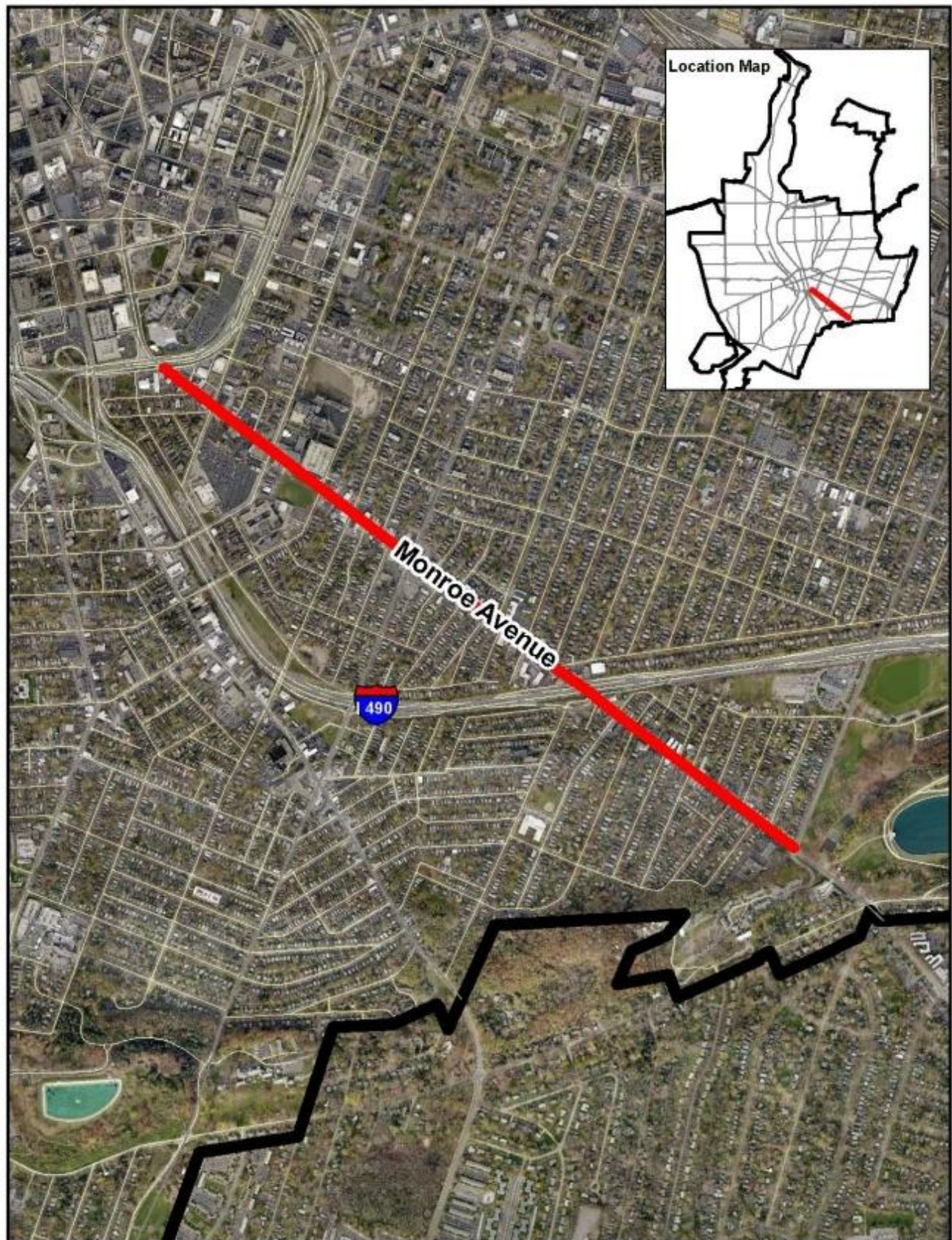
The City of Rochester has been and continues to be an equal opportunity organization. All qualified Minority and Women Owned Business Enterprise (M/WBE) suppliers, contractors, and/or businesses will be afforded equal opportunity without discrimination because of race, color, religion, national origin, sex, age, disability, sexual preference, or Vietnam Era Veteran status. The following table illustrates the City's M/WBE Goals:

