COBB COUNTY
PURCHASING DEPARTMENT
100 Cherokee Street, Suite 260
Marietta, Georgia 30090
phone: (770) 528-8400 • fax: (770) 528-8428

William J. Tommie Jr., CPPO
Purchasing Director

ADDENDUM No. 1

Sealed Bid #17-6196
Request for Proposal
Construction Manager At-Risk Services for
CobbLinc Fueling Station and Bus Wash Facility Improvements
Cobb Community Transit

Date: October 6, 2016

The following addendum hereby amends and/or modifies the Proposal Documents and specifications as originally issued for this project. All proposers are subject to the provisions of this Addendum.

This Addendum consists of:

- **Minutes, Questions, Clarifications from Pre-Proposal Meeting held on September 29, 2016**
- **Sign-In Sheets from Pre-Proposal Meeting**
- **Attachment – Construction Agreement**
- **Attachment – Federal Clauses**
- **Attachment – Pre-Construction Services Agreement**

Receipt of addendum MUST be acknowledged in the submitted proposal. It is the Proposer's ultimate responsibility to ensure that they have all applicable addenda prior to bid submittal.

This acknowledgment form must be signed, dated, and included with your submitted proposal

_____ _____
Company Name Date

_____ _____
Signature Please Print Name

All bids must be received before 12:00 (noon) by the Bid Opening date. Bids shall be delivered to Cobb County Purchasing Department, 122 Waddell Street, Marietta, GA 30060.

ADDENDUM No. 1

Sealed Bid #17-6196
Request for Proposals
Construction Management At-Risk Services for
CobbLinc Bus Fueling Station and Bus Wash Facility Improvements

Date: October 6, 2016

A. Pre-Proposal Meeting - September 29, 2016, 10:00 am, 463 Commerce Park Drive, Marietta, GA 30060 (CobbLinc Paratransit Facility, Room 03)

1. Proposal Submission Procedures

- Bids are due October 13, 2016 before 12:00 PM, noon at the Cobb County Purchasing Department, 122 Waddell Street, Marietta, GA 30060.
- Late bids will not be accepted.
- Bids will be opened at 2:00 PM on the same day in the Cobb County Board of Commissioner Meeting Room, 122 Waddell Street, Marietta, GA 30060.
- The bid opening may also be watched on Cobb County's government access channel TV23 or the website (www.cobbcounty.org).
- A Bid Bond is not required for this project.
- A Georgia Security & Immigration Act Affidavit (Exhibit A) must be included with the bid. It must be signed and notarized; it must include the e-verify number to be deemed as completed; if it is not included, the bid will be deemed non-responsive.
- Mark all packages with the company name and bid number. The "Sealed Bid Label" from the RFP can be printed and attached to your submittal package. If your bids are packaged separately or in multiple packages, clearly mark each.
- One original and six (6) copies of the bid must be submitted. Clearly mark the box with the original copy.
- All questions must be submitted to Cobb County Purchasing Department by October 4, 2016 at 5:00pm. Questions may be faxed to (770) 528 – 1154 or emailed to purchasing@cobbcounty.org. Please reference the bid number and bid title on all questions.
- If Addenda are issued, receipt of each addendum MUST be acknowledged in the submitted proposal. It is the Proposer's ultimate responsibility to ensure that they have all applicable addenda prior to bid submittal. The acknowledgement form issued with each addenda must be signed, dated, and included with your submitted proposal. Failure to acknowledge addenda may result in the bid being nonresponsive.
- The sign-in sheets from the pre-proposal meeting are attached.

2. Main Points Discussed at Pre-Proposal Meeting

- The background of Cobb Transit was provided in accordance with the RFP.
- An Overview of the project was provided in accordance with the RFP.
    - Project is supported by FTA funding (80%).
    - All services must follow FTA guidelines.
    - The project resides within the city limits of Marietta
    - For the underground diesel storage tank, the County welcome recommendations from the contractor as to remove or abandon in place.
    - Contractors were encouraged to review the proposed oil-water system at the south corner of the bus storage area to catch runoff and provide alternate recommendations.
- An overview of the CM-At Risk approach was provided in accordance to RFP
    - Kimley-Horn Associate is the consultant providing design services for the project. Kimley-Horn has completed the design through the 60% phase.
- The scope of the Pre-Construction Services was provided in accordance with the RFP
    - The selected contractor will take part in an initial team review of the project and plans with the owner and Kimley-Horn.
    - A sample Pre-Construction Agreement will be provided with Addendum 1.
- The scope of the Construction Services was provided in accordance with the RFP
    - A sample Construction Agreement will be provided with Addendum 1.
- The response to the RFP shall not include the Price Proposal Form. After all proposals are reviewed and scored by a selection committee, the highest ranked contractors will be invited for an interview. The Price Proposal Form will be requested and included in the final evaluation score of the interview.
- FTA funding requires an environmental document (NEPA document). The document required is a Categorical Exclusion. There were no impacts identified. The document is expected to be finalized in the near future.
- The DBE goal for this project is 5%. All in attendance were encouraged not to limit themselves to the minimum percentage. Prior to approval of the Construction Agreement, the selected contractor will be required to submit documents to provide proof of DBE Certification for each DBE subcontractor.
    - All in attendance were encouraged to visit the FTA's website for clarity and a breakdown of the FTA Required Clauses
    - More detailed FTA clauses will be provided with Addendum 1.
- An overview of the selection criteria was provided in accordance with the RFP.
- All attendees were encouraged to review the section "Delivery Goals" of the RFP.
- All attendees were encouraged to take part in a site visit.
- All attendees were informed that verbal remarks and explanations at the pre-proposal meeting conference shall not qualify the terms of the solicitation. A written addendum must be made available for all.

3. Questions from Pre-Proposal Meeting

- Question: Is Davis Bacon a requirement for this Project
  Answer: Yes, Davis Bacon is a requirement during the construction phase. The required FTA clauses provide more details on this requirement.

- Question: Is Davis Bacon a requirement for the Pre-Construction phase?
  Answer: No, Davis Bacon is not required in the Pre-Construction Phase.

- Question: What is the budget for the project?
  Answer: The estimated budget for the project is $4-5 million dollars. Please refer to page 6 of the RFP.

Cobb County Department of Transportation – Transit Division
Sign in Sheet for Pre-Proposal Meeting for Construction Management At-Risk Services for CobbLinc Bus Fueling Station and Bus Wash Facility Improvements
September 29, 2016

NAME	FIRM	PHONE	EMAIL ADDRESS
Rustavius Ford	Cobb County DOT - Transit	770-420-6659	rustavius.ford@cobbcounty.org
JEFFERY CASEY	L-SQUARED	678-634-0444	jkcassociates@att.net
Drew Lewis	L-Squared	423-763-8855	drewelsquared.build@aol.com
Jim Young	L-Squared	239-571-9515	jyoungnaples@[illegible]
WILL WARD	ALBION SCACCIA ENTERPRISES	(678) 325-5900	WWARD@ALBIONSCACCIA.COM
Charlie Sewell	Tulsa Gas Tech	918 691 2641	CSewell@tulsagastech.com
Charles Moon	Southern Company Gas	404 859 7085	CMoon@SouthernCo.com
TODD CHANDLER	ATLANTA GAS LIGHT Co.	404-357-8239	DCHANDL@SOUTHERNCO.COM
Jim Leonard	J.R. Leonard Construction Co.	704-622-0697	jim@jrleonardconstruction.com
Paul Pattison	Kimley Horn	704-319-7690	paul.pattison@kimley-horn.com
Stephanie Brice	Cobb County Purchasing	(770) 528-8439	purchasing@cobbcounty.org
Allen Kronenberger	Property Mgmt	7) 529 2187	
Sarah Logue	Property Management	7) 528 2656	~~slogue~~ Sarah.Logue@cobbcounty.org
April Tolbert	Multiplex LLC	678-317-2040	admin@multiplexllc.com
Jessica Fulton	MBP	404-353-5201	jfulton@mbpce.com
Howard Harris	Clean Energy	202-870-6387	hharris@cleanenergyfuels.com
Vicki Covington	DOT/ Transit	770-528-1614	vcovington@cobbcounty.org

Cobb County Department of Transportation – Transit Division
Sign in Sheet for Pre-Proposal Meeting for Construction Management At-Risk Services for CobbLinc Bus Fueling Station and Bus Wash Facility Improvements
September 29, 2016

NAME	FIRM	PHONE	EMAIL ADDRESS
Rustavius Ford	Cobb County DOT - Transit	770-420-6659	rustavius.ford@cobbcounty.org
Wil Smolenski	Evergreen Construction	678-244-6520	bids@evergreencorp.com
Jamal Mainor	DOT - Transit	770-528-3690	jamal.mainor@cobbcounty.org
Matthew Bristol	DOT - Transit	7/420-6620	matthew.bristol@cobbcounty.org
Mamie A. Jones	DOT - Transit Division	770-528-1610	mamie.jones@cobbcounty.org.
Anthony Flynn	TruStar Energy	678-215-2762	aflynn@trustarenergy.com
STEWART CARLISLE	COOPER & COMPANY	770 888-2650	BIDS@COOPERGC.COM

CONTRACT FOR CONSTRUCTION
(At-Risk Construction Management
Guaranteed Maximum Price Form)

CHAPTER 1
BUILDER'S AGREEMENT

This Contract For Construction is entered into between:

"OWNER": **COBB COUNTY, GEORGIA**
100 Cherokee Street, Suite 350
Marietta, GA 30090

And

"CONSTRUCTION MANAGER": *[Insert legal name, legal address and business status of Construction Manager]*

This Contract For Construction is executed under seal, and shall be effective on the date signed by the last party to do so.

ADDRESSES AND AUTHORIZED REPRESENTATIVES

The authorized representatives and addresses of the Owner, the Construction Manager and the Professional are:

OWNER:

Representative: Rustavius Ford
Address: (Insert DOT Address)
City, State, Zip: (Insert)
Office: (Insert) Mobile: (Insert) Fax: (Insert)
E-mail: (Insert)

CONSTRUCTION MANAGER:

Representative:
Address:
City, State, Zip:
Office: Mobile: Fax:
E-mail:
License #: FEIN / SSN #:

PROFESSIONAL (Architect):

Representative:
Address:
City, State, Zip:
Office: Mobile: Fax:
E-mail:

Whenever this Contract For Construction refers to "Professional" in the singular, such reference shall mean the Owner's designated representative.

SAMPLE

OWNER'S PROJECT IDENTIFICATION INFORMATION: (Insert)

Project Title:
Project Location
Address:
City, State, Zip:
Project ID Number:
General Project Description:

RECITALS

A. The Owner intends to construct the Project and is engaging the Construction Manager to furnish or cause to be furnished (i) all labor, equipment, goods and materials now or hereafter required by this Contract For Construction to successfully plan, construct and complete the Work; (ii) all construction management and supervisory services required by this Contract For Construction to successfully plan, construct and complete the Project.

B. The Owner and Construction Manager each acknowledges that it will act in good faith in carrying out its duties and obligations.

C. The Owner's engagement of the Construction Manager is based upon the Construction Manager's representations to the Owner that it (i) is experienced in providing construction management services for projects of similar size and complexity to the Project; (ii) is authorized and licensed to perform the type of labor and services for which it is being engaged in the State and locality in which the Project is located; (iii) is qualified, willing and able to perform construction management services for the Project; and (iv) has the expertise and ability to provide construction management services which will meet the Owner's objectives and requirements and which will comply with the requirements of all governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.

D. The Owner and Construction Manager each acknowledges that it has reviewed and familiarized itself with this Contract For Construction, including the documents enumerated in Article 1, and agrees to be bound by the terms and conditions contained therein.

E. The Owner intends to engage, or has engaged, one or more Professionals to perform architectural and/or engineering services for the Project, including preparation of Site-specific Construction Documents.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

SAMPLE

ARTICLE 1
CONTRACT DOCUMENTS

1.1 The "Contract For Construction" is comprised of the following documents:

This "Chapter 1 – Builder's Agreement (At-Risk Construction Management Guaranteed Maximum Price Form)" (hereafter "Chapter 1"), including the foregoing recitals A. through E., and all attached documents, appendices and addenda and exhibits;

"Chapter 2 – Construction Manager's Required Services (At-Risk Construction Management Guaranteed Maximum Price Form)" (hereafter "Chapter 2") and all attached documents, appendices and addenda;

"Chapter 3 – General Terms and Conditions of Builder's Contracts" (hereafter "Chapter 3") and all attached documents, appendices and addenda;

Special Conditions, if any; (See attached)

The Request for Proposal issued by Owner, dated ____, 2016;

Proposal(s) submitted by the Construction Manager and accepted by the Owner, dated ____, 2016;

Proposed modifications, if any, dated _____;

The Construction Documents, now existing or issued hereafter;

Any amendments or addenda executed by the Owner and the Construction Manager hereafter;

Approved Change Order(s) or field orders; and

Additional documents listed hereafter, if any:

[Identify with specificity all additional documents, or check that there are none.]

☐ None

☐ Additional Documents: _____

_____

1.2 Documents not included or expressly contemplated in this Article 1 do not, and shall not, form part of this Contract For Construction.

1.3 The Owner shall: *[Select and complete as appropriate]*

☐ furnish the Construction Manager with __(Insert)_____ (____) copies and one reproducible copy of the Construction Documents.

☐ furnish the construction manager electronically formatted construction documents.

SAMPLE

ARTICLE 2
NOTICES

2.1 Unless otherwise provided, all notices, requests, demands, writings, or correspondence, as required by this Agreement, shall be in writing and shall be deemed received, and shall be effective, when (1) personally delivered, or (2) on the third calendar day after the postmark date when mailed by certified mail, postage prepaid, return receipt requested, or (3) upon actual delivery when sent *via* national overnight commercial carrier to the addresses set forth above or at a substitute address previously furnished to the other parties by written notice in accordance herewith.

ARTICLE 3
SCOPE OF CONSTRUCTION MANAGER'S SERVICES

3.1 **General Scope Of Services.** Upon execution of this Contract For Construction, the Construction Manager shall commence performance of Pre-Construction Services and upon execution of Appendix E and issuance of a Notice To Proceed by the Owner, the Construction Manager shall commence provision of Construction Services. The parties acknowledge that (i) the Owner may determine not to proceed with Construction Services, (ii) performance of Pre-Construction Services may overlap performance of Construction Services, (iii) categories of Work performed during Construction Services may be performed in separate phases, and (iv) payment of the Construction Manager for Pre-Construction Services shall be separate from payment, if any, for Construction Services.

3.1.1 **Scope Of Pre-Construction Services.** The Construction Manager shall furnish and pay for out of the Pre-Construction Services Fee, all Pre-Construction Services required by:

(i) Chapter 1;
(ii) Chapter 2, Articles 1, 2 and 4; and
(iii) Chapter 3.

3.1.2 **Scope Of Construction Services.** Upon execution of Appendix E, the Construction Manager shall furnish and pay for out of the Construction Price all Construction Services required by:

(i) Chapter 1;
(ii) Chapter 2, Articles 1, 3 and 4; and
(iii) Chapter 3.

3.2 **Self-Performance By The Construction Manager.** *[Select as appropriate]:*

☐ The Construction Manager shall not be allowed to self-perform any category of the Work without prior written approval of the Owner.

☐ The Construction Manager shall be allowed to bid and, if it is the lowest acceptable bidder, perform the following categories of Work:

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(i) _____

(ii) _____

(iii) _____

(iv) _____

☐ The Construction Manager shall be allowed, with the prior written approval of the Owner, to perform categories of Work for which there is no acceptable bidder.

ARTICLE 4
COMPENSATION OF CONSTRUCTION MANAGER

4.1 **Compensation For Pre-Construction Services.** The Owner shall pay, and the Construction Manager shall accept, as full and complete payment for the Construction Manager's timely and complete performance of Pre-Construction Services, the Pre-Construction Services Fee.

4.1.1 **Pre-Construction Services Fee – Amount.** The Pre-Construction Services Fee shall be: *[Select one of the following]*

☐ LUMP SUM FIXED FEE.

