

REQUEST FOR PROPOSALS

Station Area Strategic Plans
Southwest LRT Line
Minneapolis



RFP Issued: 12 February, 2010
Proposals Due: 12 March, 2010

Issued by the Hennepin County Regional Railroad Authority



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INTRODUCTION

PURPOSE

This Request for Proposals (RFP), issued by the Hennepin County Regional Railroad Authority (HCRRRA) in partnership with the City of Minneapolis, is to solicit proposals for the development of Strategic Plans for the five proposed Minneapolis stations along the proposed locally preferred alternative (LPA) of the Southwest Light Rail Transit (LRT) line: Royalston, Van White, Penn, 21st Street, and West Lake. Maps of the station locations are attached. The planning process will examine how development patterns and infrastructure needs to support those development patterns will likely change within the ¼ to ½ mile radius of the station locations in the near term (defined as pre-LRT or 2010 to 2017) and long-term (defined as post-LRT or 2017 to 2030). In addition, the process will address access and circulation in station areas, and assess the impact of LRT design, including station platform location, on proposed development patterns. The process may result in recommendations for incorporation into the upcoming Preliminary Engineering (PE) process for the Southwest LRT line, which will be led by the Metropolitan Council/Metro Transit.

The City of Minneapolis has completed some level of recent planning in portions of the ¼ - ½ mile study area around the proposed stations. As a result, the scope of work necessary to complete the strategic plan for each station is different. To assist in clarifying some of the differences in scope of work between the stations, prospective proposers should plan to attend a pre-bid meeting. The meeting will be held:

Wednesday, March 3, 2010

9:00 am – 11:00 am

Hennepin County Environmental Services Building

Visitors' Center-First Floor

417 N. Fifth Street Minneapolis, MN 55401

Budget and Timeline

Strategic plans are expected to be completed within 9-12 months of the contract award date. An amount not-to-exceed \$300,000 has been budgeted for this planning process.

PROJECT BACKGROUND

History

The Southwest Transitway is a proposed 14-mile light rail transit (LRT) line serving Eden Prairie, Minnetonka, Edina, Hopkins, St. Louis Park and Minneapolis. The LRT line will increase system capacity in an area of high demand, respond to travel demand created by existing and planned residential and employment growth, provide a competitive travel option that will attract 'choice' riders (who have a choice between transit and driving) and serve transit dependent populations. This line will also be an expansion of the region's transitway system.

Southwest Transitway Locally Preferred Alternative (LPA) Process

The HCRRRA initiated the Southwest Transitway Alternatives Analysis (AA) process in 2005. During the AA process, a broad range of transit modes (LRT, BRT, conventional bus, etc.) were evaluated. Prior to identifying the Locally Preferred Alternative (LPA) for the Southwest Transitway project, the HCRRRA chose to initiate the environmental review process, the Draft Environmental Impact Statement (DEIS). The purpose for initiating the environmental review process prior to identification of the LPA was to ensure that the potential impacts to critical environmental resources would be considered when

identifying the LPA. In addition, proceeding in this fashion allowed the public and affected agencies to comment upon the purpose and need for the project as well as the alternatives under consideration.

According to Federal guidance, the selection of the LPA and inclusion of the LPA in the Metropolitan Council's Transportation Policy Plan (TPP) concludes the Alternatives Analysis (AA) process. It is at this point that the Metropolitan Council, as the project sponsor, may submit an application to the Federal Transit Administration (FTA) for the project to enter Preliminary Engineering (PE). The process for identification of the LPA is a separate process from the environmental review process, but it is beneficial for projects to combine portions of the processes to avoid duplication and project delays. The Metropolitan Council's selection and adoption of the LPA into the TPP is part of the long-range planning process required by state and federal law. The LPA selection does not replace, nor does it override the requirement to fully examine alternatives and determine the adverse impacts that must be avoided or mitigated under the National Environmental Policy Act (NEPA) and Minnesota Environmental Policy Act (MEPA).

In fall of 2008, the HCRRA in partnership with the Federal Transit Administration (FTA) initiated the environmental review process, the Environmental Impact Statement (EIS), for the Southwest Transitway. An EIS is required for all major federal and state actions, such as the Southwest Transitway project, that will significantly affect the environment. The EIS is a full disclosure document that includes a detailed evaluation of the social, economic, and environmental impacts of the alternatives and identification of mitigation options, presuming that adverse impacts cannot be avoided. The EIS is composed of two documents, the Draft EIS (DEIS) and the Final EIS (FEIS). In the DEIS all reasonable alternatives are discussed at a comparable level of detail and while there is no requirement to identify a preferred alternative, if one has been selected that should be stated in the document. The FEIS, which is typically completed in conjunction with Preliminary Engineering (PE), is required to describe the preferred alternative, the basis for that decision, and the mitigation requirements. The EIS is considered to be completed when a Record of Decision (ROD), which documents the decision made by the lead federal agency, is issued. At the state level, the EIS is considered complete when the Responsible Governmental Unit (RGU) issues an Adequacy Determination.

On November 3, 2009, the HCRRA voted unanimously to recommend to the Metropolitan Council that the LRT 3A alternative be selected as the Locally Preferred Alternative (LPA) for the purposes of project development.

STATION DESCRIPTIONS AND RELEVANT STUDIES

West Lake Street Station

This station is located behind the Calhoun Commons Shopping Center south of West Lake Street. Existing policy found in the [Minneapolis Plan for Sustainable Growth](#) (See Chapter 1 Land Use) and the [Midtown Greenway Land Use and Development Plan](#) (See Pages 45 and 62) already supports increased density. Lake Street is designated as a "Commercial Corridor" in the Comprehensive Plan and Calhoun Commons is identified as a "Major Retail Center". The HCRRA currently owns a 1.52 acre parcel of land to the east of the HCRRA's Southwest Corridor abutting the Calhoun Commons commercial property.

21st Street Station

This station is adjacent to the Kenwood neighborhood and Minneapolis Park and Recreation Board land. Current policy does not support increased density. The HCRRRA owns several corridor-adjacent parcels along the east side of the Kenilworth Corridor.

Penn Station

This station is located just south of I-394 at Penn Avenue. There is limited land available between the highway and the station location. This area is described in the [Bryn Mawr Neighborhood Land Use Plan](#) (See Pages 63-67). Current Comprehensive Plan policies support mixed-use development, but there are no Comprehensive Plan land use features such as Commercial Corridors or Growth Centers directly adjacent to the station location. The HCRRRA owns a large parcel south of the rail corridor.