<b>Ordinance No. 94-213 M/WBE Goals - % of Total Expenditures per FY</b>			
<b>Contract Type</b>	<b>African American Goal</b>	<b>Hispanic Goal</b>	<b>Woman Bus. Enterprise Goal</b>
Architectural/ Engineering Services	2.1%	0.6%	3.5%
Personnel Training and Testing	6.6%	0.0%	21.7%
Advertising and Media	6.6%	0.0%	16.7%

If submitting a proposal with an M/WBE component, potential consultants should be aware that there will be legal penalties (liquidated damages) for willfully or intentionally failing to comply with promised M/WBE participation goals. The penalty will be the withholding of funds at a level consistent with the M/WBE deficiency.



## X. PROJECT AREA MAP





## **XI. LIST OF ATTACHMENTS**

To help ensure that the project meets federal procurement requirements, the consultants must complete Attachment A - “Required Forms” and submit them along with their proposals.

Attachment B contains Federal and New York State contract clauses that will be included in the final contract that the selected consultant signs with the City.

Attachment C is a typical contract used by the City of Rochester for professional service agreements. It is likely that a similar contract will be developed for this study.

**Attachment A: Required Forms**

**Attachment B: Federal and New York State Contract Clauses**

**Attachment C: Standard City Contract Template**

# **Attachment A**

## **Required Forms**

**CERTIFICATION REGARDING LOBBYING**

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

\_\_\_\_\_ that:  
(Service Provider)

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

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

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

\_\_\_\_\_  
Title

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

**SUBCONTRACTOR INFORMATION**

Offeror Name:

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Offeror must check one of the following:

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

TRADE:

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

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

ADDENDUM NUMBER

ACKNOWLEDGED BY:

DATE

<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>

**ACKNOWLEDGEMENT OF AUTHORITY TO SUBMIT PROPOSAL**

**SUBMITTED:**

Dated: \_\_\_\_\_

**Individual, Partnership, or Non-Incorporated Organization**

Name of Bidder: \_\_\_\_\_

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

Address of Bidder: \_\_\_\_\_

Names and Addresses of Owners of the Firm

\_\_\_\_\_  
\_\_\_\_\_

**Corporation**

Name of Bidder: \_\_\_\_\_

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

Incorporated Under the Laws of the State of: \_\_\_\_\_

Name of President: \_\_\_\_\_  
Name Address

Officers:  
Secretary: \_\_\_\_\_  
Name Address

Treasurer: \_\_\_\_\_  
Name Address

Corporate Seal

**STATE OF  
COUNTY OF  
CITY OF**

**SS:**

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

\_\_\_\_\_  
**Notary Public**

**NON-COLLUSION AFFIDAVIT**

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

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

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

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

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

\_\_\_\_\_ and under penalties of perjury affirms:  
Name of firm

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

Sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Signature of person making affidavit

\_\_\_\_\_  
Notary Public

(SEAL)

**ELIGIBLE BIDDER CERTIFICATE**

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

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

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

Sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Signature of person making affidavit

\_\_\_\_\_  
Notary Public

Notary Seal

**NOTE:** This form must be submitted with all bids.

**AFFIDAVIT OF NON-DISCRIMINATION**

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

SS:

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

\_\_\_\_\_, being first duly sworn, deposes and says:

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

\_\_\_\_\_  
Company or Partnership

\_\_\_\_\_  
(President or Other Official Title)

(SEAL)

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

\_\_\_\_\_  
Notary Public in and for the County of \_\_\_\_\_

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

My commission expires on the \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_\_.



**REQUIRED FORM G**

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

Supplier's Name \_\_\_\_\_ Telephone \_\_\_\_\_

Street Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_

Zip Code \_\_\_\_\_ Number of Employees \_\_\_\_\_

This Firm is

\_\_\_\_\_ Independently Owned and Operated

\_\_\_\_\_ an Affiliate \_\_\_\_\_ Parent Company \_\_\_\_\_  
or of Address \_\_\_\_\_