The Owner shall pay, and the Construction Manager shall accept as complete payment for performance of Pre-Construction Services, the fixed fee of _____ ($_____) Dollars. If the scope of the Pre-Construction Services is materially increased through no fault of the Construction Manager, the Pre-Construction Services Fee shall be equitably adjusted.

☐ TIME AND MATERIAL NOT TO EXCEED

The Owner shall pay, and the Construction Manager shall accept as complete payment for performance of Pre-Construction Services, a fee based upon services rendered and materials provided; however, the Pre-Construction Services Fee shall not exceed _____ ($_____) Dollars.

☐ HANDLED IN ACCOURDANCE TO A SEPARATE PRE-CONSTRUCTION AGREEMENT

4.1.2 **Pre-Construction Services Fee – Payment.** *[Select one of the following]*

☐ The lump sum fixed Pre-Construction Services Fee shall be paid proportionately to the Pre-Construction Services rendered.

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☐ The lump sum fixed Pre-Construction Services Fee shall be paid pursuant to the time schedule in Appendix A.

☐ The time and material not to exceed Pre-Construction Services Fee shall be paid in accordance with the labor and material rates set forth in Appendix A.

☐ Handled in accordance to a separate Pre-Construction Agreement

☐ Other: _____

_____

4.2 **Guaranteed Maximum Price.** Prior to performance of Construction Services and in accordance with the requirements set forth in Chapter 2, Article 2, the Construction Manager shall prepare and deliver to the Owner, with a copy to the designated Professional, a Guaranteed Maximum Price ("GMP") proposal *[Select one (1) and complete as appropriate]*

☐ upon completion of ____ percent (____%) of the Construction Documents.

☐ _____days after completion of the Construction Documents.

☐ no later than _____, 20__.

☐ [*Other*] _____

If the GMP proposal is finalized in accordance with Chapter 2, Paragraph 2.4 and Appendix E hereto is executed by the parties, the Owner shall issue a written notice to the Construction Manager ("Notice To Proceed") establishing the date construction is to commence (the "Commencement Date").

4.3 **Compensation For Construction Services.** The Owner shall pay, and the Construction Manager shall accept, as full and complete payment for Construction Services, the Construction Price ("the Construction Price") which shall not exceed the Guaranteed Maximum Price ("GMP").

4.3.1 **Construction Price – Amount.** The Construction Price shall include, and is limited to, the total of:

(i) the aggregate net cost of the Construction Manager's General Conditions ("General Conditions Cost"), as defined in Chapter 2, Subparagraph 2.4.2, not to exceed the General Conditions Guaranteed Maximum Cost set forth in Appendix E;

(ii) the aggregate net cost directly paid, or to be paid, by the Construction Manager to subcontractors pursuant to written subcontracts to perform the Work ("Subcontracts Cost"); and

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(iii) the compensation for the Construction Manager's provision of management services pursuant to Chapter 2, Articles 1, 3 and 4 ("Management Fee"), as defined in Chapter 2, Subparagraph 2.4.3, which is: *[Select one (1) and complete as appropriate]*

☐ LUMP SUM FIXED FEE

The Owner shall pay, and the Construction Manager shall accept as its Management Fee, the fixed fee set forth in Appendix E.

☐ FIXED PERCENTAGE OF AGGREGATE SUBCONTRACTS COST

The Owner shall pay, and the Construction Manager shall accept as its Management Fee, _____ (%) percent of the sum total of the Subcontracts Cost.

4.3.2 **Construction Price – Payment And Retainage.** There will be no retainage for this project by the Owner as a requirement of FTA. The Owner recommends the Contractor follow the same guidelines for subcontractors.

4.4 **Compensation For Change Orders.** Amounts owed by the Owner to the Construction Manager shall be adjusted by duly authorized Change Order.

4.4.1 **Change Order – Material Increase In Scope.** For change orders materially increasing or decreasing the Construction Manager's scope of services, the Construction Manager's Pre-Construction Services Fee and Management Fee shall be equitably adjusted.

4.4.2 **Change Order – Increase In Subcontracts Cost**. If the Subcontracts Cost is increased by change order, the Owner shall pay the Construction Manager the aggregate net cost directly paid by the Construction Manager to subcontractors or suppliers for performance of the Work. If the Management Fee is being paid by the Owner to the Construction Manager on a "Fixed Percentage Of Aggregate Subcontracts" basis, the Management Fee shall be increased according to the percentage set forth in Chapter 1, Subparagraph 4.3.1 above; if the Construction Manager is being paid on a lump sum fixed fee basis, the Construction Manager shall receive no additional Management Fee.

4.4.3 **Change Order – Decrease In Subcontracts Cost.** If the Subcontracts Cost is decreased by change order, payment due from the Owner to the Construction Manager shall be reduced by the amount the Construction Manager is no longer obligated to pay subcontractors or suppliers for performance of the Work. If the Management Fee is being paid by the Owner to the Construction Manager on a "Fixed Percentage Of The Aggregate Subcontracts" basis, the Management Fee shall be decreased according to the percentage set forth in Chapter 1, Subparagraph 4.3.1 above; if the Construction Manager is being paid on a lump sum fixed fee basis, the Construction Manager's Management Fee shall not be reduced.

SAMPLE

4.4.4 **Change Order – Disputed.**

.1 If the Construction Manager disputes a change order decision pursuant Chapter 3, Paragraph 9.7, it must give the Owner its written notice of dispute, including the reasons therefore, within seven (7) calendar days of the disputed decision.

.2 For change orders directed by a Professional to be performed by the Construction Manager on a time-and-materials basis pursuant to Chapter 3, Subparagraph 9.5.1, the Owner shall pay the Construction Manager the actual incurred cost and expenses paid to those subcontractors and suppliers performing the Work, plus a markup of _____ percent (___%) for the change order Work performed by its own forces. If the Management Fee is being paid by the Owner to the Construction Manager on a "Fixed Percentage Of Aggregate Subcontracts" basis, the Management Fee shall be increased according to the percentage set forth in Chapter 1, Subparagraph 4.3.1 above; if the Construction Manager is being paid on a lump sum fixed fee basis, the Construction Manager shall receive no additional Management Fee.

4.5 **Liquidated Damages.** If liquidated damages are assessed pursuant to Chapter 3, Article 17, such damages shall be calculated at the rate of one thousand ($1000.00) Dollars per calendar day for failure to meet the required date of Substantial Completion, or fifteen (15%) per cent thereof for failure to meet the required date of Final Completion.

ARTICLE 5
SPECIFIC INSURANCE REQUIREMENTS

[Select one as appropriate]:

☐ 5.1 **Owner-Provided Insurance Program.** The Owner shall provide insurance under an Owner-Provided Insurance Program and the Construction Manager is not required to provide insurance. The Construction Manager will communicate and cooperate with the Owner and the Owner's insurance broker, as required.

X☐ 5.2 **Construction Manager-Provided Insurance Program.** The Construction Manager shall provide insurance and the Owner is not required to provide insurance. The Owner will communicate and cooperate with the Construction Manager and the Construction Manager's insurance broker, as required.

5.1.1 The Construction Manager shall purchase and maintain at all times that it is performing services under this Contract For Construction, at its expense, from a company or companies authorized to do business in the state of Georgia, insurance policies containing the types of coverages and minimum limits of liability, and meeting the requirements, as set forth in Appendix G attached to and made a part of this Contract, protecting from claims which may arise out of or result from the performance or non-performance of services under this Contract For Construction by the Construction Manager or by anyone directly or indirectly employed by it,

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or by anyone for whose acts it may be liable, and including the following:

(i) Workers' Compensation, Disability Benefit, or similar employee benefit act coverage, and employer's liability coverage.

[Select one as appropriate]:

X☐ The cost of such insurance is included in the Construction Manager's Management Fee as part of the Construction Manager's profit and overhead.

☐ Other_____

(ii) Commercial General Liability insurance.

[Select one as appropriate]

X☐ The cost of such insurance is included in the Construction Manager's Management Fee as part of the Construction Manager's profit and overhead.

☐ Other_____

(iii) Commercial Comprehensive Automobile Liability.

[Select one as appropriate]

X☐ The cost of such insurance is included in the Construction Manager's Management Fee.

☐ Other_____

(iv) Builder's Risk Insurance.

[Select one as appropriate]

X☐ The cost of such insurance is included in the Construction Manager's General Conditions Cost.

☐ Other_____

(v) Other Insurance. See Appendix G

[Describe type, limits, extent of coverage, insureds and other pertinent information for additional insurance requirements, or state that there are none]

ARTICLE 6
PERSONNEL, SUBCONTRACTOR, SUPPLIER

SAMPLE

AND CONSULTANT CHARTS

6.1 The Construction Manager shall prepare and attach as Appendix B to this Chapter the Construction Manager's Personnel Chart which lists by name, job category, responsibility and hourly rate, the Construction Manager's primary employees who will work on the Project. The Construction Manager shall promptly inform the Owner in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right to reject any proposed replacement.

6.2 At the conclusion of Bidding and Negotiation Services contained in Chapter 2, Article 3, the Construction Manager (i) shall prepare and attach as Appendix C to this Chapter the Construction Manager's Subcontractors and Suppliers Chart which lists by name and general Project responsibility each subcontractor and supplier who will be utilized by the Construction Manager to provide goods or services with respect to the Project; (ii) shall not enter into any agreement with any subcontractor or supplier to which the Owner raises a reasonable, timely objection; and (iii) shall promptly inform the Owner in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right to reject any proposed replacement.

6.3 The Owner shall prepare and attach as Appendix D to this Chapter the Owner's Consultants Chart which lists by name and general duties each consultant retained by the Owner to provide services with respect to the Project. The Owner reserves the right to engage any other consultants which it may deem necessary or desirable.

ARTICLE 7
CONSTRUCTION SCHEDULE, SPECIFIC BOND REQUIREMENTS, PAYMENT SCHEDULE AND QUALITY CONTROL AND TESTING

7.1 **Time For Performance.**

7.1.1 **Delivery Of Pre-Construction Services.** The Construction Manager shall commence delivery of its Pre-Construction Services on _____and shall deliver such services in a prompt and expeditious manner so as not to delay the Owner or the Professional(s).

7.1.2 **Commencement Of Construction.** The Construction Manager shall commence construction on the date set forth in a written Notice to Proceed issued by the Owner. (the "Commencement Date").

7.1.3 **Substantial Completion.** The Construction Manager shall accomplish Substantial Completion of the Work on or before a date to be agreed upon and set forth in Appendix E to this Chapter (the required "Date of Substantial Completion").

7.1.4 **Final Completion.** The Construction Manager shall accomplish Final Completion of the Work on or before thirty days following Substantial Completion

SAMPLE

of the Work (the "required date of Final Completion").

7.2 **Construction Schedule.** The Construction Manager shall *[Select one (1)]*

☐ not less than _____ calendar days after execution of Appendix E or

☐ no later than *[Insert date certain]*_____

prepare and submit a final Construction Schedule to the Owner and the Professional for their review and acceptance pursuant to Chapter 2, Subparagraph 2.3.1 and Chapter 3, Paragraph 16.1 of this Contract For Construction.

7.3 **Schedule Of Values.** Within _____ calendar days after execution of Appendix E to this Chapter, the Construction Manager shall prepare and present to the Owner and the designated Professional Appendix F to this Chapter, the Construction Manager's Compensation Schedule which includes, as applicable:

☐ A. Schedule of values for payment of the Subcontracts Cost and General Conditions Cost;

☐ B. Time Schedule for payment of the Management Fee;

☐ C. Unit prices and estimated number of units for compensation for services rendered and goods supplied on a unit-price basis;

☐ D. Rates for compensation for services rendered on a time-and-material basis;

☐ E. Compensation for goods furnished on a time-and-material basis; and

☐ F. Allowances.

7.4 **Bond Requirements.** *[Check one (1) box in each paragraph]*

7.4.1 The Construction Manager shall provide payment and performance bonds, each having a penal sum equal to the GMP, on the forms attached hereto as **Appendices H-1** and **H-2**, and with a surety licensed to do business in the State of Georgia and listed on the Treasury Department's most current list (Circular 570, as amended) . The amount of the premiums for such bonds shall be included in the GMP. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

7.4.2 The Construction Manager (X☐ shall) (☐shall not) be required to provide a maintenance bond. If so, the penal sum of the bond shall be

SAMPLE

_____ ($____,000) Dollars.

7.4.3 Payment for bonds shall be as follows: *[Select one (1) as appropriate]*

X☐ The cost of required bonds shall be included in the General Conditions Guaranteed Maximum Cost and paid by the Owner to the Construction Manager as a part of the General Conditions Cost.

☐ Other_____

7.5 **Quality Control And Testing.** *[Select one as appropriate]:*

☐ The Owner shall select the quality control and testing agencies.

☐ The Construction Manager shall select the quality control and testing agencies.

[Select as appropriate]:

X☐ The cost of specified measures and tests required by the Construction Documents shall be included in the General Conditions Guaranteed Maximum Price and shall be paid by the Owner to the Construction Manager as a part of General Conditions Cost.

☐ Other _____

ARTICLE 8
NONDISCRIMINATION

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 all other provisions of Federal law, the Contractor agrees that, during performance of this Agreement, Contractor, for itself, its assignees and successors in interest, will not discriminate against any employee or applicant for employment, any subcontractor, or any supplier because of race, color, creed, national origin, gender, age or disability. In addition, Contractor agrees to comply with all applicable implementing regulations and shall include the provisions of this Section 7(Z) in every subcontract for services contemplated under this Agreement.

ARTICLE 9
CONFLICT OF INTEREST

A. Builders shall execute and deliver to Owner an affidavit in the form as set forth in Appendix I attached to and by reference made a part of this Contract whereby Builder certifies that to the best of his knowledge no circumstances exist which will cause a conflict of interest in performing the services required by this Agreement, that no employee of Owner, nor any member thereof, nor any public agency or official affected by this Contract, has any pecuniary interest in the

SAMPLE

business of Builder or his subcontractor(s) and that no person associated with Builder or his subcontractor(s) has any interest that would conflict in any manner or degree with the performance of the Contract.

Should Builder become aware of any circumstances which may cause a conflict of interest during the term of this Contract, Builder shall immediately notify Owner. If Owner determines that a conflict of interest exists, Owner may require that Builder take action to remedy the conflict of interest or terminate the Contract without liability. Owner shall have the right to recover any fees paid for services rendered by Builder which were performed while a conflict of interest existed if Builder had knowledge of the conflict of interest and did not notify Owner within one week of becoming aware of the existence of the conflict of interest.

B. Builder warrants he and his subcontractor(s) have not employed or retained any company or person other than a bona fide employee working solely for Builder or his subcontractor(s) to solicit or secure this Contract and that he and his subcontractor(s) have not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for Builder or his subcontractor(s) any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award of this Contract. For any breach or violation of this provision, Owner shall have the right to terminate the Contract without liability and, at its discretion, to deduct from the price, or otherwise recover, the full amount of such fee, commission, percentage, gift, payment, or consideration.

C. Builder shall include the terms and conditions of Paragraphs A and B of this Article in all subcontractor agreements for work to be performed under this Contract.

ARTICLE X
GEORGIA SECURITY & IMMIGRATION COMPLIANCE ACT

A. Immigration Compliance. The Owner and Builder ("Contractor") agree that compliance with the requirements of O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 of the Rules of the Georgia Department of Labor are conditions of this Contract for the physical performance of services.

Physical Performance of Services – includes any performance of labor or services for a public employer using a bidding process or by contract wherein the labor or services exceed $2,499.99.

B. The Contractor represents that it employs:

_____ 500 or more employees;
_____ 100 or more employees; or
_____ fewer than 100 employees

(Contractor must initial appropriate category).