Van White Station

This station is located in the Bassett Creek Valley area which is identified as a "Growth Center" in the Comprehensive Plan, and in the [Bassett Creek Valley Master Plan](#), updated in 2006. Existing land use policy supports mixed-use development and increased density. Ryan Companies currently has development rights to City-owned land within the Bassett Creek Valley area, but new locations for existing Public Works facilities need to be found to allow for future development. Furthermore, Hennepin County is currently conducting a study on future rail car storage sites, including a site in the Van White station area, and plans are underway for the construction of Van White Boulevard Memorial Drive which will connect North and South Minneapolis through the Bassett Creek area. The Luce Line Trail, Cedar Lake Trail, and the Van White Trail also pass through the area.

Royalston Station

A Small Area planning process is currently wrapping up for a portion of this station area. The station is located one block from the Farmers Market and two blocks from Target Field. [The North Loop Small Area Plan](#) will likely be adopted by the Minneapolis City Council in the first quarter of 2010. This plan will set land use policy around the immediate station area and identify connectivity constraints and broad improvement methods.

FEDERAL CONSIDERATIONS

This work is being conducted with federal funds and will need to follow relevant federal guidelines and requirements. The proposer should propose methods to conduct this phase of work in a manner that will meet Federal Transit Administration New Starts criteria and other applicable federal requirements allowing the Corridor to qualify for federal funding.

SCOPE OF SERVICES

REQUIREMENTS

The selected consultant will be expected to provide assistance in the following areas of expertise:

- Public Involvement
- Land Use Planning and Urban Design
- Transit Oriented Development
- 3D Visualization
- Sustainable Development
- Transportation Planning
- Traffic Analysis/Parking Management
- Economic Market Analysis

The consultant is also expected to have an understanding of LRT planning, design and operations. The selected consultant will need to work closely with the southwest LRT consultant and Southwest Project Office (SPO) staff to share information and preliminary study findings.

PLANNING PROCESS SCOPE OF WORK

Consultants should address the following work tasks in their proposal. In addition to the items that follow, the consultant may suggest other relevant elements of the study. If the consultant proposes additional tasks that will enhance the planning process, these should be identified as such in their proposal with hours by staff by task identified. The financial estimate, which includes hours by staff by RATE by task must be submitted in a separate sealed envelope.

A. Review of Previously Completed Work

Existing plans and ongoing studies and projects should be reviewed before proceeding with work.

Land Use Plans

The following City of Minneapolis plans will inform the creation of strategic plans:

- [Minneapolis Plan for Sustainable Growth](#)
- [Southwest Transitway Suburban Station Area Plans](#)
- [Minneapolis Zoning Code](#)
- [Bryn Mawr Neighborhood Land Use Plan](#)
- [Midtown Greenway Land Use & Development Plan](#)
- [Bassett Creek Valley Master Plan](#)
- [North Loop Small Area Plan](#)

Station Area Plans

Station area plans have been completed for the twelve suburban stations along the Southwest LRT line. Review and understanding of these plans will be necessary to assure the station area activities along the Southwest LRT line complement and do not compete with each other.

Southwest LRT Alternatives Analysis & Draft Environmental Impact Statement

The consultant should be familiar with Southwest LRT project development to date, including the Alternatives Analysis, Locally Preferred Alternative selection process, and Draft Environmental Impact Statement. Relevant documentation is posted on the

Southwest Transitway website Project Background and Information page. www.southwesttransitway.org. As part of the Alternatives Analysis (AA) and Locally Preferred Alternative (LPA) process, HDR Engineering, Inc. produced conceptual engineering plans for the four candidate LRT lines include the alignment through the Kenilworth corridor in Minneapolis. The consultants should review and be familiar with the September, 2009, conceptual engineering plans for the LRT line through the Kenilworth corridor.

Intermodal Phase II Study & Interchange Study

An initial feasibility study on the Minneapolis Transportation Interchange was completed in 2006 and a second feasibility study is currently underway now that the location of the Twins Ballpark has been finalized. The goal of the study is: to determine a practical and financially feasible approach for developing the site to accommodate Light Rail, Commuter Rail, and Intercity rail services; to connect these modes to bus transit centers which already exist in the immediate area; and to identify suitable space for train storage and maintenance needs. The consultants should review and be familiar with initial Feasibility Study and work done to date on the second Feasibility Study.

Deliverable: Memo summarizing relevant studies

B. Study Area Inventory

The consultant will compile a parcel based inventory and maps documenting current land uses, land values, and transportation infrastructure (auto, transit, pedestrian, LRT and bicycle). City of Minneapolis staff will work directly with the consultants to provide them with the required data to compile this inventory and produce related maps.

Deliverable: GIS maps and associated databases documenting the land use patterns, land and building values, and transportation service/infrastructure within the study area.

C. Multimodal Opportunities

The consultant will analyze the connections between modes at each station, including bus access, kiss and ride, bicycle, and pedestrian access to the station, and identify traffic related issues such as the location of potential generators of traffic to and from the station, as well as missing links in pedestrian and bicycle infrastructure. The consultant is also expected to facilitate a process to consider the impact of park/ride and/or parking management on development within the station locations. For this task, the consultant must coordinate with HDR Engineering, Inc. to review and incorporate, as appropriate, information produced by HDR Engineering, Inc. as part of the Locally Preferred Alternative (LPA) process under project development as well as the Draft Environmental Impact Statement (DEIS) process under NEPA.

Deliverable: Technical memorandum and associated maps documenting station accessibility and recommendations for accessibility improvements.

D. Community Participation

Public education and involvement is a key component of the Station Area Planning process. The consultant will be expected to present analysis and concept plans at all public meetings. The consultant is expected to present at three public meetings. One to introduce the planning/site design process, educate the public on transit oriented development (including local and national case studies/projects), and solicit ideas for the station area visions; a second to show analysis findings and draft plans and to get

feedback on these; and a third public meeting to explain the final station area plans and site designs.

To better foster communications between communities as this regional LRT facility is developed, every station is not required to have its own set of public meetings. West Lake and 21st Street Stations will have a set of three public meetings. Penn, Van White, and Royalston Stations will have another set of three public meetings.

The proposal should offer specific methods used to gain public input and ways to measure the outcomes of the public involvement process. Additionally, as plans are developed, the consultant should document the specific ways that the plans incorporate community input.

Any materials distributed at public meetings, either electronically or in paper copy, must be reviewed and approved by the Project Management Team (PMT) prior to distribution or viewing by the public. The consultant will make these materials available to staff one week prior to the public meeting.

The consultant will work with the Project Management Team (PMT) to develop project messages and graphic standards that will be consistently incorporated into all publications and work products produced. Materials may be placed on the city website and the Southwest Transitway website.

Deliverables:

- Public meeting presentations and materials including but not limited to an electronic PowerPoint presentation, presentation boards, transparencies, and slides
- Document and respond to all comments received during the public meetings.
- Preparation of web-ready materials for the project website

E. Project Management

In order to coordinate the station area planning with the Southwest LRT project and City of Minneapolis planning efforts, the selected consultant will meet with the following:

Project Management Team

A project management team composed of the project managers from the consultant firm, the City of Minneapolis, and the HCRRA will be assembled to provide day-to-day direction of the consultants work. The PMT is expected to meet weekly.