\_\_\_\_\_ a Subsidiary  
or

\_\_\_\_\_ a Division

\_\_\_\_\_ Small Business \_\_\_\_\_ Large Business

SELLER HAS

SELLER HAS NOT

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

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

Developed a written Affirmative Action Program

\_\_\_\_\_

\_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**REQUIRED FORM H**

## OFFEROR'S INFORMATION

NAME OF FIRM: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_

STATUS: (check one) DBE \_\_\_\_\_ NON-DBE \_\_\_\_\_

MBE \_\_\_\_\_ WBE \_\_\_\_\_

AGE OF FIRM: \_\_\_\_\_

ANNUAL GROSS RECEIPTS OF FIRM: \_\_\_\_\_

DATE: \_\_\_\_\_

**CERTIFICATION OF LOWER-TIER PARTICIPANTS REGARDING  
DEBARMENT, SUSPENSION AND OTHER  
INELIGIBILITY AND VOLUNTARY EXCLUSION**

The Lower-Tier Participant (potential sub-grantee or sub-recipient under an FTA project, potential third party contractor, or potential subcontractor under a major third party contract), \_\_\_\_\_, certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(If the Lower-Tier Participant (potential sub-grantee or sub-recipient under an FTA project, potential third-party contractor, or potential subcontractor under a major third-party contract) is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this proposal).

THE LOWER-TIER PARTICIPANT (POTENTIAL SUB-GRANTEE OR SUB-RECIPIENT UNDER AN FTA PROJECT, POTENTIAL THIRD-PARTY CONTRACTOR, OR POTENTIAL SUBCONTRACTOR UNDER A MAJOR THIRD-PARTY CONTRACT) \_\_\_\_\_, 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 U.S.C. SECTIONS 3801 ET SEQ ARE APPLICABLE THERETO.

\_\_\_\_\_  
Signature and Title of Authorized Official

The undersigned chief legal counsel for the \_\_\_\_\_ hereby certifies that the \_\_\_\_\_ has authority under State and Local law to comply with the subject assurances and that the certification has been legally made.

\_\_\_\_\_  
Signature of Applicant's Attorney

\_\_\_\_\_  
Date

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

Described Procurement: \_\_\_\_\_

(Check as Applicable – Use additional pages if necessary)

**Designation of Individuals and Organizations to Influence This Procurement**

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

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

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

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

Telephone Number: \_\_\_\_\_ Occupation: \_\_\_\_\_

Place of Principal Employment: \_\_\_\_\_

Such person or organization ☐ does not have ☐ has a financial interest in the procurement.

If yes, describe that financial interest: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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

Telephone Number: \_\_\_\_\_ Occupation: \_\_\_\_\_

Place of Principal Employment: \_\_\_\_\_

Such person or organization ☐ does not have ☐ has a financial interest in the procurement.

If yes, describe that financial interest: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Agreement**

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

**Prior Findings**

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

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-Responsibility: \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_.

**Prior Contract Terminations**

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

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

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract: \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_.

**Certification**

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

**Agreement to Comply**

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

**Acknowledgment**

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

\_\_\_\_\_  
Print Contractor Name

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

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

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

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

City, State, Zip: \_\_\_\_\_

**Attachment B**  
**Federal and New York State Contract Clauses**

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

DATED: \_\_\_\_\_

FEDERAL REQUIRED CLAUSES

[Insert Name of Study]

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



## **Federal Clauses**

## **Fly America Requirements**

Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$3,000 or less, except for construction contracts over \$2,000).

Contractor shall comply with 49 USC 40118 (the “Fly America” Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

## **Energy Conservation**

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

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

## **Access to Records and Reports**

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

The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of

USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

### **Federal Changes**

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

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

### **No Government Obligation to Third Parties**

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

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

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

### **Program Fraud and False or Fraudulent Statements or Related Acts**

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

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

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.

(3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## **Termination**

**Applicability** – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$100,000

a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.

b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this

contract.

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

g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. the recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work.

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

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates,

summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient.

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

j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

### **Government Wide Debarment and Suspension (Non Procurement)**

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

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

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000)

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

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

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

### **Civil Rights Requirements**

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

The following requirements apply to the underlying contract:

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing.

Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute): (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, or (g) Age, and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,

c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate

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

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

d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of MAP-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding \$250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under MAP-21 and previous legislation,

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



U.S.C. § 5332, as stated in section a,

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

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

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

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

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

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

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

## **Patent and Rights in Data**

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK (\$3,000 or less, except for construction contracts over \$2,000).