C. The Contractor further agrees and represents that its compliance with the requirements of O.C.G.A. §13-10-91 and DOL Rule 300-10-1-.02 is attested to on the executed Contractor Affidavit and Contract attached hereto as **Appendix J-1.**

D. The Contractor further agrees and represents that:

SAMPLE

i. The Contractor (and any subcontractors, regardless of tier) shall fully comply with the requirements for completing and submitting the "Immigration Compliance Certification" attached hereto as **Exhibit J-3** and that such certification shall be received by the Owner prior to the commencement of any work under the contract or subcontract;

ii. The Contractor (or any subcontractor, regardless of tier) shall notify the Owner within five (5) business days of entering into a contract or other agreement for hire with any subcontractor(s), regardless of tier;

iii. The Contractor shall be responsible for obtaining and providing to the Owner the "Subcontractor Affidavit & Agreement" and "Immigration Compliance Certification" attached to as **Exhibit J-2** and **Exhibit J-3** from each subcontractor, regardless of tier, employed or retained for work under the contract prior to the commencement of any work under the contract or any subcontract;

iv. Owner reserves the right to dismiss, or require the dismissal of, any contractor or subcontractor for failing to provide the required affidavit or certification and/or for failure to comply with the statutory requirements of O.C.G.A. § 13-10-91 and/or for providing false or misleading information upon the required affidavit(s) or certification(s);

v. Any contractor and/or subcontractor retaining any other subcontractor to perform services under the contract shall provide legal notice to any subcontractor of the requirements of Owner for immigration compliance and further provide notice that Owner reserves the right to dismiss, or require the dismissal of, any contractor or subcontractor for failing to provide the required affidavit or certification and/or for failure to comply with the statutory requirements of O.C.G.A. § 13-10-91 and/or for providing false or misleading information upon the required affidavit(s) or certification(s);

vi. Failure to comply with any of the requirements and procedures of the Owner (i.e., failure to timely supply required affidavits or compliance certification documents; failure to utilize federal work authorization procedures; failure to permit or facilitate audits or reviews of records by county or state officials upon request; and/or failure to continue to meet any of the statutory or county obligations during the life of the contract) shall constitute a material breach of the Contract and shall entitle the Owner to dismiss any general contractor or to require the dismissal of any subcontractor or sub/subcontractor (irrespective of tier) for failing to fully comply with these requirements;

vii. Upon notice of a material breach of these provisions, the Contractor (or subcontractor, regardless of tier) shall be entitled to cure the breach within ten (10) days and provide evidence of such cure. Should the breach not be cured, the Owner shall be entitled to all available remedies, including termination of the Contract, the requirement that a subcontractor be dismissed from performing work under the Contract, and any and all damages permissible by law.

E. Immigration Compliance Certification: Prior to commencing work under any contract for the physical performance of services, the Contractor shall complete the "IMMIGRATION COMPLIANCE CERTIFICATION" form attached hereto and submit the same to the Owner.

Prior to allowing any other subcontractor to perform work under the contract, the Contractor shall obtain a completed "IMMIGRATION COMPLIANCE CERTIFICATION" from each subcontractor (regardless of tier) and submit the same to the Owner.

SAMPLE

ARTICLE XI
AMENDMENTS TO CHAPTER 3

8.1 The following additions to, deletions from and/or modifications to the specifically referenced articles and paragraphs of Chapter 3 shall take precedence over the provisions of those referenced articles and paragraphs as follows:

[*State the reference to each such article and paragraph and how the language is to be added to, deleted from or modified, or state "None"*]

OWNER:
COBB COUNTY, GEORGIA

By:_____
Timothy D. Lee, Chairman
Board of Commissioners

Attest: _____
County Clerk

Date:_____

Approved as to Form:

_____
County Attorney's Office

CONSTRUCTION MANAGER:
_____

By:_____

Print Name:_____

Title:_____

Attest:_____

Title:_____

Date:_____

[Insert Corporate Seal If Required]

SAMPLE

APPENDIX A
CONSTRUCTION MANAGER'S COMPENSATION SCHEDULE
FOR PRE-CONSTRUCTION SERVICES

[*Insert information as appropriate based on payment method selected*]

☐ Time schedule for payment of the Pre-Construction Services Fee on a lump sum fixed fee basis

OR

☐ Compensation for Pre-Construction Services rendered on a time-and-material, not-to-exceed basis:

A. Labor rates

B. Compensation rates for goods and materials

C. Allowance / reimbursement limits, inclusions and exclusions

SAMPLE

APPENDIX B
CONSTRUCTION MANAGER'S PERSONNEL CHART

[*Insert information as required*]

For each of the Construction Manager's primary employees working on the Project, list:

A. Name

B. Job category

C. Responsibility

SAMPLE

APPENDIX C
CONSTRUCTION MANAGER'S SUBCONTRACTORS AND SUPPLIERS CHART

[*Insert information as required]*

SAMPLE

APPENDIX D
OWNER'S CONSULTANTS CHART

[*Insert information as required]*

Lists by name and general duties each consultant retained by the Owner to provide services with respect to the Project.

SAMPLE

APPENDIX E
AUTHORIZATION FOR CONSTRUCTION

Pursuant to Chapter 1, Article 3 and Chapter 2, Article 2 of the Contract For Construction between_____ ("Owner") and _____ ("Construction Manager"), for _____, the Owner and the Construction Manager hereby execute this Appendix E and further agree as set forth below.
(the Project)

1. The Construction Manager's Guaranteed Maximum Price ("GMP") proposal dated _____, attached hereto and incorporated herein, is accepted by the Owner.

2. The General Conditions Guaranteed Maximum Cost is

   _____($_____).

3. The Subcontracts Cost is

   _____($_____).

3. If applicable, the Lump Sum Fixed Management Fee Is

   _____($_____).

4. The Guaranteed Maximum Price is

   _____ ($_____).

5. The Date of Substantial Completion shall be _____.

This _____ day of _____, 20___.

_____	_____
[Insert legal name of Owner]	*[Insert legal name of Construction Manager]*
("Owner")	("Construction Manager")
By:_____	By:_____
Its: _____	Its:_____
Date:_____	Date:_____
	[Insert Corporate Seal If Required]

SAMPLE

APPENDIX F
CONSTRUCTION MANAGER'S COMPENSATION SCHEDULE

[*Insert information as required]*

A. Schedule of values for payment of the Subcontracts Cost and General Conditions Cost

B. Time Schedule for payment of the Management Fee

C. Unit prices and estimated number of units for compensation for services rendered and goods supplied on a unit-price basis

D. Rates for compensation for services rendered on a time-and-material basis

E. Compensation for goods furnished on a time-and-material basis

F. Allowances

SAMPLE

APPENDIX G
REQUIRED INSURANCE

(1) Requirements:

The Builder shall have and maintain in full force and effect for the duration of this Contract, insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work by the Builder, its agents, representatives, employees or subcontractors. All policies shall be subject to approval by the County Attorney and/or Risk Manager to form and content. These requirements are subject to amendment or waiver if so approved in writing by the County Manager.

(2) Minimum Limits of Insurance:

Builder shall maintain the following insurance policies with coverage and limits no less than:

(a) *Commercial General Liability*: $1,000,000 (one million dollars) combined single limit per occurrence and $2,000,000 (two million dollars) aggregate comprehensive/extended/enhanced Commercial General Liability policy with coverage including bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom, damage for premises/operations, products/completed operations, independent consultants and contractual liability (specifically covering the indemnity), broad-from property damage, and underground, explosion and collapse hazard. This coverage may be achieved by using an excess or umbrella policy. The policy or policies must be on "an occurrence" basis ("claims made" coverage is not acceptable).

(b) *Commercial Automobile Liability* (owned, non-owned, hired): $1,000,000 (one million dollars) combined single limit per occurrence for comprehensive Commercial Automobile Liability coverage including bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.

(c) *Professional Liability*: $1,000,000 (one million dollars) limit for claims arising out of professional services and caused by the Builder's errors, omissions, or negligent acts. **(required if any professional services will be provided)**

(d) *Workers' Compensation and Employers Liability*: Workers' Compensation limits as required by the State of Georgia and Employers' Liability limits of $1,000,000 (one million dollars) per occurrence or disease. (If Builder is a sole proprietor, who is otherwise not entitled to coverage under Georgia's Workers' Compensation Act, Builder must secure Workers' Compensation coverage approved by both the State Board of Workers' Compensation

SAMPLE

and the Commissioner of Insurance. The amount of such coverage shall be the same as what is otherwise required of employers entitled to coverage under the Georgia Workers' Compensation Act. Further, the Builder shall provide a certificate of insurance indicating that such coverage has been secured and that no individual has been excluded from coverage.)

(e) *Builder's Risk Insurance*: Builder shall provide a Builder's Risk Insurance Policy to be made payable to the County and Builder, as their interests may appear. The policy amount shall be equal to 100% of the Maximum Contract Price, written on a Builder's Risk "All Risk," or its equivalent. The policy shall provide, or be endorsed to provide, as follows: "The following may occur without diminishing, changing, altering or otherwise affecting the coverage and protection afforded the insured under this policy: i) Equipment may be delivered to the insured premises and installed in place ready for use; and ii) Partial or complete occupancy by County; and iii) Performance of Work in connection with construction operations insured by the County, by agents or lessees, or other Builders of the County or Using Agency." The insurance coverage shall include extended coverage, and providing coverage for transit, with sub-limits sufficient to insure the full replacement value of the property or equipment removed from its site and while located away from its site until the date of final acceptance of the Work.

(f) *Commercial Umbrella Liability Coverage*: $_____ (_____) per occurrence shall be provided and will apply over all liability policies, without exception, including but not limited to Commercial General Liability, Commercial Automobile Liability, Employers' Liability, and Professional Liability.

(3) Deductibles and Self-Insured Retentions:

Any deductibles or self-insured retentions must be declared to and approved by the County in writing so that the County may ensure the financial solvency of the Builder; self-insured retentions should be included on the certificate of insurance.

(4) Other Insurance Provisions:

Each policy shall contain, or be endorsed to contain, the following provisions respectively:

(a) General Liability, Automobile Liability and Umbrella Liability Coverage.

(i) *Additional Insured Requirement.* The County and the County's elected and appointed officials, officers, boards, commissions, employees, representatives, consultants, servants, agents and volunteers (individually "Insured Party" and collectively "Insured Parties") shall be named as additional insureds as respects: liability

SAMPLE

arising out of activities performed by or on behalf of the Builder; products and completed operations of the Builder; premises owned, leased, or used by the Builder; automobiles owned, leased, hired, or borrowed by the Builder. The coverage shall contain no special limitations on the scope of protection afforded to the Insured Parties. Nothing contained in this section shall be construed to require the Builder to provide liability insurance coverage to any Insured Party for claims asserted against such Insured Party for its sole negligence.

(ii) *Primary Insurance Requirement.* The Builder's insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to the Insured Parties. Any insurance or self-insurance maintained by the Insured Parties shall be in excess of the Builder's insurance and shall not contribute with it.

(iii) *Reporting Requirement.* Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Insured Parties.

(iv) *Separate Coverage.* Coverage shall state that the Builder's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to limits of insurance provided.

(v) *Defense Costs/Cross Liability.* Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion.

(vi) *Subrogation*. The insurer shall agree to waive all rights of subrogation against the Insured Parties for losses arising from Work performed by the Builder for the County.

(b) Workers' Compensation Coverage.

The insurer providing Workers' Compensation Coverage will agree to waive all rights of subrogation against the Insured Parties for losses arising from Work performed by the Builder for the County.

(c) All Coverages.

(i) Notice Requirement. Each insurance policy required by this Contract shall be endorsed to state that coverage shall not be suspended, voided, or canceled except after thirty (30) calendar days prior written notice (or 10 calendar days if due to non-payment) has been given to the County. Such notice shall be sent directly to: _____[

SAMPLE

Department, Cobb County, Address]. The County reserves the right to accept alternate notice terms and provisions, provided they meet the minimum requirements under Georgia law.

(ii) Starting and Ending Dates. Policies shall have concurrent starting and ending dates.

(5) Acceptability of Insurers:

The insurance to be maintained by Builder must be issued by a company licensed or approved by the Insurance Commissioner to transact business in the State of Georgia. Such insurance shall be placed with insurers with an A.M. Best Policyholder's rating of no less than "A-" and with a financial rating of Class VII or greater. The Builder shall be responsible for any delay resulting from the failure of its insurer to provide proof of coverage in the proscribed form.

(6) Verification of Coverage:

Builder shall furnish the County with certificates of insurance and endorsements to the policies evidencing all coverage required by this Contract along with the declarations page for each insurance policy listed on the certificate of insurance prior to submission of this Contract to the County for execution and must be approved by the County before commencement of the Work. Without limiting the general scope of this requirement, Builder is specifically required to provide an endorsement naming the County as an additional insured when required. The certificates of insurance and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf, unless alternate sufficient evidence of their validity and incorporation into the policy is provided. The certificates of insurance, endorsements and declarations page shall be furnished on a form utilized by Builder's insurer in its normal course of business. The County reserves the right to require complete, certified copies of all required insurance policies at any time. The Builder shall provide proof that any expiring coverage has been renewed or replaced prior to the expiration of the coverage.

(7) Subcontractors:

Builder shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated in this Contract, including, but not limited to, naming the Insured Parties as additional insureds.

(8) Claims-Made Policies:

Builder shall extend any claims-made insurance policy for at least six (6) years after termination or final payment under the Contract, whichever is later, and

SAMPLE

have an effective date which is on or prior to the date of the Builder's initial contract date with the County.

(9) County as Additional Insured and Loss Payee:

The County shall be named as an additional insured and loss payee on all policies required by this Contract, except the County need not be named as an additional insured and loss payee on any Professional Liability policy or Workers' Compensation policy.

(10) Progress Payments:

The making of progress payments to the Builder shall not be construed as relieving the Builder or its subcontractors or insurance carriers from providing the coverage required in this Contract.

SAMPLE

APPENDIX H - 1
PERFORMANCE BOND

COBB COUNTY

KNOW ALL MEN BY THESE PRESENTS THAT _____ (as "BUILDER", hereinafter referred to as the "Principal"), and _____ (as SURETY COMPANY, hereinafter referred to as the "BUILDER'S SURETY"), are held and firmly bound unto Cobb County, Georgia (as OWNER, hereinafter referred to as the "County"), for the use and benefit the County, in the sum of _____ Dollars ($_____.__), lawful money of the United States of America, for the payment of which the Principal and the Builder's Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered, or is about to enter, into a certain written agreement with the County, dated the _____ of _____, 20___ which is incorporated herein by reference in its entirety (hereinafter referred to as the "CONTRACT"), for the construction of a project known as _____, (hereinafter referred to as "the PROJECT").

NOW THEREFORE, the conditions of this obligation are as follows:

1. That if the Principal shall fully and completely perform each and all of the terms, provisions and requirements of the Contract, including and during the period of any warranties or guarantees required thereunder, and all modifications, amendments, changes, deletions, additions, and alterations thereto that may hereafter be made, and if the Principal and the Builder's Surety shall indemnify and hold harmless the County

SAMPLE

from any and all losses, liability and damages, claims, judgments, liens, costs and fees of every description, including but not limited to, any damages for delay, which the County may incur, sustain or suffer by reason of the failure or default on the part of the Principal in the performance of any and all of the terms, provisions, and requirements of the Contract, including all modifications, amendments, changes, deletions, additions, and alterations thereto, and any warranties or guarantees required thereunder, then this obligation shall be void; otherwise to remain in full force and effect;

2. In the event of a failure of performance of the Contract by the Principal, which shall include, but not be limited to, any breach or default of the Contract:

a. The Builder's Surety shall commence performance of its obligations and undertakings under this Bond no later than thirty (30) calendar days after written notice from the County to the Builder's Surety; and

b. The means, method or procedure by which the Builder's Surety undertakes to perform its obligations under this Bond shall be subject to the advance written approval of the County.

The Builder's Surety hereby waives notice of any and all modifications, omissions, additions, changes, and advance payments or deferred payments in or about the Contract, and agrees that the obligations undertaken by this Bond shall not be impaired in any manner by reason of any such modifications, omissions, additions, changes, and advance payments or deferred payments. The Parties further expressly agree that any action on this Bond may be brought within the time allowed by Georgia law for suit on contracts under seal.