Technical Advisory Committee

A station area planning technical advisory committee composed of agency staff is expected to meet bi-monthly. The consultant will be responsible for preparing agendas and meeting materials and distributing them to the technical advisory committee, after PMT approval, no later than one week prior to the technical advisory committee meeting.

HDR Engineering, Inc.; Intermodal Phase II Consultant; Interchange Study Consultant; Others as needed

In order to facilitate communication and the transfer of information between the LRT project, the Intermodal Phase II Study, and other relevant studies that will inform the station area planning process, the consultant is expected to meet on an as needed basis with other consultants working on these projects.

Minneapolis Planning Commission

The consultant is expected to present on the station area planning process at three Minneapolis Planning Commission meetings.

Community Members' Working Group

It is expected that Southwest LRT neighbors will play an active role in shaping the station area plans. To this end, the consultants are expected to meet with a community members' working group throughout the planning process at major project milestones.

It is expected that the selected consultant will provide the PMT with presentations, and technical documentation, as well as compile and respond to comments received.

Deliverables: Attendance at Project Management, Technical Advisory Committee, LRT and other Consultant, Planning Commission, and Community Working Group meetings as requested.

F. Station Site Plans

Stations: All Stations.

The visualization of the station areas will be important so residents can see what is proposed and ultimately approved as part of the station area planning process. It will be important to show how these stations will fit into existing development, and how the station and adjacent land uses will change over time.

To this end, the consultant will develop station site plans within a ¼ mile of the station that best support transit oriented development, multi-modal access/circulation, and conformance with community character. The station site plans should include access and circulation diagrams that identify specific access routes and circulation patterns for each of the modes and may include recommendations for relocation of station platforms for future consideration by the Southwest LRT project staff. These should at a minimum include dimensions of facilities, signage, pavement markings, traffic controls and wayfinding facilities. Volumes and turning movements should be included as appropriate.

Deliverable: Site plan for each station area.

G. Station Area Concept Plans

Stations: All Stations. *However, where planning studies have been completed, such as at the Royalston station, simply insert the land uses and circulation plans as proposed in these studies into the conceptual station area. It is not necessary to develop a new conceptual plan for these areas that have been recently studied.*

The consultant will prepare a detailed conceptual site plan for each of the future station areas including graphics and text that identify key development and redevelopment sites as well as streetscape and infrastructure improvements that are needed. The plans should also include a concept for the station and associated facilities (parking, station platforms, bus loading and unloading zones and turnarounds, way finding signage, bus shelters, transit information, etc.). The concept plan will consider motorized (auto and bus), bicycle, and pedestrian access and circulation improvements and parking. The concept plan will identify key development opportunity sites, overall land use mix and building massing and configuration to create a transit-supportive station area. Development of the concept plan must be coordinated with the Southwest DEIS

consultant. The concept plan should also include the opportunity for phasing of development and improvements to the station areas.

Deliverable: Strategic plan for each station area.

H. Implementation Plans

Stations: All Stations.

The Implementation Plan should prioritize parcels for development/redevelopment, prioritize infrastructure improvements, and recommend an LRT platform location with regard to land use, development, and access and circulation.

Deliverable: Implementation plan for each station area.

I. Development Opportunities and Market Assessment

Stations: West Lake, Penn, Royalston

The consultant will conduct a real estate market assessment that includes an evaluation of the current uses in the station area including land availability, vacancy rates, land prices, rents, and price points. The consultant will conduct interviews (focus group and/or telephone) with local real estate brokers, city staff, and potential developers to assist in evaluating potential future real estate mixes within the station areas. Through use of the collected real estate data, demographic data and discussions with developers, real estate brokers, city staff and current property owners in the station areas, the consultant will identify transit-oriented development (TOD) and redevelopment opportunities.

The consultant will also conduct an analysis to identify future development/redevelopment opportunities within the ½ mile radius of each of the proposed station locations both in the short-term (2010 to 2017) or pre-transitway and the long-term (2017 to 2030) or post-transitway.

Deliverable: Technical memorandum and report documenting the methodology and finding of the market assessment, including GIS maps that document the methodology and conclusions of the development/redevelopment opportunities.

J. Study Report

The consultant will compile a draft study report describing the information and analysis developed in the above listed tasks. The consultant will produce 6 copies of the draft report and 15 copies of the final report. The draft study report will be prepared in an editable format with adequate time for review and comment. The final study report will be provided in a web ready and original format. All work produced will be the property of Hennepin County.

Deliverables: Draft and final study report

INSTRUCTIONS FOR PROPOSAL PREPARATION

1. SUBMISSION OF PROPOSALS

All proposals must be addressed as follows:

Hennepin County Regional Railroad Authority
Attn: Adele Hall
Transit Planner
Hennepin County
Housing, Community Works and Transit
417 North Fifth Street, Suite 320
Minneapolis, MN 55401-1362

Proposals must be physically delivered to the offices of HCRRA at the above address no later than **4:30 p.m. on Friday, March 12, 2010**. Proposals received after the specified time and date may not be considered, at HCRRA's discretion.

Notice of intent to propose in email form to Adele.Hall@co.hennepin.mn.us must be received by 4:30 p.m. on Wednesday, February 27, 2010. Questions regarding the study must also be received via email to Adele.Hall@co.hennepin.mn.us by 4:30 p.m. on Wednesday, February 27, 2010. Responses will be transmitted to all prospective consultants who have notified HCRRA of their intent to propose. It is requested that all prospective consultants provide email address contact information to HCRRA as the preferred means of communications for expediency during the proposal process. All consultants will receive a full list of prospective consultant questions (with anonymity preserved) along with HCRRA responses.

HCRRA reserves the right to include any clarifications/revisions to the RFP content in correlation with the question and response process.

Consultants may not contact the staff of HCRRA or others serving on the consultant selection committee regarding this RFP beyond the inquiry process described above.

Request for Proposals Issued	February 12, 2010
Consultant Questions and Intent to Propose Due	February 27, 2010
Pre-Bid Meeting	March 3, 2010
Proposal due	March 12, 2010
Selection of Consultant	Mid-April 2010
HCRRA Board Approval	May 11, 2010
Contract Award and Notice to Proceed	May 11, 2010

2. PROPOSAL FORMAT

Proposals must be submitted on 8-1/2" x 11" size paper and should be typed using a minimum 12 point standard font. Graphic illustrations may be shown on 11"x17" paper and will be considered as one page. Proposal narratives may not exceed 30 pages in length, including the cover letter. An appendix may be included that includes resumes and examples of relevant work experience. This appendix is not to exceed 20 pages. The proposal narrative and appendices should be bound together in a single submittal.