### **Patent Rights**

A. General. The Recipient agrees that:

(1) Depending on the nature of the Project, the Federal Government may acquire patent rights when the Recipient or Third Party Participant produces a patented or patentable: (a) Invention, (b) Improvement, or (c) Discovery, (2) The Federal Government's rights arise when the patent or patentable information is: (a) Conceived under the Project, or (b) Reduced to practice under the Project, and (3) When a patent is issued or patented information becomes available as described in Patent Rights section A(2), the Recipient agrees to: (a) Notify FTA immediately, and (b) Provide a detailed report satisfactory to FTA,

B. Federal Rights. The Recipient agrees that:

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

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

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

### **Rights in Data and Copyrights**

A. Definition of "Subject Data." means recorded information: (1) Copyright. Whether or not copyrighted, and (2) Delivery. That is delivered or specified to be delivered under the Underlying Agreement,

B. Examples of "Subject Data." Examples of "subject data": (1) Include, but are not limited to:

- (a) Computer software, (b) Standards, (c) Specifications, (d) Engineering drawings and associated lists, (e) Process sheets, (f) Manuals, (g) Technical reports, (h) Catalog item identifications, and (i) Related information, but (2) Do not include: (a) Financial reports,
- (b) Cost analyses, or (c) Other similar information used for Project administration,

C. General Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the Recipient's Project supported by the Underlying Agreement: (1) Prohibitions. The Recipient may not: (a) Publish or reproduce any subject data in whole or in part, or in any manner or form, or (b) Permit others to do so, but (2) Exceptions. The prohibitions of Rights in Data and Copyrights C(1) do not apply to: (a) Publications or reproductions for the Recipient's own internal use, (b) An institution of higher learning, (c) The portion of subject data that the Federal Government has previously released or approved for release to the public, or (d) The portion of data that has the Federal Government's prior written consent for release,

D. Federal Rights in Data and Copyrights. The Recipient agrees that: (1) License Rights. The Recipient must provide a license to its "subject data" to the Federal Government, which license is: (a) Royalty-free, (b) Non-exclusive, and (c) Irrevocable, (2) Uses. The Federal Government's license must permit the Federal Government to take the following actions provided those actions are taken for Federal Government purposes: (a) Reproduce the subject data, (b) Publish the subject data, (c) Otherwise use the subject data, and (d) Permit other entities or individuals to use the subject data, and

E. Special Federal Rights in Data for Research, Development, Demonstration, Deployment, and Special Studies Projects. In general, FTA's purpose in providing Federal funds for a research, development, demonstration, deployment, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to the Recipient and its Third Party Participants, therefore, the Recipient agrees that: (1) Publicly Available Report. When the Project is completed, it must provide a Project report that FTA may publish or make available for publication on the Internet, (2) Other Reports. It must provide other reports pertaining to the Project that FTA may request, (3) Availability of Subject Data. FTA may make available to any FTA Recipient or any of its Third Party Participants at any tier of the Project, either FTA's copyright license to the subject data or a copy of the subject data, except as the Federal Government determines otherwise in writing, (4) Identification of Information. It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA, (5) Incomplete Project. If the Project is not completed for any reason whatsoever, all data developed under the Project becomes "subject data" and must be delivered as the Federal Government may direct, but (6) Exception. Rights in Data and Copyrights Section E does not apply to an adaptation of automatic data processing equipment or program that is both: (a) For the Recipient's use, and (b) Acquired with FTA capital program funding,

F. License Fees and Royalties. As permitted by 49 C.F.R. parts 18 and 19: (1) License fees and royalties for copyrighted material or trademarks derived from Project are program income, and

(2) The Recipient has no obligation to the Federal Government with respect to those license fees or royalties, except:

- (a) For compliance with 35 U.S.C. § 200 et seq., which applies to patent rights developed under a federally funded research-type project, and
- (b) As FTA determines otherwise in writing,

G. Hold Harmless. Upon request by the Federal Government, the Recipient agrees that: (1) Violation by Recipient. (a) If it willfully or intentionally violates any: 1 Proprietary rights, 2 Copyrights, or 3 Right of privacy, and (b) Its violation occurs from any of the following uses of Project data: 1 Publication, 2 Translation, 3 Reproduction, 4 Delivery, 5 Use, or 6 Disposition, then (c) It will indemnify, save, and hold harmless against any liability, including costs and expenses of: 1 The Federal Government's officers acting within the scope of their official duties,