SAMPLE

IN WITNESS WHEREOF, the Principal and Builder's Surety have hereunto affixed their corporate seals and caused this obligation to be signed by their duly authorized officers or attorneys-in-fact, this _____ day of _____, 20___.

BUILDER ("Principal"):

_____

By: _____

(signature)

_____ (print)

Attest:
(SEAL)

Title: _____

_____ (signature)
_____ (print)
Title: _____
Date:_____

BUILDER'S SURETY:

_____

By:_____
(Signature)
_____
(Print Name)

Title: _____

Attest:
_____
(Signature)
_____
(Print Name)

Title: _____

Date:_____

(SEAL

(ATTACH SURETY'S POWER OF ATTORNEY)

SAMPLE

EXHIBIT H-2
PAYMENT BOND

COBB COUNTY

KNOW ALL MEN BY THESE PRESENTS THAT _____ (as BUILDER, hereinafter referred to as the "Principal"), and _____ (as SURETY COMPANY, hereinafter referred to as the "BUILDER'S SURETY"), are held and firmly bound unto Cobb County (as OWNER, hereinafter referred to as the "County"), for the use and benefit of any "Claimant," as hereinafter defined, in the sum of _____ Dollars ($_____.__), lawful money of the United States of America, for the payment of which the Principal and the Builder's Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered, or is about to enter, into a certain written agreement with the County, dated the _____ **day of** _____ **20__, which is incorporated herein by reference in its entirety (hereinafter referred to as the "CONTRACT"), for the construction of a project known as _____, (hereinafter referred to as "the PROJECT").**

NOW THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to any Claimant, as hereinafter defined, for all labor, services, and materials used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise to remain in full force and effect.

A "Claimant" shall be defined herein as any Subcontractor, person, Party, partnership, corporation, or other entity furnishing labor, services, or materials used or reasonably required for use in the performance of the Contract, without regard to whether such labor, services, or materials were sold, leased, or rented, and without regard to whether such Claimant is or is not in privity of the Contract with the Principal or any Subcontractor performing Work on the Project.

SAMPLE

In the event of any claim made by the Claimant against the County, or the filing of a Lien against the property of the County affected by the Contract, the Builder's Surety shall either settle or resolve the Claim and shall remove any such Lien by bond or otherwise as provided in the Contract.

The Parties further expressly agree that any action on this Bond may be brought within the time allowed by Georgia law for suit on contracts under seal.

IN WITNESS WHEREOF, the Principal and Builder's Surety have hereunto affixed their corporate seals and caused this obligation to be signed by their duly authorized officers on this day of _____, 20___.

BUILDER:	**BUILDER'S SURETY:**
_____	_____
By:_____ (Signature)	By:_____ (Signature)
_____ (Print Name)	_____ (Print Name)
Title:_____ (SEAL)	Title:_____(SEAL)
Attest:_____ (Signature)	Attest:_____ (Signature)
_____ (Print Name)	_____ (Print Name)
Title: _____	Title: _____
Date:_____	Date:_____

(ATTACH SURETY'S POWER OF ATTORNEY)

SAMPLE

APPENDIX I
CONFLICT OF INTEREST AFFIDAVIT

As a duly authorized representative of the firm _____, Inc., I,_____ with the title_____certify that to the best of my knowledge and belief that no circumstances exist that will cause a conflict of interest in performing services for Cobb County under the Agreement to which this affidavit is attached and incorporated by reference, that no employee of Cobb County, nor any public agency, official or employee affected by such Agreement has any pecuniary interest in the business of this firm, associates or consultants of this firm, or the firm's parent firm, subsidiary, or other legal entity of which this firm is a part, and that no person associated with or employed by this firm has any interest that would conflict in any way, manner or degree with the performance of services for Cobb County.

Subscribed and sworn before me on this
the ____ day of _____, 2016.

_____**,INC.**

_____
Witness

By:_____
Signature of Authorized Representative

Print Name:_____

_____
Notary Public

Title_____ [Seal]

Date: _____

[Notary Seal]

SAMPLE

PPENDIX J-1
CONTRACTOR AFFIDAVIT & AGREEMENT

By executing this affidavit, the undersigned Contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is contracting with Cobb County, Georgia, has registered with, is authorized to use, and is participating in a federal work authorization program [an elect6ronic verification of work authorization program operated by the U.S. Department of Homeland Security or any equivalent federal work authorization program operated by the U.S. Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA)). The undersigned Contractor further attests that it will continue to use the federal Employment Eligibility Verification (EEV) work authorization program throughout the Contract period.

The undersigned further agrees that should it employ or contract with any subcontractor(s) or should its subcontractor(s) employ other subcontractor(s) for the physical performance of services pursuant to the contract with Cobb County, Georgia, the contactor or subcontractor will:

(1) Notify the County within five business days of entering into a contract or agreement for hire with any subcontractor(s);
(2) Secure from any subcontractor(s) and/or their subcontractor(s) verification of compliance with O.C.G.A. § 13-10-91 on the attached Subcontractor Affidavit. (EXHIBIT F-1) prior to the commencement of any work under the contract/agreement;;
(3) Secure from any subcontractor(s) and/or their subcontractor(s) a completed Immigration Compliance Certification (Exhibit F-2) prior to the commencement of any work under the contract/agreement;
(4) Provide the subcontractor(s) with legal notice that Cobb County, Georgia, reserves the right to dismiss, or require the dismissal of, any Contractor or subcontractor for failing to provide the affidavit and/or for failure to comply with the requirements referenced in the affidavit;
(5) Maintain records of such compliance for a period of five (5) years and provide a copy of each such verification to Cobb County, Georgia, at the time the subcontractor(s) is retained to perform such services or upon any request from Cobb County, Georgia; and
(6) Allow the audit or review of records of compliance by the County upon request.

_____
EEV (E-Verify) Program User ID Number

_____ _____
BY: Authorized Officer or Agent Contractor Business Name
(Contractor Name)

_____ _____
Printed Name Date

SWORN AND SUBSCRIBED BEFORE ME
ON THIS THE ____ DAY OF _____, 20__

_____
Notary Public

Commission Expires: _____

Effective 10-23-2013

SAMPLE

APPENDIX J-2
SUBCONTRACTOR AFFIDAVIT & AGREEMENT

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of Cobb County, Georgia, has registered with, is authorized to use, and is participating in a federal work authorization program [an electronic verification of work authorization program operated by the U.S. Department of Homeland Security or any equivalent federal work authorization program operated by the U.S. Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA)). The undersigned subcontractor further attests that it will continue to use the federal Employment Eligibility Verification (EEV) work authorization program throughout the Contract period.

The undersigned further agrees that should it employ or contract with any subcontractor(s) or should its subcontractor(s) employ other subcontractor(s) for the physical performance of services pursuant to the contract with Cobb County, Georgia, the contactor or subcontractor will:

(1) Notify the County within five business days of entering into a contract or agreement for hire with any subcontractor(s);
(2) Secure from any subcontractor(s) and/or their subcontractor(s) verification of compliance with O.C.G.A. § 13-10-91 on the attached Subcontractor Affidavit (EXHIBIT F-1) prior to the commencement of any work under the contract/agreement;;
(3) Secure from any subcontractor(s) and/or their subcontractor(s) a completed Immigration Compliance Certification (Exhibit F-2) prior to the commencement of any work under the contract/agreement;
(4) Provide the subcontractor(s) with legal notice that Cobb County, Georgia, reserves the right to dismiss, or require the dismissal of, any Contractor or subcontractor for failing to provide the affidavit and/or for failure to comply with the requirements referenced in the affidavit;
(5) Maintain records of such compliance for a period of five (5) years and provide a copy of each such verification to Cobb County, Georgia, at the time the subcontractor(s) is retained to perform such services or upon any request from Cobb County, Georgia; and
(6) Allow the audit or review of records of compliance by the County upon request.

_____
EEV (E-Verify) Program User ID Number

_____ _____
BY: Authorized Officer or Agent Subcontractor Business Name
(Contractor Name)

_____ _____
Printed Name Date

SWORN AND SUBSCRIBED BEFORE ME

ON THIS THE ____ DAY OF _____, 20__ Commission Expires: _____

_____
Notary

SAMPLE

APPENDIX J-3
EMPLOYER IMMIGRATION COMPLIANCE CERTIFICATION

(To be completed by Contractor and all subcontractors prior to contract initiation, every six months after commencement of work, and at any time there is a change in personnel assigned to the Project.)

I certify to the Cobb County Board of Commissioners that the following employees will be assigned to:

_____
(Project Name/Program Number)

_____ _____ _____ _____
_____ _____ _____ _____

I further certify to Cobb County, Georgia the following:

- The E-Verify program was used to verify the employment eligibility of each of the above-listed employees hired after the effective date of our contract to use the program;
- We have not received a Final Nonconfirmation response from E-Verify for any of the employees listed;
- If we receive a Final Nonconfirmation response from E-Verify for any of the employees listed above, we will immediately terminate that employee's involvement with the Project;
- I have confirmed that we have an I-9 on file for every employee listed above and that to the best of my knowledge all the I-9's are accurate;
- To the best of my knowledge and belief, all of the employees on the above list are legally authorized to work in the United States;
- If any other employee is assigned to this Cobb County project, a certification will be provided for said employee prior to the employee commencing work on the Project.

To the best of my knowledge and belief, the above certification is true, accurate and complete.

Sworn to by: Employer Name & Address:

_____ _____
Signature of Officer

_____ _____
Printed Name/Title

_____ _____
Date

SWORN AND SUBSCRIBED BEFORE ME
ON THIS THE ____ DAY OF _____, 20__

_____
Notary Public

Commission Expires: _____

EFFECTIVE 10-23-2013

SAMPLE

CERTIFICATION REGARDING LOBBYING

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned 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 subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, 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.]

Certification Regarding Lobbying

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

_____	_____
BY: Authorized Officer or Agent [Contractor Name]	Contractor Business Name
_____	_____
Printed Name	Date

BUY AMERICA CERTIFICATION

Certification requirement for procurement of buses, other rolling stock and associated equipment.
Proposer should complete either the Certificate of Compliance or the Certificate of Non-Compliance but not both.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).
The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

_____ _____

BY: Authorized Officer or Agent Contractor Business Name

[Contractor Name]

_____ _____

Printed Name Date

OR

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)
The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

_____ _____

BY: Authorized Officer or Agent Contractor Business Name

[Contractor Name]

_____ _____

Printed Name Date

APPENDIX M
FTA AND FEDERAL GOVERNMENT REQUIREMENTS

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.

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.

Access to Third Party Contract Records

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,

SAMPLE

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.

Changes to Federal Requirements

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.

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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.

Disadvantaged Business Enterprises

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part

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26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.* The County's overall goal for DBE participation is **5%.**

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 County deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

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 the County. In addition, the contractor may not hold retainage from its subcontractors. It is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed. It is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the County and contractor's receipt of the partial retainage payment related to the subcontractor's work.

e. The contractor must promptly notify County 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 County.

Incorporation of Federal Transit Administration (FTA) Terms

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

Terminations

Termination for Convenience

a.The County 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 County to be paid the Contractor. If the Contractor has any property in its possession belonging to the County, the Contractor will account for the same, and dispose of it in the manner the County directs.

b. Termination for Default

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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 County 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.

c. Opportunity to Cure

The County in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 30 days 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 the Contractor fails to remedy to the County's Satisfaction, the breach or default or any terms, covenants, or conditions of the Contract within (10) days after receipt by Contactor or written notice from the County setting forth the nature of said breach, the County shall have the right to terminate the Contract without any further obligation to the Vendor. Any such termination for default shall not in any way operate to preclude the County from pursuing all available remedies against the Contractor and its sureties for said breach or default.

Equal Opportunity (EEO) Provision

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

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(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) the contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(b) *Federally assisted construction contracts.* (1) Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided,* That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

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The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(c) *Subcontracts.* Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d) *Incorporation by reference.* The equal opportunity clause may be incorporated by reference in all Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts and subcontracts as the Deputy Assistant Secretary may designate.

(e) *Incorporation by operation of the order.* By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written.

(f) *Adaptation of language.* Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

Debarment and Suspension

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 County. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to County the Federal Government may pursue available remedies,

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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.

Buy America

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

Resolution of Disputes, Breaches, or Other Litigation

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

Performance During Dispute - Unless otherwise directed by County, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

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

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

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

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Lobbying

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 County.

Clean Air

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.

Clean Water

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.

Cargo Preference

To the extent applicable, the Recipient agrees to comply with 46 U.S.C. § 55305 and U.S. Maritime Administration regulations, “Cargo Preference - U.S.-Flag Vessels,” 46 C.F.R. Part 381.

Fly America Requirements

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an

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appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

Contract Work Hours and Safety Standards Act

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** – The County upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

Patent and Rights In Data

The FTA patent clause is substantially similar to the text of 49 C.F.R. Part 19, Appendix A, Section 5, but the rights in data clause reflects FTA objectives. For patent rights, FTA is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This model clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

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CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. **Rights in Data** - This following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

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

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or

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programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

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

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause , provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e. , a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. **Patent Rights** - This following requirements apply to each contract involving experimental, developmental, or research work:
(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser

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and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA

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.

Recycled Products

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

Recovered Materials

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

ADA Access

The Recipient agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq*., which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq*., which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow

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applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

(3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

(4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

(5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

(6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

(7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

(8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;

(9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;

(10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

(11) Federal civil rights and nondiscrimination directives implementing those Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. To the extent applicable, the Recipient agrees to comply with the confidentiality and civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq*., the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq*., and the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

i. Access to Services for Persons with Limited English Proficiency. The Recipient agrees to facilitate compliance with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and follow applicable provisions of U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 *Fed. Reg*. 74087, December 14, 2005, except to the extent that FTA determines otherwise in writing.

j. Environmental Justice. The Recipient agrees to facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note; and DOT Order 5620.3, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 *Fed. Reg*. 18377 *et seq*., April 15, 1997, except to the extent that the Federal Government determines otherwise in writing.

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k. Other Nondiscrimination Laws. The Recipient agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable Federal directives prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

Assignably

The covenants contained herein shall, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.

Davis-Bacon and Copeland Anti-Kickback Acts

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officershall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and

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3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
4. With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and

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3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The COUNTY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the COUNTY may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or

program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the COUNTY for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

1. That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension

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of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) *Apprentices* - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees* - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training

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Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity* - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

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Bonding Requirements

A. Bid Bond Requirement for Construction

1. **Bid Security** - A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.
2. **Rights Reserved** - In submitting this Bid, it is understood and agreed by bidder that the right is reserved by COUNTY to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of COUNTY.
   It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of COUNTY, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of COUNTY's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.
   It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by COUNTY as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense COUNTY for the damages occasioned by default, then the undersigned bidder agrees to indemnify COUNTY and pay over to COUNTY the difference between the bid security and COUNTY's total damages, so as to make COUNTY whole.
   The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

B. Performance and Payment Bonding Requirements for Construction

The Contractor shall be required to obtain performance and payment bonds as follows:

Performance bonds:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the COUNTY.
2. The COUNTY may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The COUNTY may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

Payment bonds:

1. The penal amount of the payment bonds shall equal:
   A. Fifty percent of the contract price if the contract price is not more than $1 million.

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B. Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or
C. Two and one half million if the contract price is more than $5 million.

2. If the original contract price is $5 million or less, the COUNTY may require additional protection as required by subparagraph 1 if the contract price is increased.

C. Performance and Payment Bonding Requirements for Non-Construction

The Contractor may be required to obtain performance and payment bonds when necessary to protect the COUNTY's interest.

1. The following situations may warrant a performance bond:
   A. COUNTY property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
   B. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
   C. Substantial progress payments are made before delivery of end items starts.
   D. Contracts are for dismantling, demolition, or removal of improvements.
2. When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:
   A. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the COUNTY determines that a lesser amount would be adequate for the protection of the COUNTY.
   B. The COUNTY may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The COUNTY may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
3. A payment bond is required only when a performance bond is required, and if the use of payment bond is in the COUNTY's interest.
4. When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:
   A. The penal amount of payment bonds shall equal:
      1) Fifty percent of the contract price if the contract price is not more than $1 million;
      2) Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or
      3) Two and one half million if the contract price is increased.

D. Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The COUNTY shall determine the amount of the advance payment bond necessary to protect the COUNTY.

E. Patent Infringement Bonding Requirements (Patent Indemnity)

SAMPLE

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The COUNTY shall determine the amount of the patent indemnity to protect the COUNTY.

F. Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to COUNTY, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by COUNTY, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by COUNTY and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to COUNTY. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to COUNTY written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

Third Party Rights

Notwithstanding anything herein to the contrary, the services provided under this Agreement shall not give rise to, nor shall be deemed to or construed so as to confer any rights on any other party, as a third party beneficiary or otherwise.

Notice of Federal Requirements

New Federal laws, regulations, policies, and administrative practices may be established after the date of this Contract, which may apply to this contract. If Federal requirements change, the changed requirements will apply to the contract or the performance of work under the contract as required. All standards or limits set forth in this contract to be observed in the performance of the work are minimum requirements.

Environmental Requirements

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq. Consistent with Executive Order No. 11514, as amended, “Protection and Enhancement of Environmental Quality”, 42 U.S.C. § 4321 note; FTA

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statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy of 1969, as amended, 40 C.F.R. Part 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures", 23 C.F.R. Part 771 and 49 C.F.R. Part622.

Seismic Safety Requirements

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

Drug and Alcohol Testing

FTA's drug and alcohol rules, 49 CFR 653 and 654, respectively, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with Parts 653 and 654. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

Therefore, FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

Option 1 - The contractor agrees to *participate in COUNTY's drug and alcohol program established in compliance with 49 CFR 653 and 654.*

Option 2 - The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Georgia, or the COUNTY to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before date before March 15) to COUNTY's Project Manager To certify compliance the contractor shall use the "Substance Abuse

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Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register

Option 3 - The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of COUNTY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to COUNTY Project Manager To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before (insert date or upon request) a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the recipient wishes the contractor to use) as its policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before (insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: (to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

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CONTRACT FOR CONSTRUCTION

(AT-RISK CONSTRUCTION MANAGEMENT GUARANTEED MAXIMUM PRICE FORM)

CHAPTER 1

BUILDER'S AGREEMENT

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CONTRACT FOR CONSTRUCTION
(At-Risk Construction Management Guaranteed Maximum Price Form)

CHAPTER 2
BUILDER'S REQUIRED SERVICES

ARTICLE 1
GENERAL PROJECT SERVICES

1.1 **Essential Services.** The Construction Manager agrees to provide all services required to professionally complete the Work in an expeditious and economical manner consistent with this Contract For Construction and the best interests of the Owner.

1.2 **Compliance With Contractual Requirements.** At all times the Construction Manager is performing services, it shall comply with the requirements set forth in Chapter 1, Chapter 2 and Chapter 3 of this Contract For Construction.

1.3 **Cooperative Effort.** The Construction Manager shall, in consultation with the Owner, Professional(s), and the subcontractors, endeavor to develop, implement and maintain a spirit of cooperation, collegiality, and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and, upon completion, the Project is deemed a success by all parties.

1.4 **Additional Or Modified Required Services.** Additional or modified required services, if any, included in General Project Services are listed in Appendix 1 and incorporated herein by reference.

ARTICLE 2
PRE-CONSTRUCTION SERVICES

2.1 **Preliminary Design Review.**

2.1.1 The Construction Manager shall actively and jointly participate with the Owner and the Professional(s) in formation of the final Project design.

2.1.2 The Professional is required, in accordance with schedule requirement, to provide preliminary design drawings. The Construction Manager shall promptly and in accordance with schedule requirements:

(i) familiarize itself with the preliminary design drawings;

(ii) analyze and evaluate the constructability of the preliminary design drawings; and

(iii) analyze and evaluate the preliminary design drawings in regard to the completeness of intended bid categories, conflicts or overlaps in the divisions of the Work, design details affecting construction, value engineering, identification of long-lead materials affecting the Construction Schedule, availability of labor and other factors affecting construction.

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2.1.3 The Construction Manager and the Professional(s) shall jointly schedule and attend regular meetings with the Owner to review and evaluate the preliminary design drawings.

2.1.4 The Construction Manager shall, in accordance with schedule requirements, notify the designated Professional in writing and assist the Professional(s) with the resolution, of all problems, conflicts, defects or deficiencies identified during the review and evaluation of the preliminary design drawings.

2.1.5 Upon completion of the preliminary design drawings, the Professional is required, in accordance with schedule requirement, to prepare and submit a preliminary estimate of Total Project Construction Cost broken down by line item into major construction disciplines and systems.

2.1.6 The Construction Manager shall, in accordance with schedule requirements, review the preliminary estimate of Total Project Construction Cost and promptly inform the Owner and Professional of recommended adjustments, if any.

2.2 **Construction Documents Review.**

2.2.1 The Professional is required, in accordance with schedule requirements, to provide Review Construction Documents and other information.

2.2.2 The Construction Manager shall, in accordance with schedule requirements, review applicable Construction Schedule(s), the estimate of Total Project Construction Cost, the cost of local utilities, fees for permits and licenses, any modifications necessitated by local conditions, other information necessary for a full understanding of the Project, and the review Construction Documents. The Construction Manager shall:

(i) examine the review Construction Documents for clarity, adequacy of detail, consistency, accuracy and completeness;

(ii) identify conflicts, omissions or overlaps in the proposed divisions of the Work, evaluate the completeness of intended bid categories, and identify unusual design details affecting construction cost and schedules;

(iii) apply established value engineering principles and practices to reduce the cost of the Project;

(iv) identify factors with the potential to impact the Construction Schedule such as materials with long lead time, the unavailability of required labor, and other factors and make suggestions for acceptable alternatives;

(v) evaluate and make suggestions to optimize Site utilization;

(vi) recommend proposed modifications or alternatives to the review Construction Documents based on its evaluation and review;

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(vii) notify the Owner and the Professional(s) in writing of any variances between the Construction Documents and applicable laws, statutes, building codes, rules and regulations of which it is aware; and

(viii) notify the Owner and the Professional(s) in writing of all problems, conflicts, defects or deficiencies in the review Construction Documents of which it is aware or should be aware.

2.2.3 The Construction Manager shall, in accordance with schedule requirements, assist the Professional with the resolution of all problems, conflicts, defects or deficiencies identified during the review and evaluation of the review Construction Documents.

2.2.4 Upon completion of the examination of the review Construction Documents, the Professional is required, in accordance with schedule requirements, to prepare and submit a final estimate of Total Project Construction Cost.

2.2.5 Upon completion of the examination of the review Construction Documents, the Construction Manager, in accordance with schedule requirements, shall prepare and submit a final estimate of Total Project Construction Cost.

2.2.6 If the final estimates of Total Project Construction Cost by the Construction Manager and the Professional differ materially, the Construction Manager and Professional shall meet promptly to reconcile the discrepancies between their estimates so as to permit submission to the Owner of a final estimate of Total Project Construction Cost on which both the Professional and the Construction Manager agree.

2.3 **Planning And Scheduling.**

2.3.1 **Construction Schedule.** The Construction Manager understands and acknowledges the Owner's intent that the Project will be complete by the Date of Substantial Completion. The Construction Manager shall timely prepare and submit the Construction Schedule for the Owner's review and approval. The Construction Schedule shall complement, and shall not conflict with, the Design Schedule.

2.3.2 The Construction Manager shall establish and timely submit for Owner review:

(i) Project cost control procedures;

(ii) Project reporting procedures;

(iii) Project Manual;

(iv) Quality Management Program;

(v) MBE/WBE participation plan; and

(vi) Staffing Plan for the Construction period.

SAMPLE

2.4 **Guaranteed Maximum Price Proposal.**

2.4.1 **Guaranteed Maximum Price Proposal.** The Construction Manager shall prepare and deliver to the Owner, with copies to the Professional, a Guaranteed Maximum Price ("GMP") proposal. The Construction Manager shall, at a minimum, include in the GMP proposal:

(i) a recital of the specific Construction Documents, including drawings, specifications, and all addenda thereto, used in preparation of the GMP proposal;

(ii) the three elements of the Construction Contract Price, as defined in Chapter 1, Paragraph 4.3, including:

a) a General Conditions Guaranteed Maximum Cost, including line item detail of the component parts as defined in Chapter 1, Subparagraph 4.3.1 (i) and Chapter 2, Subparagraph 2.4.2;

b) estimated Subcontracts Cost, as defined in Chapter 1, Subparagraph 4.3.1 (ii), detailed by each subcontract, trade or bid division, and including a reasonable, separately stated maximum contingency amount for each subcontract, trade or bid division; and

c) the actual or estimated amount of the Management Fee, as applicable, as defined in Chapter 1, Subparagraph 4.3.1 (iii) and Chapter 2, Subparagraph 2.4.3;

(vi) a description of all other inclusions to or exclusions from the GMP;

(vii) all assumptions and clarifications;

(viii) the proposed Date of Substantial Completion upon which the GMP is based;

(ix) an outline of preliminary Construction Schedule showing proposed start and finish dates of major components of construction; and

(xi) the date by which the GMP proposal must be accepted by the Owner.

2.4.2 **General Conditions Cost**. Items within the General Conditions Cost for which the Construction Manager is entitled to no additional compensation include, without limitation:

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(i) costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value;

(ii) costs incurred to provide site safety;

(iii) costs of removal of debris from the site;

(iv) costs of document reproduction including bid sets, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office;

(v) that portion of the reasonable expenses of the Construction Manager's personnel incurred while traveling in discharge of duties directly connected with the Work;

(vi) that portion of insurance and bond premiums that can be directly attributed to this Contract for Construction. Premiums shall be net of trade discounts, volume discounts, dividends and other adjustments;

(vii) sales, use or similar taxes imposed by a governmental authority and paid by the Construction Manager, and directly related to the Work;

(viii) fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract for Construction to pay;

(ix) data processing costs directly related to the Work; however, these costs shall not include any hardware, software, or CADD costs unless approved by the Owner in writing;

(x) expenses incurred in accordance with the Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner;

(xi) the cost of obtaining and using all utility services required for the Work;

(xii) the cost of crossing or protecting any public utility, if required, and as directed by the Owner;

(xiii) all reasonable costs and expenditures necessary for the operation of the site office, such as stationary, supplies, blueprinting, furniture, fixtures, office equipment and field computer services, provided that quantity and rates are subject to Owner's prior written approval;

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(xiv) the cost of secure off-site storage space or facilities approved in advance by Owner;

(xv) printing and reproduction of the Construction Documents;

(xvi) rental charges for temporary facilities, and for machinery, equipment, and tools not customarily owned by construction workers; however any rental charge shall not exceed the purchase price of such facilities, machinery, equipment or tools; and

(xvii) other expenses or charges properly incurred and paid in the prosecution of the Work, with the prior written approval of the Owner.

2.4.3 **Management Fee**. Items within the Management Fee for which the Construction Manager is entitled to no additional compensation include, without limitation:

(i) direct costs incurred with the exception of those specifically enumerated compensable as a General Conditions Cost or a Subcontracts Cost;

(ii) wages, salaries, bonuses and incentive compensation, of the Construction Manager's supervisory, technical, administrative and clerical personnel engaged in supervision and management of the Work on or off the Project Site, including all company overhead and expenses

(iii) the cost of Construction Manager's home or branch office employees or consultants not at the Project Site;

(iv) cost of fringe benefits, contributions, assessments and taxes, including for example such items as Unemployment Compensation and Social Security, to the extent that such cost is required by law and is based on the compensation paid to the Construction Manager's employees referred to in subparagraphs (ii) and (iii) above;

(v) non-field office (home and branch office) operational expenses such as telegrams, telephone service and long-distance and zone telephone charges, postage, office supplies, expressage, and other similar expenses;

(vi) data-processing costs indirectly related to the Work; including hardware, software, and CAD costs;

(vii) personnel expenses and temporary living allowances incurred due to relocation of personnel required for the Work;

(viii) cost of all non-project specific insurance;

(ix) all general operating expenses;

(x) all capital expenses, including any interest;

SAMPLE

(xi) all sales, use or similar taxes related to the Project imposed by any governmental authority on the Construction Manager's services and non-reimbursable costs;

(xii) any costs which would cause the Construction Price to exceed the GMP; and

(xiv) any costs or expenses incurred by the Construction Manager, not included in the General Conditions Cost, for provision of management services necessary to complete the Project in an expeditious and economical manner consistent with this Contract For Construction and the best interests of the Owner.

2.4.4 The Construction Manager acknowledges that the Construction Documents may be incomplete at the time the Construction Manager delivers the GMP proposal, and that the Construction Documents may not be completed until after commencement of the Work. Nevertheless, the GMP proposal shall include payment for Work required by the completed Construction Documents, and if the GMP proposal is accepted by the Owner, the Construction Manager shall be entitled to no increase in the GMP if the Work required by the completed Construction Documents (i) is required by this Contract For Construction, (ii) is reasonably inferable from the incomplete documents, (iii) is consistent with the Owner's stated goals and program objectives, (iv) is consistent with general industry standards for completion of the Work, (v) is not a substantial enlargement of the scope of Work portrayed by the incomplete documents, or (vi) substantially conforms to the nature, type, kind or quality of Work depicted in the incomplete documents.

2.4.5 If the GMP proposal is unacceptable to the Owner, the Owner shall promptly so notify the Construction Manager in writing. Within fourteen calendar days of such notification, the Owner, Professional(s) and Construction Manager shall meet to discuss and resolve any differences, inconsistencies, or misunderstandings and to negotiate recommended adjustments to the Work and/or to the GMP.

2.4.6 The Owner may, at its sole discretion and based upon its sole judgment, (i) indicate its acceptance of a GMP proposal; (ii) reject a GMP proposal; (iii) terminate the Project; or (iv) proceed to construct the Project using a party or parties other than the Construction Manager.

2.4.7 If the Owner rejects a GMP proposal, neither party shall have any further obligation pursuant to the Contract For Construction.

SAMPLE

2.4.8 If the Owner accepts a GMP proposal, the parties shall complete and execute Appendix E attached to Chapter 1, and the Owner shall issue a written notice to the Construction Manager ("Notice To Proceed") establishing the date construction is to commence (the "Commencement Date"). The Construction Manager shall not expend any monies for construction prior to receipt of such Notice to Proceed without the written approval of the Owner.

2.5 **Price Guarantees.**

2.5.1. Upon execution of Appendix E, the Construction Manager guarantees that the Construction Price shall not exceed the GMP. All costs or expenses that would cause the Construction Price to exceed the GMP shall be borne by the Construction Manager unless adjusted by change order.

2.5.2 Upon execution of Appendix E, the Construction Manager guarantees that the General Conditions Cost shall not exceed the General Conditions Guaranteed-Maximum Cost and that all costs or expenses that would cause the General Conditions Cost to exceed the General Conditions Guaranteed-Maximum Cost shall be borne by the Construction Manager unless adjusted by change order.

2.5.3 Upon execution of Appendix E, the Construction Manager guarantees that, (i) unless adjusted by change order, the final cost to the Owner of each individual subcontract, trade or bid division shall not exceed the sum total of the estimated cost and contingency for that subcontract, trade or bid division as set forth in the GMP; (ii) no unused contingency amount from any subcontract, trade or bid division shall be transferred, carried over or applied to any other subcontract, trade or bid division, but rather such unused contingency shall inure to the Owner's benefit; and (iii) the cost of any subcontract, trade or bid division exceeding the sum total of the estimated cost and contingency for that subcontract, trade or bid division shall be borne by the Construction Manager unless adjusted by change order

2.5.4 Upon execution of Appendix E, the Construction Manager guarantees that to the extent the GMP proposal includes contingencies, no unused contingency shall be transferred, carried over or applied to any other GMP line item, but rather such unused contingency shall inure to the Owner's benefit.