The applicant must submit a financial bid in a separate envelope from the proposal document. This financial bid should include estimated hours, rates, expenses and other

costs in correlation with the major tasks identified in the proposal work plan. As described previously, the financial bid should respond to the scope of services in this RFP. The financial bid should also include the implications of any recommended deviations from the RFP scope of services.

One (1) original, twenty (20) photocopies, and twenty (20) CD's in PDF format of the proposal are required. It is requested that the financial bid also be submitted in electronic Excel spreadsheet format to facilitate the evaluation process.

All information included in the submitted proposal will be classified in accordance with Section 13.591 of Minnesota statutes governing data practices.

3. VALID PROPOSAL

In order to be considered valid, the proposal shall be in writing, submitted on time in sealed packages and be signed by an officer of the Proposer who can be accountable for all representations.

The proposal must contain the following information, presented in the order shown:

1. Profile of Proposer, including the size and organizational structure, past history, and the status and outcome of any lawsuits brought against the Proposer in the past five years. HCRRA reserves the right to exclude Proposers that have an organizational conflict of interest.
2. Description of Proposers overall approach or solution.
3. Work Plan. Breakdown of project by phases or tasks. For each task identified in the scope of services in this RFP, identify:
 - Specific staff to be involved, roles, and responsibilities. Availability of staff including percent of time allocated to the Southwest Corridor versus other commitments over the duration of the study.
 - Time commitment for each person (hours)
 - Schedule
4. Master Schedule on single sheet illustrating task relationships including anticipated meetings over the duration of the study.
5. Description of Proposer's past experience providing similar services including:
 - Names and addresses of contact persons.
 - Description (history and experience) of proposal team members' role in each project.
 - Experience and knowledge of NEPA, the State of Minnesota's environmental rules and regulations, Federal Transit Administration (FTA) regulations and guidance for New Starts projects and Section 5309 funding.
6. Project Team Profile
 - Resumes of key project participants, including prior projects of similar size and scope for which the participants played the same or a similar role.

Organizational chart of the Proposer's key team members including sub consultants.

- Description of the anticipated role of each Proposer key team member. Confirm that each team member will be fully engaged in the study as described for the duration of the contract.

7. Fee for Services (in separate sealed envelope)

- Budget broken down by team member, by firm, and by scope of service task. The number of hours allocated to each team member for each task element of the work plan will be clearly indicated.
- Current audited hourly rates for staff.
- Current audited overhead rates for all Proposer team firms.
- An estimate of reimbursable direct expenses by expense type.

4. PROPOSAL SUBMISSION PROCESS

1. Notice to Proposer

- a. HCRRA is not responsible for costs incurred by anyone responding to this Request for Proposals.
- b. Upon submission, all proposals become the property of HCRRA, which retains the right to use any concept or idea presented in any proposal submitted, whether or not that proposal is accepted.
- c. HCRRA expressly reserves the right to amend or withdraw this Request for Proposals at any time and to reject any or all proposals. Any amendments will be made in writing, and no verbal modifications will be binding.
- d. HCRRA is not bound to accept the lowest cost proposal.
- e. Proposals are held legally responsible for their proposals and proposal budgets. Proposers are not to collude with other proposers and competitors or take any other action which will restrict competition. Evidence of such activity will result in rejection of the proposal.
- f. HCRRA reserves the right to negotiate contract terms contemporaneously and /or subsequently with any number of proposers as HCRRA deems to be in its best interests.
- g. Any exceptions to the requirements of this RFP, including the language in the sample contract, must be included in the proposal submitted by the Proposer. Identify the exceptions as a separate element of the proposal under the heading "Exceptions/Deviations." Failure to note exceptions shall be deemed a waiver of objections.
- h. HCRRA reserves the right to request any additional information at any stage of the Request for Proposals process. Compliance shall be at the proposers' expense.
- i. Each proposal shall constitute a binding, irrevocable offer for a period of 120 days after the date proposals are due.

5. PROPOSAL EVALUATION CRITERIA

All proposals will be evaluated using Federal Transit Administration's Qualification-Based Procurement Procedures contained in the "Brooks Act," 40 U.S.C. Sections 1101 through 1104, and as set forth in FTA Circular 4420, 1F, Chapter VI, Sec. 3.f (3).

In addition, evaluation of the proposals will be based on the following criteria:

- Displayed understanding of the project
- Previous experience
- Qualifications of personnel assigned to the project, as related to the requirement of the project
- Availability of key personnel
- Ability to accomplish work within the desired project timeframe.

Additional evaluation factors are as follows:

- HCRRA reserves the right to waive any minor irregularities in the proposal request process.
- HCRRA reserves the right to interview any or all proposers at its discretion.
- Proposals will be evaluated by an evaluation team selected by HCRRA.
- The evaluation team may conduct oral interviews with selected proposers. HCRRA will not be responsible for any costs incurred by a proposer in preparing for or making a presentation.
- The decision to proceed with contract negotiations with a selected consultant will be based on the written proposals, the results of oral interviews, if held, and the recommendation of the Proposal Evaluation Team. That decision will be made by HCRRA.

The emphasis of the proposal evaluation team will be on the quality of the proposal document along with qualifications and experience of the consultant team in relation to the study tasks. A determination will be made as to which proposal, if any, is most advantageous to HCRRA, by considering the evaluations of the proposals, the best value to HCRRA, and the best interests of HCRRA.

6. CONTRACTING PROCEDURE/AWARD

HCRRA will enter into a Cost Reimbursement Contract with the selected consultant. Payment to the contractor will be based on costs incurred, consistent with the budget, performance and the work statement. See below for contract provisions that will be contained in the contract HCRRA enters into with the selected firm. Proposals should indicate the firm's willingness to agree to such contract provisions.

HCRRA may award a contract based on offers received, without discussion of such offers with the applicants. Each offer should, therefore, be submitted in the most favorable terms from a cost, programmatic and technical standpoint.

- Budget
- The budget shall include a not-to-exceed maximum of \$300,000, including a 5% contingency. Actual hourly rates for each person/position should be identified as well as the hourly rate including profit and overhead. A nine to 12 month study duration is assumed. The agreement may extend beyond 12 months.

7. SAMPLE CONTRACT

PERSONAL/PROFESSIONAL SERVICE AGREEMENT

THIS AGREEMENT is between the HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY, a political subdivision of the State of Minnesota, (the "AUTHORITY") 417 North 5th Street, Minneapolis, Minnesota 55401, and _____ [name, legal form of CONTRACTOR and CONTRACTOR's business address. The type of legal form of the CONTRACTOR should be noted in the opening paragraph (i.e., individually, partnership, corporation, limited liability company, etc.). The laws of the state under which the CONTRACTOR is incorporated should also be stated. Example: John G. Smith, Inc., a corporation duly organized under the laws of the State of Minnesota.], ("CONTRACTOR").