2 The Federal Government's employees acting within the scope of their official duties, and 3 Federal Government's agents acting within the scope of their official duties, but (2) Exceptions. The Recipient will not be required to indemnify the Federal Government for any liability described in Rights in Data and Copyrights section G(1) if: (a) Violation by Federal Officers, Employees or Agents. The violation is caused by the wrongful acts of Federal employees or agents, or (b) State law. If indemnification is prohibited or limited by applicable State law,

H. Restrictions on Access to Patent Rights. Nothing in this Rights in Data and Copyrights section pertaining to rights in data either: (1) Implies a license to the Federal Government under any patent, or (2) May be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent,

I. Data Developed Without Federal Funding or Support. The Recipient understands and agrees that in certain circumstances it may need to provide data developed without any Federal funding or support to FTA. Nevertheless: (1) Protections. Rights in Data and Copyrights Sections A, B, C, and D generally do not apply to data developed without Federal funding, even though that data may have been used in connection with the Project, and (2) Identification of Information. The Recipient understands and agrees that the Federal Government will not be able to protect data developed without Federal funding from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential," and

J. Requirements to Release Data. The Recipient understands and agrees that the Federal Government may be required to release Project data and information the Recipient submits to the Federal Government as required by: (1) The Freedom of Information Act, 5 U.S.C. § 552, (2) Another applicable Federal law requiring access to Project records, (3) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," specifically 49 C.F.R. § 19.36(d), or (4) Other applicable Federal regulations and guidance pertaining to access to Project records.

### **Disadvantaged Business Enterprise**

Contracts over \$3,000 awarded on the basis of a bid or proposal offering to use DBEs

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.

b. The contractor shall not discriminate on the basis of race, color, religion, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. If a separate contract goal has been established, Bidders/offers are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

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

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

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

### **Prompt payment**

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

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

### **Incorporation of Federal Transit Administration (FTA) Terms**

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

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

### **Other Federal Requirements**

The following requirements are not federal clauses.

### **Full and Open Competition**

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

### **Prohibition Against Exclusionary or Discriminatory Specifications**

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

### **Conformance with ITS National Architecture**

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

### **Notification of Federal Participation**

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

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

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

### **Ineligible Contractors and Subcontractors**

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

### **Other Contract Requirements**

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

### **Compliance with Federal Regulations**

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

### **Real Property**

Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by MAP-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

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

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

## **Environmental Justice**

Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1)

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

## **Environmental Protections**

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

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

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

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

Non Federal entities that expend \$500,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, Audits of States, Local Governments, and Non Profit Organizations. Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than \$500,000 in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in '3052.215(a), but records must be available for review or audit by appropriate officials of the Federal and State agencies.

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

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

**CFDA number for the Federal Transportation Administration**

A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.



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

DATED: \_\_\_\_\_

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

[Insert Name of Study]

# **Standard Clauses for New York State Contracts (January 2014)**

## **EXECUTORY CLAUSE**

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

## **NON-ASSIGNMENT CLAUSE**

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

## **COMPTROLLER'S APPROVAL**

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

## **WORKERS' COMPENSATION BENEFITS**

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

## **NON-DISCRIMINATION REQUIREMENTS**

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

any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

## **WAGE AND HOURS PROVISIONS**

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

## **NON-COLLUSIVE BIDDING CERTIFICATION**

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

## **INTERNATIONAL BOYCOTT PROHIBITION**

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

## **SET-OFF RIGHTS**

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

## **RECORDS**

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter.