2.6 **Additional Or Modified Required Services.** Additional or modified required services, if any, included in Pre-Construction Service are listed in Appendix 1 and incorporated herein by reference.

ARTICLE 3
CONSTRUCTION SERVICES

3.1 **Bidding And Negotiation.**

3.1.1 With the Professional's assistance, the Construction Manager shall prepare and assemble document packets for use in bidding or negotiating the Subcontracts Cost.

SAMPLE

3.1.2 The Construction Manager shall develop subcontractor and supplier interest for each division of the Work and shall pre-qualify proposed subcontractors using a pre-qualification form approved by the Owner and Professional.

3.1.3 The Construction Manager shall:

(i) submit to the Professional the proposed list of subcontractors and review and evaluate information received from the Professional regarding proposed subcontractors; and

(ii) evaluate the technical competence of all pre-qualified subcontractors.

3.1.4 The Construction Manager shall negotiate or competitively bid each trade category only by invitation to pre-qualified subcontractors. In the event a subcontractor does not meet a pre-qualification requirement, the Construction Manager in its best judgment may, with the Owner's prior approval, still allow the subcontractor to bid.

3.1.5 The Construction Manager shall review the subcontract breakdowns utilized in the GMP and use its best efforts to obtain bids which are less than the final GMP estimates.

3.1.6 The Construction Manager shall conduct private bid openings in the presence of the Owner's Representative. The Construction Manager shall communicate bid results to the Owner and Professional, and to no other persons or entities.

3.1.7 The Construction Manager shall, for each subcontract, trade or bid division:

(i) determine the final bid amounts,

(ii) prepare and furnish to the Owner a bid tabulation which includes by subcontract, trade and/or bid division, the applicable final GMP estimate and the related final bid amount;

(iii) identify to the Owner in writing the subcontractors to which the Construction Manager recommends award of subcontracts; and

(iv) award and enter into a subcontract between itself and each subcontractor which it has recommended pursuant to Paragraph 3.1.7 (iii) unless otherwise notified by the Owner.

3.2 **Construction Supervision.**

3.2.1 Commencing with the award of the first subcontract and terminating on the Date Of Final Completion, the Construction Manager shall provide the services described in Subparagraphs 3.2.1 through 3.2.7.

3.2.2 The Construction Manager shall, as the Owner's construction representative during construction, advise and consult with the Owner and the Professional(s), and provide administration of the Construction Documents.

SAMPLE

3.2.3 The Construction Manager shall supervise and direct the Work at the Site. The Construction Manager shall, at a minimum, staff the Project Site with personnel who shall:

(i) supervise and coordinate the Construction Manager's personnel and act as its primary liaison with the Owner and the Owner's Consultant(s);

(ii) coordinate trade contractors and suppliers, and supervise Site construction management services;

(iii) be familiar with all trade divisions and trade contractors' scopes of Work, all applicable building codes, the Construction Documents, and this Contract For Construction;

(iv) check and review shop drawings and materials delivered to the Site, regularly review the Work to determine its compliance with the Construction Documents and this Contract For Construction, periodically confer with the appropriate Owner's consultant(s) to assure acceptable levels of quality; and

(v) prepare and maintain Project records, process documents, and staff the Site field office.

3.2.4 The Construction Manager shall promptly reject any Work which does not conform to the Construction Documents or which does not comply with any applicable law, statute, building code, rule or regulation of any public authority or agency of which it is aware. The Construction Manager shall immediately notify the Professional(s) and the Owner in writing when it has rejected any Work.

3.2.5 The Construction Manager shall comply with and cause its subcontractors and suppliers to comply with the Project Construction Schedule and applicable sub-schedules. The Construction Manager shall obtain and review schedules from subcontractors and suppliers, coordinate sub-schedules with the Construction Schedule, and enforce compliance with the all applicable schedules to insure timely completion of the Work. If at any time a Project is delayed, the Construction Manager shall immediately notify the Owner of the probable cause(s) and possible alternatives, and make recommendations to minimize expense to the Owner.

3.2.6 The Professional will visit the Project Site at intervals appropriate to the stage of construction and with sufficient frequency to familiarize itself with the progress and quality of the Work and to inspect the Work The Construction Manager shall request that the Professional visit the Site at additional times as the Construction Manager deems necessary to attend meetings, inspect the Work, and render interpretations regarding the Work necessary for the proper execution of the Work. The Professional's interpretations and decisions shall be final regarding the Construction Documents and the Work.

SAMPLE

3.3 **Construction Manager's On-Site Facilities.**

3.3.1 Commencing at the Date of Commencement and terminating on the Date Of Final Completion, the Construction Manager shall provide a Site field office and toilet facilities at the Project Site.

.1 The field office facilities shall be large enough to accommodate required meetings and shall include office furnishings and equipment such as desks, telephones, computers, copiers and other similar office equipment.

.2 The Construction Manager shall maintain in the Site field office, on a current basis, all necessary Construction Documents, schedules, shop drawings, product data, samples, purchase orders, maintenance manuals and instructions, daily logs, correspondence, memoranda, and all other Project-related documents.

.3 The Construction Manager shall provide temporary toilets at the Site for all workers for the duration of the construction period.

3.4 **Additional Or Modified Required Services.** Additional or modified required services, if any, included in Construction Service are listed in Appendix 1 and incorporated herein by reference.

ARTICLE 4
EXTRA SERVICES

4.1 **Initiation Of Extra Services.** The Construction Manager shall provide such Extra Services as are initiated and authorized in writing by the Owner prior to performance. The services described in this Article 4 are not included in Required Services unless identified as an “Additional Required Service or Modified Required Service”.

4.2 **Definition Of Extra Services.** Extra services include, but are not limited to:

(i) services performed after the Date Of Final Completion, except when required as Basic Services.

(ii) services for preparation for and attendance at deposition, discovery or court or other dispute resolution proceedings on behalf of the Owner, except when such proceedings involve issues of fault, neglect or alleged liability of the Construction Manager, or its agents, employees, or consultants.

(iii) other services not included in Required Services mutually agreed to by the Owner and the Construction Manager in writing.

4.3 **Payment For Extra Services.** Payment of the Construction Manager for Extra Services shall be in accordance with applicable provisions of Chapter 1.

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APPENDIX 1
ADDITIONAL OR MODIFIED REQUIRED SERVICES

GENERAL PROJECT SERVICES [¶ 1.4]

[Insert and identify with specificity all Additional Required Services, Modified Required Services, or state "None"]

PRE-CONSTRUCTION SERVICES [¶ 2.6]

[Insert and identify with specificity all Additional Required Services, Modified Required Services, or state "None"]

CONSTRUCTION SERVICES [¶ 3.4]

[Insert and identify with specificity all Additional Required Services, Modified Required Services, or state "None"]

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CONTRACT FOR CONSTRUCTION

(AT-RISK CONSTRUCTION MANAGEMENT GUARANTEED MAXIMUM PRICE FORM)

CHAPTER 2

BUILDER'S REQUIRED SERVICES

SAMPLE

CONTRACT FOR CONSTRUCTION

CHAPTER 3
GENERAL TERMS AND CONDITIONS

ARTICLE 1
CONTRACT DOCUMENTS

1.1 **Additional Sets Of Documents.** Any additional copies of the Construction Documents required by the Builder for execution of the Work shall be made by the Builder at its cost and expense from the reproducible set(s) furnished by the Owner.

1.2 **Return Of Documents To Owner.** The Builder shall return to the Owner the reproducible set(s), and all copies, of the Construction Documents upon Final Completion of the Work or termination of this Contract For Construction.

1.3 **Electronic Media.** Unless otherwise specified in this Contract For Construction, the Builder may request that the Construction Documents required by the Builder for the Work be furnished to it on electronic media. To the extent that such documents are available on electronic media, the Builder will be furnished one set of the requested information on electronic media. Any additional electronic copies of Construction Documents required by the Builder for execution of the Work shall be made by the Builder at the Builder's cost and expense. The Builder shall return one copy of electronic Construction Documents to the Owner upon final acceptance of the Work or termination of this Contract For Construction, whichever occurs first, and shall destroy all remaining electronic copies of the documents within its possession.

1.4 **Minimum Requirements.** In every case, requirements established by the Construction Documents shall be considered as the minimum which will be accepted.

1.5 **Owner Disclaimer Of Warranty.** The Owner has requested that its Professional(s) prepare documents for the Project, including the plans and specifications for the Project, which are to be complete, accurate, coordinated, and adequate for bidding, negotiating and constructing the Work. However, the Owner makes no representation or warranty of any nature whatsoever to the Builder concerning such documents. The Builder hereby acknowledges and represents that it has not relied, and does not and will not rely, upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.

1.6 **Conflicts In Documents.** In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Contract For Construction, the following shall control:

1.6.1 As between figures given on plans and scaled measurements, the figures shall govern;

1.6.2 As between large-scale plans and small-scale plans, the large-scale plans shall govern;

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1.6.3 As between plans and specifications, the requirements of the specifications shall govern;

1.6.4 As between this document and the plans, specifications, general conditions or general requirements, this document shall govern.

1.7 **Shop Drawings And Submittals.** Shop drawings and other submittals from the Builder or its subcontractors and suppliers do not constitute a part of this Contract For Construction.

1.8 **Contract Changes.** The Builder understands and agrees that this Contract For Construction cannot be changed except as provided herein. No act, omission or course of dealing by the parties shall alter the requirement that modifications of this Contract For Construction can be accomplished only by written documents signed by the parties.

ARTICLE 2
BUILDER'S REVIEWS AND EVALUATIONS

2.1 **Sufficiency Of Construction Documents And Drawings.** The Builder acknowledges its continuing duty to review and evaluate the Construction Documents during the performance of its services and shall immediately notify the Owner and the Professional(s) about any (i) problems, conflicts, defects, deficiencies, inconsistencies or omissions it discovers in or between the Construction Documents; and (ii) variances it discovers between the Construction Documents and applicable laws, statutes, building codes, rules and regulations.

2.1.1 If the Builder performs any Work which it knows or should have known involves (i) a recognized problem, conflict, defect, deficiency, inconsistency or omission in the Construction Documents; or (ii) a variance between the Construction Documents and requirements of applicable laws, statutes, building codes, rules and regulations, without notifying the Professional(s) and prior to receiving written authorization from the appropriate Professional(s) to proceed, the Builder shall be responsible for the consequences of such performance.

2.1.2 Drawings are generally drawn to scale; however, the figured dimensions or notes thereon shall govern. Before ordering any materials or doing any Work, the Builder and subcontractors shall verify all measurements at the Site and shall be responsible for the correctness of same. Discrepancies shall be reported in writing to the Professional prior to proceeding with the Work. No extra charge or compensation will be entertained due to differences between actual measurements and dimensions indicated on drawings, if such differences do not result in a change in the scope of Work or if the Professional failed to receive written notice before the Work was performed.

2.2 **Sufficiency Of Site.** Prior to signing this Contract For Construction, the Builder has

(i) visited the Site and become familiar with local conditions under which the Project is to be constructed and operated; and

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(ii) reviewed and familiarized itself with the Site survey and any existing structures on the Site, and gathered all other information necessary for a full understanding of the Work.

In addition, if the Work involves modifications to or remodeling of an existing structure(s) or other man-made feature(s) on the Site, the Builder has also

(iii) reviewed all available as-built and record drawings, plans and specifications; and

(iv) thoroughly inspected the structure(s) and man-made feature(s) to be modified or remodeled prior to submission of bid, if any, but in all events prior to signing this Contract For Construction.

Claims resulting from the Builder's failure to familiarize itself with the Site or pertinent documents shall be deemed waived.

ARTICLE 3
BUILDER'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES

3.1 **Performance Of Work.** The Builder shall perform and complete its obligations under this Contract For Construction using its best skill and attention, and covenants with the Owner to furnish management, supervision, coordination, labor and services (i) which expeditiously, economically and properly completes the Work in the manner most consistent with the Owner's interests and objectives; (ii) which comply with the Construction Documents and this Contract For Construction; and (iii) in accordance with the highest standards currently practiced by persons and entities performing or providing management, supervision, coordination, labor and services on projects similar in size, complexity and cost to the Project.

3.1.1 The Builder shall not be required to provide professional services which constitute the practice of architecture or engineering.

3.1.2. All services rendered by the Builder for the Project shall be performed by or under the immediate supervision of persons possessing expertise in the discipline of the service being rendered.

3.1.3 The Builder shall, in the course of providing the Work, cooperate and communicate with the Owner and all other persons or entities as required for satisfactory completion of the Project.

3.1.4 The Builder understands and acknowledges that the Work referred to in this Contract For Construction may be only part of the Project and that the Project may include the construction of other structures or other construction activities on the same Site. The Builder shall conduct all its activities so as not to interfere with the construction of, or operations within or from, other structures on the Site.

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3.1.5 The Builder shall not damage, endanger, compromise or destroy any part of the Project or the Site, including by way of example and not limitation, work being performed by others on the Site, monuments, stakes, benchmarks and other survey points, utility services, and existing features or structures on the Site. Should the Builder damage, compromise or destroy any part of the Project or the Site, the Builder shall be fully and exclusively responsible for and bear all costs associated therewith.

3.2 **Compliance With Governmental Requirements.** The Builder shall:

(i) comply with all applicable laws, statutes, building codes, rules, regulations and lawful orders of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project;

(ii) prepare and file documents required to obtain, and shall obtain, all necessary approvals and permits, including building permit(s), of all governmental authorities having jurisdiction over the Work; and

(iii) give all notices required of it by governmental authorities relating to the Project.

3.3 **Safety.** Safety shall be a prime concern of the Builder at all times. The Builder shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures for coordinating and constructing the Work, including Site safety and safety precautions and programs.

3.4 **Concurrent Records.** The Builder shall, concurrently with performance, maintain detailed records of activities on the Site.

3.5 **As-Built Drawings.** The Builder shall maintain at the Site one copy of all drawings, specifications, addenda, approved shop drawings, change orders, submittals, and other modifications in good order and accurately marked depicting all changes as they occur during construction. The as-built drawings shall be available at all times to the Owner, the Professional(s), the Owner's consultants, and quality control and testing agency personnel. The drawings shall be neatly and clearly marked in color during construction to record all variations made during construction, and the Builder shall include such supplementary notes and details necessary to clearly and accurately represent as-built construction.

3.6 **Bribes And Kick-Backs.** The Builder shall not by any means:

(i) induce any person or entity employed in the construction of the Project to give up any part of the compensation to which that person or entity is entitled;

(ii) confer on any governmental, public or quasi-public official having any authority or influence over the Project, any payment, loan, subscription, advance, deposit of money, services or anything of value, present or promised;

(iii) offer nor accept any bribes or kick-backs in connection with the Project from or to any individual or entity, including any of its trade contractors, subcontractors, consultants, suppliers or manufacturers of Project goods and materials; or

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(iv) without the express written permission of the Owner, call for or by exclusion require or recommend the use of any subcontractor, consultant, product, material, equipment, system, process or procedure in which the Builder has a direct or indirect proprietary or other pecuniary interest.

3.7 **Quality Control And Testing.** The Builder shall develop and implement a quality management program to insure quality construction. Unless otherwise specified in this Contract For Construction, the Owner shall select the quality control and testing agencies and pay for the cost of specified measures and tests required by the Construction Documents. The Builder shall coordinate all tests and inspections required by the Construction Documents, and the Builder shall arrange for tests and inspections to be conducted as necessary to avoid any interference with the progress of Work. No claims for extension of time or extra costs will be allowed on account of any testing, retesting, inspection, re-inspection, or rejection of Work when defective or deficient Work is found.

3.8 **Incident Reporting.** The Builder shall immediately notify the Owner and Professional(s), both orally and in writing, of the nature and details of all incidents which may adversely affect the quality or progress of the Work including, but not limited to, union jurisdictional disputes, accidents, delays, damages to Work and other significant occurrences.