The parties agree as follows:

1. *TERM AND COST OF THE AGREEMENT*

CONTRACTOR agrees to furnish services to the AUTHORITY commencing _____ and terminating _____, unless terminated earlier in accordance with the Default and Cancellation provisions of this Agreement.

2. *SERVICES TO BE PROVIDED*

CONTRACTOR hereby warrants that, when legally required, CONTRACTOR shall obtain the written consent of both the owner and licensor to reproduce, publish, and/or use any material supplied to the AUTHORITY including but not limited to software, hardware, documentation, and/or any other item. CONTRACTOR further warrants that any material or item delivered by CONTRACTOR will not violate the United States Copyright Law or any property right of another and agrees that CONTRACTOR shall defend, indemnify, and hold harmless the AUTHORITY, its officials, officers, agents, volunteers, and employees, at CONTRACTOR's own expense, against any alleged infringement of any copyright or property right.

3. *PAYMENT FOR SERVICES*

A. Payment for services shall be made directly to CONTRACTOR after completion of the services upon the presentation of a claim as provided by law governing the AUTHORITY's payment of claims and/or invoices. CONTRACTOR shall submit monthly invoices for services rendered on forms which may be furnished by the AUTHORITY. Payment shall be made within sixty (60) days from the approval of the invoice.

B. The agreement will include the following payment provisions:

Services will be compensated on a time and materials basis up to a maximum not-to-exceed cost, inclusive of fees and reimbursable expenses. The hourly rate for time spent under this Agreement shall be in accordance with the attached rate schedule identifying the hourly rate per individual to perform services under this Agreement. Payments will be made upon achievement of agreed-upon project milestones.

Payment of interest on late payments and disputes regarding payments shall be governed by the provisions of Minn. Stat. Section 471.425. If reimbursement of expenses is included, AUTHORITY will reimburse at actual cost for out of pocket expenses. If reimbursement for travel is permitted, all air fare shall first be authorized by AUTHORITY and will be reimbursed at the economy rate. Food, ground transportation, and lodging expenses necessitated by the Agreement will be reimbursed at the rate consistent with the Runzheimer Index for the Minneapolis/St. Paul Metropolitan area. Mileage will be reimbursed at the rate for Hennepin County employees.

C. Prior to the execution of a contract by AUTHORITY, the successful proposer shall provide a certificate of insurance acceptable to the Hennepin County Risk Manager evidencing, at a minimum, the coverage required in Section 7 of this contract.

4. *PROFESSIONAL CREDENTIALS*

CONTRACTOR agrees to provide all information requested by the AUTHORITY to facilitate the verification of educational and professional credentials from primary sources. Upon request of AUTHORITY, CONTRACTOR shall complete a Statement of Academic and Professional Credentials and Activities form, provided by AUTHORITY to CONTRACTOR, prior to providing services. CONTRACTOR agrees to undergo a review of professional credentials as requested by the AUTHORITY during the term of this Agreement.

5. *INDEPENDENT CONTRACTOR*

CONTRACTOR shall select the means, method, and manner of performing the services. Nothing is intended or should be construed as creating or establishing

the relationship of co-partners between the parties or as constituting CONTRACTOR as the agent, representative, or employee of the AUTHORITY for any purpose. CONTRACTOR is and shall remain an independent contractor for all services performed under this Agreement. CONTRACTOR shall secure at its own expense all personnel required in performing services under this Agreement. Any personnel of CONTRACTOR or other persons while engaged in the performance of any work or services required by CONTRACTOR will have no contractual relationship with the AUTHORITY, and will not be considered employees of the AUTHORITY. The AUTHORITY shall not be responsible for any claims that arise out of employment or alleged employment under the Minnesota Economic Security Law or the Workers' Compensation Act of the State of Minnesota on behalf of any personnel, including, without limitation, claims of discrimination against the CONTRACTOR, its officers, agents, contractors, or employees shall in no way be the responsibility of the AUTHORITY. CONTRACTOR shall defend, indemnify, and hold harmless the AUTHORITY, its officials, officers, agents, volunteers, and employees from such claims irrespective of any determination of any pertinent tribunal, agency, board, commission, or court. Such personnel or other persons shall neither require nor be entitled to any compensation, rights or benefits of any kind from the AUTHORITY, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Re-employment Compensation, disability, severance pay, and retirement benefits.

6. *NON-DISCRIMINATION*

- A. In accordance with Hennepin County's policies against discrimination, CONTRACTOR agrees that it shall not exclude any person from full employment rights nor prohibit participation in or the benefits of any program, service or activity on the grounds of race, color, creed, religion, age, sex, disability, marital status, sexual orientation, public assistance status, or national origin. No person who is protected by applicable Federal or State laws against discrimination shall be subjected to discrimination.

- B. If this Agreement is for a sum of over \$100,000 or is one of several current contracts with CONTRACTOR totaling more than \$100,000, or is amended to exceed \$100,000, then CONTRACTOR agrees to abide by the County's non-discrimination and Affirmative Action requirements for County contractors. If CONTRACTOR has a current approved Affirmative Action Plan (AAP) from another governmental jurisdiction, it will have met this requirement upon submitting evidence of such approval.

If CONTRACTOR does not have an approved AAP from another jurisdiction, it may be exempt from these requirements for one of the following reasons:

1. Contract is for emergency or life safety related purchases;
2. CONTRACTOR has no facilities and has no more than one product/sales representative operating in Hennepin County;
3. CONTRACTOR had an average of thirty (30) or fewer full-time/benefit-earning employees during the twelve (12) months preceding the submission of the bid, request for proposal or execution of contract;
4. Pursuant to Hennepin County Board policy, the County Administrator or his/her designee granted an exemption.

If CONTRACTOR was not granted an exemption by the Hennepin County Purchasing/Contract Services (P/CS) Manager, or designee, CONTRACTOR agrees to develop and complete an Affirmative Action Plan within thirty (30) calendar days after contract execution and agrees to maintain the AAP on file at CONTRACTOR'S facility.

CONTRACTOR also agrees to submit an Initial Workforce Analysis (Form 399) to the Contract Manager within five (5) business days after contract execution. CONTRACTOR's submission shall be based on the following criteria:

1. If CONTRACTOR is located within the local Standard Metropolitan Statistical Area (SMSA) and with more than thirty (30) full-time/benefit earning employees within the local SMSA, CONTRACTOR shall submit an Initial Workforce Analysis that reflects its local SMSA workforce.
2. If CONTRACTOR is located within the local SMSA and with thirty (30) or fewer full-time/benefit earning employees within the local SMSA, then CONTRACTOR shall submit an Initial Workforce Analysis that reflects its total workforce.
3. If CONTRACTOR is located outside the local SMSA and with more than thirty (30) full-time/benefit earning employees within the local SMSA, then CONTRACTOR shall submit an Initial Workforce Analysis that reflects its local SMSA workforce.
4. If CONTRACTOR is located outside the local SMSA and with thirty (30) or fewer full-time/benefit earning employees within the local SMSA, then CONTRACTOR shall submit an Initial Workforce Analysis that reflects its total workforce.