The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

## **IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION**

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

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

## **EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN**

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

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will

undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

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

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

## **CONFLICTING TERMS**

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

## **GOVERNING LAW**

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

## **LATE PAYMENT**

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

## **NO ARBITRATION**

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

## **SERVICE OF PROCESS**

In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of

each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

### **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS**

The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

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

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

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

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

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

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

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
Telephone: 212-803-2414

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

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

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

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

#### **COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT**

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

#### **COMPLIANCE WITH CONSULTANT DISCLOSURE LAW**

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

#### **PROCUREMENT LOBBYING**



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

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

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

### **IRAN DIVESTMENT ACT**

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

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

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

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

## **SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)**

**Compliance with Regulations:**

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

**Nondiscrimination:**

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

**Solicitations for Subcontractors, Including Procurements of Materials and Equipment:**

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

**Information and Reports:**

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

**Sanctions for Noncompliance:**

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

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

**Incorporation of Provisions:**

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

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

The contractor shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may

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

**Attachment C**  
**Standard City Contract Template**

## **AGREEMENT FOR PROFESSIONAL SERVICES**

**THIS AGREEMENT**, is made this \_\_, day of \_\_\_\_\_, 2015, by and between the **CITY OF ROCHESTER**, a municipal corporation having its principal office located at City Hall, 30 Church Street, Rochester, New York 14614, herein after referred to as the "City" and \_\_\_\_\_ with offices located at \_\_\_\_\_, hereinafter to as the "Consultant".

### **WITNESSETH:**

**WHEREAS**, the City desires to secure the professional services of a Consultant to provide \_\_\_\_\_, hereinafter referred to as "the Project", and

**WHEREAS**, the Consultant has the necessary equipment, personnel and expertise to perform the Project.

**NOW THEREFORE**, in consideration of the terms and conditions contained herein, the parties do covenant and agree as follows:

### **SECTION 1.      DESCRIPTION OF CONSULTANT'S SERVICES**

A.

### **SECTION 2.      CITY RESPONSIBILITIES**

### **SECTION 3.      TERM**

The duration of the agreement will be from \_\_\_\_\_

### **SECTION 4.      FEE**

### **SECTION 5.      AUTHORIZED AGENT FOR THE CITY AND THE CONSULTANT**

A.           The City hereby designates:

B.           The Consultant hereby designates:

or their authorized representatives in case of absence, as Authorized Agents of the City and of the Consultant for receipt of all notices, demands, vouchers and other communications and all orders, permissions, and directions pursuant to this Agreement, which shall be sufficiently communicated, given and/or delivered if dispatched by registered or certified mail, postage prepaid, or delivered personally to the authorized agents designated herein. The parties reserve the right to designate other or additional agents upon written notice to the other party which shall be signed by the Authorized Agent of the requesting party.

## **SECTION 6. INDEMNIFICATION**

The Consultant hereby agrees to defend, indemnify and save harmless the City of Rochester against any and all liability, loss, damage, suit, charge, attorney's fees and expenses of whatever kind or nature which the City may directly or indirectly incur, or be required to pay by reason or in consequence of the intentionally wrongful or negligent act or omission of the Consultant, its agents, employees or contractors. If a claim or action is made or brought against the City and for which the Consultant may be responsible hereunder in whole or in part, then the Consultant shall be notified and shall handle or participate in the handling of the defense of such matter.

## **SECTION 7. WORKERS' COMPENSATION AND DISABILITY BENEFITS INSURANCE**

This Agreement shall be void and of no effect unless the Consultant shall secure compensation for the benefit of, and keep insured during the life of this Agreement, any and all employees as are required to be insured under the provisions of the Workers' Compensation Law of the State of New York or the state of the Consultant's residence, whichever may apply. The Consultant shall provide proof to the City, duly subscribed by an insurance carrier, that such Workers Compensation coverage has been secured. In the alternative, Consultant shall provide proof of self-insurance or shall establish that Workers' Compensation coverage is not required by submitting the then current and required New York State Workers' Compensation Board's form.

## **SECTION 8. EQUAL OPPORTUNITY**

### **A. General Policy**

The City of Rochester, New York reaffirms its policy of Equal Opportunity and its commitment to require all contractors, lessors, vendors and suppliers doing business with the City to follow a policy of Equal Opportunity, in accordance with the requirements set forth herein. The City further does not discriminate on the basis of disability, in admission or access to, or treatment or employment in its programs and activities. The City is including these policy statements in all bid documents, contracts, and leases. Contractors, lessors, vendors and suppliers shall comply with all State and Federal Equal Opportunity laws and regulations.