3.9 **Hazardous Substances.** The Builder shall immediately notify the Owner and the Professional(s), both orally and in writing, of the presence and location of any physical evidence of, or information regarding, environmental contamination on the Site (including but not limited to Hazardous Substances and petroleum releases) of which it becomes, or reasonably should have become, aware. If the Builder encounters environmental contamination (including but not limited to Hazardous Substances and petroleum releases), the Builder shall (i) immediately stop performance of Work or that portion of the Work affected by or affecting such contamination; (ii) secure the contaminated area against intrusion; (iii) not disturb or remove the contamination; (iv) not proceed, or allow any subcontractor or supplier to proceed, with any Work or other activities in the area affected by such contamination until directed to do so by the Owner; and (v) take any other steps necessary to protect life and health.

3.10 **Owner's Use Of And Access To The Site.** The Builder shall perform the Work so as not to interrupt any operations of the Owner on the Site.

3.10.1 The Builder understands and acknowledges that the Owner may need access to or use of certain areas of the Site or Work prior to the Builder's achievement of Substantial Completion, and that such occupancy, access or use shall not constitute the Owner's acceptance of any Work.

3.10.2 The Builder shall not enter any Owner-occupied area of the Site or Project unless first approved and scheduled by the Owner. The Builder understands and acknowledges that the Owner may incur damages if the Owner's operations on the Site are interrupted or impaired as a result of the Work.

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3.10.3 The Builder shall afford the Owner's own forces, and other consultants, trade contractors, subcontractors and suppliers, access to the Site for performance of their activities, and shall connect and coordinate its construction and operations with theirs as required by the Construction Documents.

3.11 **Commissioning.** The Builder shall, through the Owner's Representative, schedule and coordinate all equipment and systems start-ups and Project commissioning within its scope of the Work.

3.11.1 The Builder shall provide the Owner with operation and maintenance manuals and other operational documentation not less than twenty-eight calendar days prior to the required date of Substantial Completion to allow adequate time for training prior to commissioning and the Owner's occupancy of the Project.

3.11.2 The Builder shall meet with the Owner's personnel not less than twenty-eight (28) calendar days prior to the required date of Substantial Completion to familiarize and train them with respect to maintenance and use of the Project. The appropriate Professional(s) will attend and assist with such familiarization and training.

ARTICLE 4
BUILDER'S PERSONNEL, SUBCONTRACTORS, SUPPLIERS AND SITE FACILITIES

4.1 **Project Staffing.** The Builder shall staff the Project with qualified and designated individuals and entities responsible for its obligations and performance.

4.1.1 The Builder shall name a representative (the "Builder's Representative") to serve as its primary communication contact with the Owner and the Professional(s).

4.1.2 The Builder shall employ persons skilled in the tasks assigned to them and shall contract with subcontractors and suppliers skilled in the tasks assigned to them and capable of working harmoniously with all trades, crafts and other individuals on the Project. The Builder shall use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.

4.1.3 The Builder shall immediately remove from the Site, for the duration of the Project, any person making an inappropriate religious, racial, sexual or ethnic comment, statement or gesture toward any other individual.

4.1.4 The Builder shall immediately remove from the Site, for the duration of the Project, any person who is incompetent, careless, or not working in harmony.

4.1.5 The Builder shall be responsible to the Owner for the acts and omissions of its agents and employees, consultants, subcontractors and suppliers.

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4.2 **Subcontractor / Supplier Contracts.** The Builder shall enter into written contracts with its subcontractors and suppliers, and those written contracts shall be consistent with this Contract For Construction. It is the intent of the Owner and the Builder that the obligations of the Builder's subcontractors and suppliers inure to the benefit of the Owner and the Builder, and that the Owner be a third-party beneficiary of the Builder's agreements with its subcontractors and suppliers.

4.2.1 The Builder shall make available to each subcontractor and supplier, prior to the execution of written contracts with any of them, a copy of the pertinent portions of this Contract For Construction, including those portions of the Construction Documents to which the subcontractor or supplier will be bound, and shall require that each subcontractor and supplier shall similarly make copies of applicable parts of such documents available to its respective subcontractors and suppliers.

4.2.2 The Builder shall include in its written contracts with its subcontractors and suppliers a provision which contains the acknowledgment and agreement of the subcontractor or supplier that it has received and reviewed the applicable terms, conditions and requirements of this Contract For Construction that are included by reference in its written contract with the Builder, and that it will abide by those terms, conditions and requirements.

4.2.3 The Builder's written contracts with its subcontractors and suppliers shall preserve and protect the rights of the Owner and include the acknowledgment and agreement of each subcontractor or supplier that the Owner is a third-party beneficiary of the contract. The Builder's agreements with its subcontractors and suppliers shall require that in the event of default under, or termination of, this Contract For Construction, and upon request of the Owner, the Builder's subcontractors and suppliers will perform services for the Owner.

4.3 **Resolution Of Trade Disputes.** The Builder shall promptly resolve claims, complaints, labor disputes and disputes over assignment of work tasks by and among its subcontractors and suppliers.

ARTICLE 5
GOODS, PRODUCTS AND MATERIALS

5.1 **Quality Of Materials.** The Builder shall furnish goods, products, materials, equipment and systems which:

(i) comply with this Contract For Construction;

(ii) conform to applicable specifications, descriptions, instructions, drawings, data and samples;

(iii) are new (unless otherwise specified or permitted) and without apparent damage;

(iv) are of quality, strength, durability, capacity or appearance equal to or higher than that required by the Construction Documents;

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(v) are merchantable;

(vi) are free from defects; and

(vii) are beyond and in addition to those required by manufacturers' or suppliers' specifications where such additional items are required by the Construction Documents.

5.2 **Installation And Use Of Materials.** All goods, products, materials, equipment and systems named or described in the Construction Documents, and all others furnished as equal thereto shall, unless specifically stated otherwise, be furnished, used, installed, employed and protected in strict compliance with the specifications, recommendations and instructions of the manufacturer or supplier, unless such specifications, recommendations or instructions deviate from accepted construction practices, or the Construction Documents, in which case the Builder shall so inform the Owner and the appropriate Professional and shall proceed as directed by that Professional, unless otherwise directed by the Owner. The Builder shall coordinate and interrelate all trade contracts, and subcontracts to ensure compatibility of goods, products, materials, equipment and systems, and validity of all warranties and guarantees, required by the Construction Documents for the Work.

5.3 **Unsuitable Materials.** The Builder shall inform the Owner of goods, products, materials, equipment or systems which the Builder knows or should have known are unsuitable or unavailable at the time of bid submission, and claims relating to or arising out of claims that goods, products, materials, equipment or systems are unsuitable or unavailable shall not be entertained by the Owner unless the Builder, subcontractor, or supplier notified the Owner in writing at the time of bid submission, along with proposed alternatives. Approval by the Owner and a Professional of substitute goods, products, materials, equipment or systems does not mean or imply final acceptance by the Owner and Professional if such items should be defective or not as previously represented. Should the Builder furnish any approved goods, products, materials, equipment or systems different from or in addition to those required by the Construction Documents which require supplemental materials or installation procedures different from or in addition to those required for specified items, the Builder shall provide such at no increased cost to the Owner.

5.4 **Security For The Project.** The Builder shall provide security for the Project, including but not limited to security for its Work in progress and for the goods, products, materials, equipment, systems, construction machinery, tools, devices and other items required, used or to be used for its scope of the Work.

ARTICLE 6
DOCUMENTS AND INFORMATION

6.1 **Information From Owner.** The Owner shall provide the Builder with information reasonably necessary to assist the Builder in performing its services including, if applicable:

(i) the Site legal description and any required survey;

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(ii) all written and tangible material in its possession concerning conditions below ground at the Site;

(iii) if the Project involves an existing structure, all available as-built drawings, record drawings, plans, specifications and structure system information with respect to such structure; and

(iv) the Owner's pertinent Project dates and key milestone dates.

6.2 **Resolution Of Questions.** The Builder shall resolve all questions concerning the Construction Documents with the Professional who has prepared the documents.

6.3 **Processing Of Documents.** When requested to do so by the Owner, the Builder shall process documents, and provide other reasonably required drawings, services and certifications, necessary to enable the Owner to (i) obtain financing or insurance for the Project; (ii) obtain approvals, permits and Certificates of Occupancy for the Project not otherwise required to be obtained by Builder; and (iii) represent that the Work complies with requirements of governmental agencies having jurisdiction over the Project.

6.4 **Sufficiency Of Owner Information.** The furnishing of information by the Owner to the Builder shall not relieve the Builder of responsibilities contained elsewhere in this Contract For Construction to evaluate information and documents provided by the Owner and the Builder shall timely notify the Owner in writing of any additional information needed or services required from the Owner in order for the Builder to perform the Work.

ARTICLE 7
SUBMITTALS

7.1 **Submittal Schedule.** The Builder shall timely prepare and transmit to the designated Professional a schedule for provision of all anticipated submittals. The schedule shall (i) include submittals required by the specifications; (ii) be in a format acceptable to the Professional; and (iii) set forth specific dates for submission of the listed submittals. The Builder shall review and approve all submittals prior to submission to a Professional.

7.2 **Processing Of Submittals.** The Builder shall in timely fashion review, approve if appropriate and forward submittals to the Professional(s) for review and approval along with such detail and information as the Professional requires. No part of the Work dealt with by a submittal shall be fabricated or performed until such approval has been given.

7.2.1 A Professional is responsible to the Owner, but not to the Builder, to verify that the submittals conform to the design concept and functional requirements of the plans and specifications, that the detailed design portrayed in shop drawings and proposed equipment and materials shown in submittals are of the quality specified and will function properly, and that the submittals comply with the Contract For Construction.

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7.2.2 All Work shall be performed in accordance with approved submittals. Approval of submittals by a Professional shall not relieve the Builder from complying with this Contract For Construction, including all plans and specifications, except as changed by Change Order.

ARTICLE 8
BUILDER'S INSPECTION AND CORRECTION OF DEFECTIVE OR INCOMPLETE WORK

8.1 **Rejection And Correction Of Work In Progress.** During the course of Project, the Builder shall inspect and promptly reject any Work (i) which does not conform to the Construction Documents; or (ii) which does not comply with any applicable law, statute, building code, rule or regulation of any governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.

8.1.1 The Builder shall promptly correct or require the correction of all rejected Work, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Builder shall bear all costs of correcting such Work, including additional testing and inspections and compensation for all services and expenses necessitated by such correction.

8.1.2 The Builder shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, of the Owner or other trade contractors or subcontractors caused by the Builder 's correction or removal of rejected Work.

8.2 **Covered Or Concealed Work.** If a portion of the Work has been covered, the Builder shall, if notified to do so by the Owner or a Professional, uncover the designated portion for observation and then replace it.

8.2.1 If the designated portion of the Work was covered contrary to the request of the Owner or the Professional, or to requirements specifically expressed in the Construction Documents, the Builder shall receive no additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule.

8.2.2 If the designated portion of the Work was covered prior to a specific request by the Owner or the Professional that it remain uncovered, the Builder shall receive additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule(s) only if the designated portion of the Work was in conformance with the Construction Documents.

ARTICLE 9
CHANGE ORDERS AND CHANGES TO THE WORK

9.1 **Change Order Requests.** Any party to the construction process may request changes to the Work, compensation or applicable schedules.

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9.1.1 With respect to such requests for changes by the Builder, the Builder shall prepare and submit change order requests to the designated Professional.

9.1.2 With respect to requests for changes by parties other than the Builder, the Builder shall promptly review and respond to change order requests submitted by a Professional.

9.1.3 When requested to do so, the Builder shall prepare and submit to a Professional drawings, specifications or other data in support of a change order request.

9.1.4 Each change order shall include time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the Project.

9.2 **Owner-Directed Changes.** The Owner may unilaterally direct the Builder to implement changes in the Work so long as the Work the Owner is requiring is not outside of the general scope of this Contract For Construction, and the Builder, upon written direction from the Owner, shall proceed with such change.

9.3 **Professional-Directed Changes**. A Professional, without the Owner's prior approval, may authorize or direct the Builder to make minor changes in the Work which are consistent with the intent of the Construction Documents and which do not involve a change in Project cost, time for construction, scope, or approved design elements, and the Builder shall promptly carry out such changes. Any such minor changes shall be implemented by written field order and executed by the Builder.

9.4 **Administration Of Changes.** A Professional will administer and manage all change order requests and change orders and will prepare required drawings, specifications and other supporting data as necessary in connection with minor changes, change order requests and change orders.

9.5 **Compensation For Changes.** With respect to all change order requests involving credit to the Owner or additional compensation to the Builder, the Builder shall (i) obtain from subcontractors and suppliers the best possible price quotations; (ii) review such quotations to ascertain whether they are reasonable; (iii) prepare an itemized accounting together with appropriate supporting data, including reasonable expenditures by, and savings to, those performing the Work involved in the proposed change; and (iv) provide a reasonable price quotation to the designated Professional.

9.5.1 If price quotations for change order requests are determined by the Professional to be unreasonable, the Builder shall, in writing, justify said quotations or provide additional back-up materials. If after review of the additional information the Professional determines the quotation is unreasonable, the Owner may require the subject Work be performed on a time and material basis.

9.5.2 The Builder and its subcontractors and suppliers shall be allowed no additional compensation for any costs, fees or expenses incurred in performing services already required by this Contract For Construction, and shall not be entitled to additional reimbursement for home-office, other non-job-site or indirect overhead expenses, or tools necessary for construction.

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9.5.3 It is the responsibility of the Builder to review and approve all pricing of additional work required of its subcontractors and suppliers.

9.6 **Performance Of Changes.** Upon receipt of a field order or change order, changes in the Work shall be promptly performed. All changes in the Work shall be performed under applicable conditions of the Construction Documents.

9.7 **Disputes Regarding Changes.**

9.7.1 Regardless if there is a dispute (i) that a change has occurred; (ii) whether a change in the Work will result in adjustment of compensation or applicable schedules; or (iii) as to the amount of any adjustment of compensation or applicable schedules, the change shall be carried out if the Owner so directs. No claim shall be prejudiced by performance of the Work so long as the Owner is notified of the claim in writing prior to performance of the Work which is the subject of the dispute and the party disputing the decision of the Owner recites the reasons for its dispute in the written notice. Failure to notify the Owner in writing shall constitute a waiver of any claim resulting from the change.

9.7.2 In the event a change order request is approved by the Owner in the absence of an agreement as to cost, time, or both, the appropriate Professional will (i) receive and maintain all documentation pertaining thereto; (ii) examine such documentation on the Owner's behalf; (iii) take such other action as may be reasonably necessary or as the Owner may request; and (iv) make a written recommendation to the Owner concerning any appropriate adjustment in the Construction Price or time.

9.8 **Necessity For Signed Writing.** No act, omission or course of dealing shall alter the requirement that change orders shall be in writing and signed by the Owner, and that change orders are the exclusive method for effecting any adjustment to compensation or applicable schedules. The Builder understands and agrees, on behalf of itself and its subcontractors and suppliers, that neither compensation nor applicable schedules can be changed by implication, oral agreement, or unwritten change order.

ARTICLE 10
FINANCIAL CLAIMS AND LIENS

10.1 **Notification Regarding Liens.** The Builder shall immediately notify the Owner and Professional(s), both orally and in writing, of the nature and details of any mechanics' liens, construction liens, builder's trust fund claims, or claims of any type made by anyone against the Owner, the Professional(s), the Builder or any subcontractor or supplier of any of them or against the Project whether or not such claims arise from the Work.

10.2 **Discharge Of Liens.** The Builder shall take all action necessary to obtain the prompt discharge of any liens or claims filed against the Project. If any lien or claim filed against the Project is not discharged and released by the claimant, the Builder shall, within a reasonable period of time, but in no event more than fourteen calendar days after request and at its own cost, promptly obtain discharge and release of, or indemnity for,

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such lien or claim by providing or filing, as appropriate, the requisite bond. If the Builder fails to have any such lien or claim discharged and released, or fails to provide or file the requisite bond, the Owner shall have the right to pay all sums necessary to obtain such a discharge and release, and the Builder shall bear all expenses incurred by the Owner in so doing.