Contract Manager shall submit the Initial Workforce Analysis to the P/CS Division. If a P/CS Division review determines there is underrepresentation of women and/or racial minorities based on local SMSA

labor force availability data, CONTRACTOR shall be required to identify measures to correct the deficiencies. If the deficiencies are not corrected, Hennepin County will require CONTRACTOR to demonstrate that good faith efforts have been made to correct them. CONTRACTOR also agrees to keep the AAP current and available for review by the County during the term of this Agreement and any extensions. The AAP must include the following elements:

1. EEO Policy Statement;
2. Identification of a person responsible for EEO Coordination;
3. Harassment policy statement;
4. Initial Workforce Analysis (Form CC399);
5. Identification of the specific steps CONTRACTOR will take to achieve or maintain a diverse workforce and ensure non-discrimination;
6. List of recruitment sources; and
7. A plan for dissemination of CONTRACTOR's AAP and policy.

Contractors who submit evidence of an approved AAP from another jurisdiction and contractors who are required to develop and maintain an AAP on file also agree to submit an Annual Workforce Report (CC400) to Hennepin County's P/CS Division.

CONTRACTOR also agrees that Hennepin County and AUTHORITY will have access to the AAP and the right to make on-site visits for the purpose of determining compliance with these requirements.

If CONTRACTOR fails to demonstrate good faith efforts to correct identified deficiencies, and/or fails to submit requested reports or information required by Hennepin County, and/or has engaged in discriminatory practices, the AUTHORITY may consider this a violation of the Agreement and may exercise any remedies available to it in law or in equity, including but not limited to cancellation or termination of the Agreement.

The local Standard Metropolitan Statistical Area is defined as the Counties of Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, and Wright in Minnesota and Pierce and St. Croix in Wisconsin.

7. *INDEMNIFICATION AND INSURANCE*

A. CONTRACTOR agrees to defend, indemnify, and hold harmless the AUTHORITY, its officials, officers, agents, volunteers and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney’s fees, resulting directly or indirectly from any act or omission of CONTRACTOR, a subcontractor, anyone directly or indirectly employed by them, and/or anyone for whose acts and/or omissions they may be liable in the performance of the services required by this Agreement, and against all loss by reason of the failure of CONTRACTOR to perform any obligation under this Agreement.

B. In order to protect CONTRACTOR and those listed above under the indemnification provision, CONTRACTOR agrees at all times during the term of this Agreement, and beyond such term when so required, to have and keep in force the following insurance coverages:

	<u>Limits</u>
1. Commercial General Liability on an occurrence basis with contractual liability coverage:	
General Aggregate	\$2,000,000
Products—Completed Operations Aggregate	1,000,000
Personal and Advertising Injury	1,000,000
Each Occurrence—Combined Bodily Injury and Property Damage	1,000,000
2. Workers’ Compensation and Employer’s Liability:	
Workers’ Compensation	Statutory
If CONTRACTOR is based outside the State of Minnesota, coverage must apply to Minnesota law. In accordance with Minnesota law, if Contractor is a sole proprietor, it is exempted from the above Workers’ Compensation requirements. In the event that CONTRACTOR should hire employees or subcontract the work, CONTRACTOR shall obtain the required insurance.	
Employer’s Liability. Bodily injury by:	
Accident—Each Accident	500,000
Disease—Policy Limit	500,000
Disease—Each Employee	500,000

3.	Professional Liability: Per Claim	1,000,000
	Aggregate	2,000,000

The professional liability insurance must be maintained continuously for a period of two years after the termination of this Agreement.

- C. An umbrella or excess policy over primary liability insurance coverages is an acceptable method to provide the required insurance limits.

The above establishes minimum insurance requirements. It is the sole responsibility of CONTRACTOR to determine the need for and to procure additional insurance which may be needed in connection with this Agreement. Upon written request, CONTRACTOR shall promptly submit copies of insurance policies to the AUTHORITY.

CONTRACTOR shall not commence work until it has obtained required insurance and filed with the AUTHORITY, a properly executed Certificate of Insurance which clearly evidences required insurance coverages. The certificate must name Hennepin County Regional Railroad Authority as the certificate holder and as an additional insured for the liability coverage(s) for all operations covered under the Agreement. The certificate must also show that the AUTHORITY will receive 30 days' prior written notice in the event of cancellation, nonrenewal, or material change in any described policies.

CONTRACTOR shall furnish to the AUTHORITY updated certificates during the term of this Agreement as insurance policies expire. If CONTRACTOR fails to furnish proof of insurance coverages, the AUTHORITY may withhold payments and/or pursue any other right or remedy allowed under the contract, law, equity, and/or statute. The AUTHORITY does not waive any rights or assume any obligations by not strictly enforcing the requirements set forth in this section.

- D. Duty to Notify. CONTRACTOR shall promptly notify the AUTHORITY of any claim, action, cause of action or litigation brought against CONTRACTOR, its employees, officers, agents or subcontractors, which arises out of the services contained in this Agreement. CONTRACTOR shall also notify the AUTHORITY whenever CONTRACTOR has a reasonable basis for believing that CONTRACTOR and/or its employees, officers, agents or subcontractors, and/or the AUTHORITY, might become the subject of a claim, action, cause of action, criminal arrest, criminal charge or litigation arising out of and/or related to the services contained in this Agreement. Failure to provide the notices required by this section is a material violation of the terms and conditions of this Agreement.

8. *DATA PRACTICES*

CONTRACTOR, its officers, agents, owners, partners, employees, volunteers and subcontractors shall abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (MGDPA), the Health Insurance Portability and Accountability Act and implementing regulations, if applicable, and all other applicable state and federal laws, rules, regulations and orders relating to data privacy or confidentiality. If CONTRACTOR creates, collects, receives, stores, uses, maintains or disseminates data because it performs functions of the AUTHORITY pursuant to this Agreement, then CONTRACTOR must comply with the requirements of the MGDPA as if it were a government entity, and may be held liable under the MGDPA for noncompliance. CONTRACTOR agrees to defend, indemnify and hold harmless the AUTHORITY, its officials, officers, agents, employees, and volunteers from any claims resulting from CONTRACTOR's officers', agents', owners', partners', employees', volunteers', assignees' or subcontractors' unlawful disclosure and/or use of such protected data, or other noncompliance with the requirements of this section. CONTRACTOR agrees to promptly notify the AUTHORITY if it becomes aware of any potential claims, or facts giving rise to such claims, under the MGDPA. The terms of this section shall survive the cancellation or termination of this Agreement.