### **B. Definitions**

GOOD FAITH EFFORT - shall mean every reasonable attempt to comply with the provisions of this policy by making every reasonable effort to achieve a level of employment of minority groups and female workers that is consistent with their presence in the local work force.

MINORITY GROUP PERSONS - shall mean a person of Black, Spanish surname American, Asian American or American Indian ethnic or racial origin and identity.

### **C. Compliance**

The Consultant shall comply with all of the following provisions of this Equal Opportunity Requirement:

1. The Consultant shall not discriminate on the basis of age, race, creed, color, national origin, sex, sexual orientation, disability or marital status in the performance of services or programs pursuant to this agreement. The Consultant agrees to make a good faith effort to employ minority group persons and females and that in hiring employees and treating employees performing work under this Agreement or any subcontract hereunder, the Consultant, and its subcontractors, if any, shall not, by reason of age, race, creed, color, national origin, sex, sexual orientation, disability or marital status

discriminate against any person who is qualified and available to perform the work to which the employment relates. The Consultant agrees to take affirmative action to ensure that applicants are employed and that employees are treated during their employment, without regard to their race, color, religion, sex, age or national origin. Such actions shall include, but not be limited to the following: employment, upgrading, demotions or transfers, recruitment and recruitment advertising, layoffs, terminations, rates of pay and other forms of compensation, and selection for training, including apprenticeship. The Consultant agrees to post notices in conspicuous places available to employees and applicants for employment, and to include language in all solicitations or advertisements for employment placed by or on behalf of the Consultant, reflecting this nondiscrimination policy.

2. If the Consultant is found guilty of discrimination in employment on the grounds of age, race, creed, color, national origin, sex, sexual orientation, disability or marital status by any court or administrative agency that has jurisdiction pursuant to any State or Federal Equal Opportunity Laws or regulations, such determination will be deemed to be a breach of contract, and this Agreement will be terminated in whole or part without any penalty or damages to the City on account of such cancellation or termination, and the Consultant shall be disqualified from thereafter selling to, submitting bids to, or receiving awards of contract with the City of Rochester for goods, work, or services until such time as the Consultant can demonstrate its compliance with this policy and all applicable Federal and State Equal Opportunity laws and regulations.
3. The Consultant shall cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

#### **SECTION 9. COMPLIANCE WITH ALL LAWS**

The Consultant shall familiarize itself and comply with all applicable laws, ordinances and regulations of all federal, state and municipal governments or the legally constituted agencies thereof.

#### **SECTION 10. AUDIT**

The Consultant agrees that to the extent provisions of the Federal Acquisition Regulations apply to services provided by Consultant under this Agreement, the City shall, until the expiration of three (3) years after final payment, have access to and the right to examine any directly pertinent books, documents, papers and records of the Consultant and of any of the subcontractors engaged in the performance of and involving transactions related to this Agreement or any subcontracts. In all other instances, the City shall have the right during the term of this Agreement, and up to one (1) year thereafter, to inspect all relevant records related to invoices submitted by Consultant or Fee modifications requested by Consultant.

#### **SECTION 11. PROHIBITION AGAINST ASSIGNMENT**

The parties are prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement or any of its contents, or of any right, title or interest therein, or of the power to execute this Agreement, to any other person or corporation without the previous consent, in writing, of both parties. However, Contractor may assign its rights to receive payment upon prior written approval of the City unless otherwise prohibited by law.

#### **SECTION 12. OBLIGATIONS LIMITED TO FUNDS AVAILABLE**



The parties specifically agree that the Consultant's duty to perform work under this agreement and the City's obligation to pay for that work, including any out-of-pocket and subcontracting expenses of the Consultant, shall be limited to the amount of money actually appropriated by the City Council and encumbered (i.e., certified as being available) for this Project by the City Director of Finance (or his authorized deputy). This provision shall limit the parties' obligation to perform even though this Agreement may provide for the payment of a fee greater than the appropriated and encumbered amount.

### **SECTION 13. EXTENT OF AGREEMENT**

This Agreement constitutes the entire and integrated Agreement between and among the parties hereto and supersedes any and all prior negotiations, agreements and conditions, whether written or oral. Any modification or amendment to this Agreement shall be void unless it is in writing and subscribed by the party to be charged or by the party's authorized agent.