9. *RECORDS – AVAILABILITY/ACCESS*

Subject to the requirements of Minnesota Statutes Section 16C.05, Subd. 5, CONTRACTOR agrees that the AUTHORITY, Hennepin County, the State Auditor, the Legislative Auditor or any of their authorized representatives at any time during normal business hours, and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of CONTRACTOR and involve transactions relating to this Agreement. The CONTRACTOR shall maintain these materials and allow access during the period of the Agreement and for six (6) years after its termination or cancellation.

10. *SUCCESSORS, SUBCONTRACTING AND ASSIGNMENTS*

- A. CONTRACTOR binds itself, its partners, successors, assigns and legal representatives to the AUTHORITY for all covenants, agreements and obligations contained in the contract documents.

- B. CONTRACTOR shall not assign, transfer or pledge this Agreement and/or the services to be performed, whether in whole or in part, nor assign any monies due or to become due to it without the prior written consent of the

AUTHORITY. A consent to assign shall be subject to such conditions and provisions as the AUTHORITY may deem necessary, accomplished by execution of a form prepared by the AUTHORITY and signed by CONTRACTOR, the assignee and the AUTHORITY. Permission to assign, however, shall under no circumstances relieve CONTRACTOR of its liabilities and obligations under the Agreement.

- C. CONTRACTOR shall not subcontract this Agreement and/or the services to be performed, whether in whole or in part, without the prior written consent of the AUTHORITY. Permission to subcontract, however, shall under no circumstances relieve CONTRACTOR of its liabilities and obligations under the Agreement. Further, CONTRACTOR shall be fully responsible for the acts, omissions, and failure of its subcontractors in the performance of the specified contractual services, and of person(s) directly or indirectly employed by subcontractors. Contracts between CONTRACTOR and each subcontractor shall require that the subcontractor's services be performed in accordance with the terms and conditions specified. CONTRACTOR shall make contracts between CONTRACTOR and subcontractors available upon request.

- D. CONTRACTOR shall notify the AUTHORITY in writing if another person/entity acquires, directly or indirectly, more than 50 percent (50%) of the voting power of the shares entitled to vote for directors of CONTRACTOR. Notice shall be given within ten (10) days of such acquisition and shall specify the name and business address of the acquiring person/entity. The AUTHORITY reserves the right to require the acquiring person/entity to promptly become a signatory to this Agreement by amendment or other document so as to help assure the full performance of this Agreement.

11. MERGER AND MODIFICATION

- A. It is understood and agreed that the entire Agreement between the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter. All items that are referenced or that are attached are incorporated and made a part of this Agreement.

- B. Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement signed by the parties.

12. DEFAULT AND CANCELLATION

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement or so fails to administer the work as to endanger the performance of the Agreement, it shall be in default. Unless CONTRACTOR's default is excused by the AUTHORITY, the AUTHORITY may upon written notice immediately cancel this Agreement in its entirety. Additionally, failure to comply with the terms of this Agreement shall be just cause for the AUTHORITY to delay payment until CONTRACTOR's compliance. In the event of a decision to withhold payment, the AUTHORITY shall furnish prior written notice to CONTRACTOR.
- B. Upon cancellation or termination of this Agreement:
1. At the discretion of the AUTHORITY and as specified in writing by the Contract Administrator, CONTRACTOR shall deliver to the Contract Administrator copies of all writings so specified by the AUTHORITY and prepared by CONTRACTOR in accordance with this Agreement. The term "writings" is defined as:

Handwriting, typewriting, printing, photocopying, photographing, facsimile transmitting, and every other means of recording, including electronic media, any form of communication or representation, including letters, works, pictures, drawings, sounds, or symbols, or combinations thereof.
 2. The AUTHORITY shall have full ownership and control of all such writings. CONTRACTOR shall have the right to retain copies of the writings. However, it is agreed that CONTRACTOR without the prior written consent of the AUTHORITY shall not use these writings for any purpose or in any manner whatsoever; shall not assign, license, loan, sell, copyright, patent and/or transfer any or all of such writings; and shall not do anything which in the opinion of the AUTHORITY would affect the AUTHORITY's ownership and/or control of such writings.
- C. Notwithstanding any provision of this Agreement to the contrary, CONTRACTOR shall remain liable to the AUTHORITY for damages sustained by the AUTHORITY by virtue of any breach of this Agreement by CONTRACTOR. Upon notice to CONTRACTOR of the claimed breach and the amount of the claimed damage, the AUTHORITY may withhold any payments to CONTRACTOR for the purpose of set-off until such time as the exact amount of damages due the AUTHORITY from CONTRACTOR is determined. Following notice from the AUTHORITY of the claimed breach and damage, CONTRACTOR and the AUTHORITY shall attempt to resolve the dispute in good faith.

- D. The above remedies shall be in addition to any other right or remedy available to the AUTHORITY under this Agreement, law, statute, rule, and/or equity.
- E. The AUTHORITY's failure to insist upon strict performance of any provision or to exercise any right under this Agreement shall not be deemed a relinquishment or waiver of the same, unless consented to in writing. Such consent shall not constitute a general waiver or relinquishment throughout the entire term of the Agreement.
- F. This Agreement may be canceled with or without cause by either party upon thirty (30) days' written notice.

13. CONTRACT ADMINISTRATION

In order to coordinate the services of CONTRACTOR with the activities of the AUTHORITY so as to accomplish the purposes of this Agreement, Brent Rusco (Phone: 612.543.0579, Fax: 612.348.9710) shall manage this Agreement on behalf of the AUTHORITY and serve as liaison between the AUTHORITY and CONTRACTOR.

14. COMPLIANCE AND NON-DEBARMENT CERTIFICATION

- A. CONTRACTOR shall comply with all applicable federal, state and local statutes, regulations, rules and ordinances currently in force or later enacted.
- B. If the source or partial source of funds for payment of services under this Agreement is federal, state or other grant monies, CONTRACTOR shall comply with all applicable conditions of the specific referenced grant.
- C. CONTRACTOR certifies that it is not prohibited from doing business with either the federal government or the State of Minnesota as a result of debarment or suspension proceedings.

15. SUBCONTRACTOR PAYMENT

CONTRACTOR shall pay any subcontractor within ten (10) days of CONTRACTOR's receipt of payment from the AUTHORITY for undisputed services provided by the subcontractor. CONTRACTOR shall pay interest of 1½ percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, CONTRACTOR shall pay the actual penalty due to the

subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a prime contractor must be awarded its costs and disbursements, including any attorney's fees, incurred in bringing the action.

16. *PAPER RECYCLING*

The AUTHORITY encourages CONTRACTOR to develop and implement an office paper and newsprint recycling program.

17. *NOTICES*

Any notice or demand which must be given or made by a party under this Agreement or any statute or ordinance shall be in writing, and shall be sent registered or certified mail. Notices to the AUTHORITY shall be sent to the Deputy Executive Director with a copy to the AUTHORITY's Contract Manager identified in Section 12. Notice to CONTRACTOR shall be sent to the address stated in the opening paragraph of the Agreement or to the address stated in CONTRACTOR's Form W-9 provided to the AUTHORITY.

18. *CONFLICT OF INTEREST*

CONTRACTOR affirms that to the best of CONTRACTOR's knowledge, CONTRACTOR's involvement in this Agreement does not result in a conflict of interest with any party or entity, which may be affected by the terms of this Agreement. The CONTRACTOR agrees that, should any conflict or potential conflict of interest become known to CONTRACTOR, CONTRACTOR will immediately notify the AUTHORITY of the conflict or potential conflict, specifying the part of this Agreement giving rise to the conflict or potential conflict, and will advise the AUTHORITY whether CONTRACTOR will or will not resign from the other engagement or representation.

19. *PROMOTIONAL LITERATURE*

CONTRACTOR agrees that the terms "Hennepin County" and "Hennepin County Regional Railroad Authority," or any derivative, shall not be utilized in any promotional literature, advertisements of any type or form or client lists without the express prior written consent of the AUTHORITY.

20. *MINNESOTA LAWS GOVERN*

The Laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the parties and their performance. The appropriate venue and jurisdiction for any litigation will be those courts located within the County of Hennepin, State of Minnesota. Litigation, however, in the federal courts involving the parties will be in the appropriate federal court within the State of Minnesota. If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not be affected.

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AUTHORITY BOARD AUTHORIZATION

Reviewed by the
County Attorney's Office

HENNEPIN COUNTY REGIONAL
RAILROAD AUTHORITY
STATE OF MINNESOTA

By: _____
Chair of Its Board

Date: _____

ATTEST: _____
Deputy/Clerk of Authority Board

Date: _____

By: _____
Deputy/Executive Director

Date: _____

CONTRACTOR

Contractor warrants that the person who executed this Agreement is authorized to do so on behalf of the Contractor as required by applicable articles, bylaws, resolutions or ordinances.*

By: _____

Printed Name: _____

Printed Title: _____

Date: _____

*CONTRACTOR shall submit applicable documentation (articles, bylaws, resolutions, or ordinances) that confirms the signatory's delegation of authority. This documentation shall be submitted at the time CONTRACTOR returns the Agreement to the Authority. Documentation is not required for a sole proprietorship.

8. FEDERAL CONTRACT CLAUSES

The Contractor agrees to comply with the following federal requirements, and agrees to require, unless specifically exempted, subcontractors and third party contractors at every tier to comply with same.

FTA Contract Clauses for Section 5309 Subrecipient Contracts for Professional Services (from FTA Best practices procurement Manual, per State Management Review matrix by ASTM, Inc. and approved by FTA Region V Counsel)

A. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.; 49 CFR Part 18

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

B. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

C. LOBBYING

31 U.S.C. 1352; 49 CFR Part 19; 49 CFR Part 20

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

See [Appendix A of this RFP](#) for form to be submitted with proposal

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of 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 Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant,

loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(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 subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized
Official

_____ Date

D. ACCESS TO RECORDS AND REPORTS
49 U.S.C. 5325; 18 CFR 18.36 (i) ; 49 CFR 633.17

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives

access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major 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 the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with 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 any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

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

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three 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 Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed

of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

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

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
I State Grantees	None	Those imposed on state pass thru to Contractor	None	None	None	None
a. Contracts below SAT (\$100,000)	None unless ¹		Yes, if non-competitive award or if funded thru ² 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
b. Contracts above \$100,000/Capital Projects	non-competitive award					
II Non State Grantees	Yes ³	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
a. Contracts below SAT (\$100,000)	Yes ³		Yes	Yes	Yes	Yes
b. Contracts above \$100,000/Capital Projects						

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 18 CFR 18.36 (i)

E. FEDERAL CHANGES

49 CFR Part 18

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of

this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

F. CLEAN AIR

42 U.S.C. 7401 et seq ; 40 CFR 15.61 49 CFR Part 18

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

G. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government.

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

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

H. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq.; 49 CFR Part 31 18 U.S.C. 1001; 49 U.S.C. 5307

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the 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 the FTA assisted project for which this contract work is being

performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

I. TERMINATION

49 U.S.C. Part 18; FTA Circular 4220.1E

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

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up

a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) the (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (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 (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 (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s 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 Government's interest. If this 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 the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate

this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

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

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

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

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

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

i. Termination for Convenience or Default (Architect and Engineering) The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

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

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the 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 the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

j. Termination for Convenience of Default (Cost-Type Contracts)

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

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

If, after serving a notice of termination for default, the (Recipient) determines that the 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 the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

J. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION
(NONPROCUREMENT)

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

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

The certification in this clause is a material representation of fact relied upon by **{insert agency name}**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **{insert agency name}**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

[See Appendix B of this RFP](#) for form to be submitted with proposal.

K. CIVIL RIGHTS REQUIREMENTS

**29 U.S.C. § 623, 42 U.S.C. § 2000; 42 U.S.C. § 6102, 42 U.S.C. § 12112; 42 U.S.C. § 12132, 49 U.S.C. § 5332;
29 CFR Part 1630, 41 CFR Parts 60 et seq.**

Civil Rights - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as

amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

L. DISADVANTAGED BUSINESS ENTERPRISE (DBE)
49 CFR Part 26

Disadvantaged Business Enterprises

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*. A separate contract goal of 15 percent has been established for this procurement.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted 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 HCRRA deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

c. Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following concurrent with and accompanying sealed bid

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

Bidders/offerors must present the information required above prior to contract award (*see* 49 CFR 26.53(3)).

d. 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 HCRRA.

e. The contractor must promptly notify HCRRA, 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 HCRRA.

Soliciting proposals by Disadvantaged Business Enterprises (DBE)

HCRRA encourages the participation of certified disadvantaged business enterprises (DBEs). Metropolitan Council Office of Diversity will assist HCRRA in reviewing the proposals for meeting the goal or establishing good faith efforts.

[See the Appendix F Document 00485 Disadvantaged Business Enterprise \(DBE\) Subcontracting Policy and Procedure](#) posted with this RFP for more information on DBE requirements and forms to be submitted along with the Proposal. **All DBE forms should be submitted in a separate envelope with the proposal.**