### **SECTION 14. STATUS AS INDEPENDENT CONTRACTOR**

The Consultant, as an independent contractor, covenants and agrees to conduct the work under this Agreement consistent with such status. The Consultant shall neither pretend nor claim to be an officer or employee of the City by reason hereof, nor make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the City, including but not limited to Workers' Compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

### **SECTION 15. LAW**

This Agreement shall be governed by and under the laws of the State of New York. In the event that a dispute arises between the parties, venue for the resolution of such dispute shall be the County of Monroe, New York.

### **SECTION 16. NO-WAIVER**

In the event that the terms and conditions of this Agreement are not strictly enforced by the City, such non-enforcement shall not act as or be deemed to act as a waiver or modification of this Agreement, nor shall such non-enforcement prevent the City from enforcing each and every term of this Agreement thereafter.

### **SECTION 17. SEVERABILITY**

If any provision of this Agreement is held invalid by a court of law, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the laws of the State of New York.

### **SECTION 18. DEBARMENT AND SUSPENSION**

The Consultant certifies, by the signing of this Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any Federal department or agency. Assistance under this part shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any contractor or sub recipient during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

### **SECTION 19. TERMINATION FOR DEFAULT**

The performance of work under this Agreement may be terminated by the parties in accordance with this clause in whole, or from time to time in part, whenever either party shall default in the performance of this Agreement in accordance with its terms. Upon termination due to City's default, Consultant shall be paid that part of the fee proportionate to the amount of services provided by Consultant under this Agreement as of the date of default. Upon termination due to Consultant's default, the City may take over the work to be performed and complete the same by contract or otherwise, and the Consultant shall be liable to the City for any excess cost occasioned thereby.

## **SECTION 20. LIVING WAGE REQUIREMENTS**

### **A. Applicability of Living Wage Requirements**

This section shall apply and the Consultant shall comply with the requirements of Section 8A-18 of the Municipal Code of the City of Rochester, known as the "Rochester Living Wage Ordinance", in the event that payments by the City to the Consultant under this Agreement are equal to or greater than \$50,000, or involves retention by the Consultant of fees equal to or greater than \$50,000 during a period of one year. If this Agreement is amended to increase the amount payable hereunder to a value equal to or greater than fifty thousand dollars (\$50,000) during a period of one year, then any such amendment shall be subject to Section 8A-18.

### **B. Compliance**

The Consultant shall pay no less than a Living Wage to any part-time or full-time Covered Employee, as that term is defined in Section 8A-18B, who directly expends his or her time on this Agreement, for the time said person actually spends on this Agreement. Living Wage, as set forth in this Agreement, shall be the hourly amount set forth in Section 8A-18(C)(2), and any adjustments thereto, which shall be made on July 1 of each year and shall be made available in the Office of the City Clerk and on the City's website, at [www.cityofrochester.gov](http://www.cityofrochester.gov). Consultant shall also comply with all other provisions of Section 8A-18, including but not limited to all reporting, posting and notification requirements and shall be subject to any compliance, sanction and enforcement provisions set forth therein.

### **C. Exemption**

This section shall not apply to any of Consultant's employees who are compensated in accordance with the terms of a collective bargaining agreement.

## **SECTION 21. COMPLIANCE WITH MACBRIDE PRINCIPLES**

The Consultant agrees that it will observe Ordinance No. 88-19 of the City of Rochester, which condemns religious discrimination in Northern Ireland and requires persons contracting to provide goods and services to the City to comply with the MacBride Principles. A copy of the MacBride Principles is on file in the Office of the Director of Finance.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first written above.

### **CITY OF ROCHESTER**

BY: \_\_\_\_\_  
Lovely A. Warren - Mayor, City of Rochester

**CONSULTANT**

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

Taxpayer Id. No.:

STATE OF NEW YORK)  
COUNTY OF MONROE) SS:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me the subscriber, Lovely A Warren, personally known, who being by me duly sworn, did depose and say that she resides in the City of Rochester; that she is the Mayor City of Rochester, the municipal corporation described in and which executed the above instrument; and that she signed her name to the foregoing instrument by virtue of the authority vested in her by the laws of the State of New York and the local laws and ordinances of the City of Rochester.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK)  
COUNTY OF MONROE) ss.:

On the \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public