ARTICLE 11
OWNER'S CONSULTANT(S), PROFESSIONAL(S) AND CONSTRUCTION ADMINISTRATION

11.1 **Owner's Designated Professional Representative.** Unless otherwise directed by the Owner, one designated Professional shall act as the Owner's representative from the effective date of this Contract For Construction until one year from the date of achievement of Substantial Completion.

11.1.1 The Professional so designated will be the Owner's design representative during performance of the Work and will consult with and advise the Owner on all design and technical matters.

11.1.2 The designated Professional will act as initial interpreter of the requirements of this Contract for Construction and as the Owner's advisor on claims.

11.2 **Professional Site Visits.** The Professional(s) will visit the Site with sufficient frequency for familiarization with the progress and quality of the Work and to inspect the Work to determine compliance of the Work with (i) this Contract For Construction, including approved shop drawings and other submittals; (ii) the Construction Schedule; and (iii) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.

11.3 **Professional Rejection Of Work.** The Professional(s) may disapprove or reject Work which does not comply with (i) this Contract For Construction including approved shop drawings and other submittals; or (ii) applicable laws, statutes, building codes, rules or regulations of any governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.

11.4 **Professional Evaluations.**

11.4.1 The Professional(s) will review and evaluate the results of all inspections, tests and written reports required by this Contract For Construction and by any governmental entity having or asserting jurisdiction over the Project. The Professional(s) will take appropriate action on test results, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the Professional(s). The Professional(s) will promptly reject Work which does not conform to and comply with testing requirements.

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11.4.2 The Professional(s) may require inspection or testing of any Work in addition to that required by this Contract For Construction or governmental entities having or asserting jurisdiction over the Project when such additional inspections and testing is necessary or advisable, whether or not such Work is then fabricated, installed or completed. The Professional(s) will take appropriate action on all such special testing and inspection reports, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the Professional(s).

11.5 **Professional Submittal Activities.** The Professional(s) will review and approve, reject or take other appropriate action on submittals such as shop drawings, product data, samples and proposed equal materials or equipment and requested substitutions within not more than fourteen calendar days, and will not approve any submittals unless such submittals conform with (i) the Project design concept; (ii) this Contract For Construction; and (iii) the Owner's budgeted Total Project Construction Cost. A Professional's review of submittals shall not constitute final acceptance of materials or equipment furnished or installed if such materials or equipment should be defective or not as represented by approved submittals or as otherwise required by the Construction Documents. The Builder remains responsible for details and accuracy, for confirming and correlating all quantities and dimensions, for selecting fabrication processes, for techniques of assembly, and for performance of the Work.

11.6 **Professional Interpretations.** A Professional will, when requested to do so in writing by the Builder, promptly and so as to cause no unnecessary delay, render written or graphic interpretations and decisions necessary for the proper execution of the Work. A Professional's interpretations and decisions relating to artistic effect shall be final if not inconsistent with this Contract For Construction.

11.7 **Professional Change Order Activities.** The Professional(s) will consult with and advise the Owner concerning, and will administer and manage, all change order requests and change orders on behalf of the Owner.

11.8 **Professional Pay Application Activities.** The appropriate Professional will review applications for payment, including such accompanying data, information and schedules as the Professional requires, to determine the amounts due to the Builder and shall authorize payment by the Owner to the Builder in writing. After the Work is determined to be finally complete and the Professional determines that the Builder has completed the Work, the Professional will determine whether the Builder is entitled to final payment, and if so will so certify to the Owner in writing.

11.9 **Professional Relationship To Builder.** The duties, obligations and responsibilities of the Builder under this Contract For Construction shall not be changed, abridged, altered, discharged, released, or satisfied by any duty, obligation or responsibility of any Professional. The Builder shall not be a third-party beneficiary of any agreement by and between the Owner and any Professional. The duties of the Builder to the Owner shall be independent of, and shall not be diminished by, any duties or obligations of any Professional to the Owner.

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ARTICLE 12
INSPECTION, CORRECTION OF WORK, AND PROJECT CLOSE OUT

12.1 **Substantial Completion.** Substantial Completion of the Work shall be deemed to have occurred on the later of the dates that the Work passes a Substantial Completion inspection, and the required Substantial Completion documentation and items have been produced.

12.1.1 When the Builder believes that the Work is substantially complete, it shall notify the Owner and the appropriate Professional that its Work is ready for a Substantial Completion inspection.

12.1.2 At or prior to the Substantial Completion inspection, the Builder will prepare and furnish to the Professional a Declaration of Substantial Completion, which at a minimum must:

(i) contain a blank for entry of the date of Substantial Completion, which date will fix the commencement date of warranties and guaranties and allocate between the Owner and the Builder responsibility for security, utilities, damage to the Work and insurance;

(ii) include a list of items to be completed or corrected and state the time within which the listed items will be completed or corrected; and

(iii) contain signature lines for the Owner, the Builder and the Professional.

12.1.3 Upon receipt of notification from the Builder the appropriate Professional will coordinate with the Owner and the Builder a date for inspection of the Work to determine whether the Work is substantially complete.

12.1.4 At inspection(s) to determine whether the Work is substantially complete, the Professional will:

(i) inspect the Work;

(ii) list additional items to be completed or corrected; and

(iii) determine, in consultation with the Owner, whether Substantial Completion of the Work has occurred.

12.1.5 If the Work is determined not to be substantially complete, the Work shall be prosecuted until the Work is substantially complete and the inspection process shall be repeated at no additional cost to the Owner until the Work is determined to be substantially complete.

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12.1.6 On or prior to the required date of Substantial Completion, the Builder shall deliver to the appropriate Professional keys, permits, the certificate of occupancy, and other necessary and customary documents and items pre-requisite for the Owner's occupancy and use of the Work for its intended purpose. The Professional will obtain and review Substantial Completion documentation and items, and will inform the Builder of any deficiencies.

12.1.7 When the Owner, the Builder and the appropriate Professional agree that the Work has passed the Substantial Completion inspection and the Builder has produced the required Substantial Completion documentation and items, they shall each sign the Declaration of Substantial Completion declaring the Work substantially complete and establishing the actual date of Substantial Completion. The Declaration of Substantial Completion shall also include a list of and timeline for the completion of Work needing completion and correction.

12.2 **Final Completion.** Final Completion of the Work shall be deemed to have occurred on the later of the dates that the Work passes a Final Completion inspection and that the Builder has produced all required Final Completion close-out documentation and items. Final Completion shall not be deemed to have occurred and no final payment shall be due the Builder or any of its subcontractors or suppliers until the Work has passed the Final Completion inspection and all required Final Completion close-out documentation and items have been produced to the Owner by the Builder.

12.2.1 When the Builder believes the Work is finally complete, the Builder shall notify the Owner and the appropriate Professional that the Work is ready for Final Completion inspection.

12.2.2 Upon receipt of such notification from the Builder, the Professional will coordinate with the Owner and the Builder a date for inspection of the Work to determine whether the Work is finally complete.

12.2.3 At the Final Completion inspection to determine whether the Work is finally complete, the Professional will:

(i) inspect the Work;

(ii) determine whether all items on the list included with the Declaration of Substantial Completion have been satisfactorily completed and corrected;

(iii) determine whether the Work complies with (a) this Contract For Construction; (b) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project; and (c) applicable installation and workmanship standards;

(iv) determine whether required inspections and approvals by the official(s) having or asserting jurisdiction over the Project have been satisfactorily completed; and

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(v) determine, in consultation with the Owner, whether the Work is finally complete.

12.2.4 If the Work is not finally complete, the Builder shall continue to prosecute the Work, and the inspection process shall be repeated at no additional cost to the Owner, until the Work is finally complete.

12.2.5 On or prior to the date of Final Completion, the Builder shall deliver to the appropriate Professional the following Final Completion close-out documentation and items:

(i) all operating and instruction manuals not previously produced during commissioning and required maintenance stocks;

(ii) two (2) sets of as-built drawings and markups;

(iii) certification and affidavit that all insurance required of the Builder beyond final payment, if any, is in effect and will not be canceled or allowed to expire without notice to the Owner;

(iv) written consent of the surety(ies), if any, to final payment;

(v) full, final and unconditional waivers of mechanics or construction liens, releases of builder's trust fund or similar claims, and release of security interests or encumbrances on the Project property from each contractor, subcontractor, supplier or other person or entity who has, or might have a claim against the Owner or the Owner's property;

(vi) full, final and unconditional certification and affidavit that all of the Builder's obligations to contractors, subcontractors, suppliers and other third parties for payment for labor, materials or equipment related to the Project have been paid or otherwise satisfied;

(vii) all written warranties and guarantees relating to the labor, goods, products, materials, equipment and systems incorporated into the Work, endorsed, countersigned, and assigned as necessary;

(viii) affidavits, releases, bonds, waivers, permits and other documents necessary for final close-out of Work;

(ix) a list of any item(s) due but unable to be delivered and the reason for non-delivery; and

(x) any other documents reasonably and customarily required or expressly required herein for full and final close-out of the Work.

12.2.6 The appropriate Professional will review and determine the sufficiency of all Final Completion close-out documentation and items required for Final Completion which are submitted by the Builder, and will immediately inform the Builder about any deficiencies and omissions.

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ARTICLE 13
BUILDER'S WARRANTIES AND GUARANTEES

13.1 **One-Year Warranty.** In addition to the warranties and guarantees set forth elsewhere in this Contract For Construction, the Builder, upon request by the Owner or the Professional, shall promptly correct all failures or defects in the Work for a period of one year after the actual date of Substantial Completion, or the date of acceptance by the Owner, whichever is later.

13.1.1 The Builder shall schedule, coordinate and participate in a walk-through inspection of the Work one month prior to the expiration of the one-year correction period, and shall notify the Owner, the appropriate Professional(s), and any necessary subcontractors and suppliers of the date of, and request their participation in, the walk-through inspection. The purpose of the walk-through inspection will be to determine if there are defects or failures which require correction.

13.1.2 Should the Builder fail to promptly correct any failure or defect, the Owner may take whatever actions it deems necessary to remedy the failure or defect and the Builder shall promptly reimburse the Owner for any expenses or damages it incurs as a result of the Builder 's failure to correct the failure or defect.

13.2 **Express Warranties And Guarantees – Builder.** In addition to the warranties and guarantees set forth elsewhere herein, the Builder expressly warrants and guarantees to the Owner:

(i) that the Work complies with (a) the Construction Documents; and (b) all applicable laws, statutes, building codes, rules and regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.

(ii) that all goods, products, materials, equipment and systems incorporated into the Work conform to applicable specifications, descriptions, instructions, drawings, data and samples and shall be and are (a) new (unless otherwise specified or permitted) and without apparent damage or defect; (b) of quality equal to or higher than that required by the Construction Documents; and (c) merchantable; and

(iii) that all management, supervision, labor and services required for the Work shall comply with this Contract For Construction and shall be and are performed in a workmanlike manner.

13.3 **Express Warranties And Guarantees - Subcontractors And Suppliers.** The Builder shall require that all of its subcontractors and suppliers provide written warranties, guarantees and other undertakings to the Owner and the Builder in a form identical to the warranties, guarantees and other undertakings set forth in this Contract For Construction, including the warranties, guarantees and undertakings set forth in this Article, which warranties, guarantees and undertakings shall run to the benefit of the Owner as well as the Builder.

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13.4 **Non-Exclusivity And Survival.** The warranties and guarantees set forth in this Article shall be in addition to all other warranties, express, implied or statutory, and shall survive the Owner's payment, acceptance, inspection of or failure to inspect the Work, and review of the Construction Documents.

13.5 **Non-Limitation.** Nothing contained in Paragraph 13.1, shall be construed to establish a period of limitation with respect to the Builder's obligations under this Contract For Construction. Paragraph 13.1 relates only to the Builder's specific obligations with respect to the Work, and has no relationship to the time within which the Builder's contractual obligations under this Contract For Construction may be enforced, nor to the time within which proceedings may be commenced to establish the Builder 's liability with respect to any contractual obligations pursuant to Paragraph 13.1 or contained elsewhere herein.

13.6 **Commencement Of Obligations.** Unless otherwise specified, all of the Builder's warranty and guaranty obligations, including the time period(s) for all written warranties and guarantees of specifically designated equipment required by the Construction Documents, shall begin on the actual date of Substantial Completion or the date of acceptance by the Owner, whichever is later.

ARTICLE 14
OWNER'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES

14.1 **Timely Compensation Of Builder.** The Owner shall timely compensate the Builder in accordance with this Contract For Construction.

14.2 **Payment For Testing.** Unless otherwise required to be provided by the Builder in its scope of services, Owner shall secure and pay for all Project testing.

14.3 **Owner Review Of Documents.** The Owner shall review documents prepared by the Builder in a timely manner and in accordance with schedule requirements. Review by the Owner shall be solely for the purpose of determining whether such documents are generally consistent with the Owner's intent. No review of such documents shall relieve the Builder of any of its responsibilities.

14.4 **Status Of Owner.** The Owner shall not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Builder, for any of the foregoing purposes, be deemed the agent of the Owner.

14.5 **Owner's Utilities.** The Owner shall provide water, gas and electrical energy only as they exist at the Site prior to the start of construction. The Builder shall be responsible to provide and pay for connections to, extensions from and means of using these utilities.

14.5.1 The Owner will pay utility company bills for water, gas and electrical energy which is required for the Project and which passes through the Owner's meters. However, the Owner shall not pay for (i) water which is expended without proper regard for ecological and conservation considerations; (ii) electrical energy expended in electric heating devices; or (iii) utilities for Builder's field offices.

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14.5.2 Acceptance by the Builder of the use of the Owner's water, gas and electrical energy constitutes a release from the Builder to the Owner of all claims and liability for any damages or losses which may be incurred by the Builder as a result of water, gas and electrical energy outages or voltage variations or surges.

14.6 **Statements Of Owner's Capacity.** The Owner, upon reasonable written request, shall furnish to the Builder in writing statements of

(i) the record legal title to the Site on which the Project is located and the Owner's interest therein at the time of execution of this Contract For Construction; and

(ii) the Owner's financial capacity to pay for the Project, subject to such reasonable confidentiality requirements that the Owner may impose.

ARTICLE 15
BUILDER'S COMPENSATION

15.1 **Unit Prices.** If any portion of the Construction Price is determined by the application of unit prices, the number of units contained in the Builder's Compensation Schedule is an estimate only, and the compensation to the Builder shall be determined by the actual number of units incorporated in, or required by, the Work.

15.2 **Schedule Of Values.** The Builder shall prepare and present to the Owner and the designated Professional the Builder's schedule of values, apportioning the different elements of the Work for purposes of periodic and final payment. The Builder's schedule of values shall be presented in the format, and with such detail and supporting information, requested by the Professional or Owner. The Builder shall not imbalance or artificially inflate any element of its schedule of values. Upon the Professional and Owner's acceptance, the schedule of values shall be used to process and pay the Builder's payment requests. The schedule of values shall not be changed without written change order authorized by the Owner.

15.3 **Invoicing Procedures.** In accordance with the procedures and requirements set forth in this Article, the Builder shall invoice the Owner and the Owner shall pay the Builder the Construction Price.

15.3.1 At least every thirty calendar days after commencement of performance, but no more frequently than once a month, the Builder shall submit invoices to the Professional requesting payment for the labor and services rendered during the preceding thirty calendar days. Each invoice shall contain such detail and be backed up with whatever supporting information the Owner or a Professional requests and shall at a minimum state:

(i) the total Construction Price;

(ii) the amount due for properly provided labor, materials and equipment properly incorporated into the Project; and with respect to amounts invoiced for materials or equipment necessary for the Project and properly stored at the Site (or elsewhere if offsite storage is approved in

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writing by the Owner), be accompanied by written proof that the Owner has title to such materials or equipment and that such material and equipment is fully insured against loss or damage;

(iii) a breakdown of the various phases or parts of the Work as related to the Construction Price;

(iv) the value of the various phases or parts of the Work actually performed;

(v) previously invoiced amounts and credit payments made;

(vi) the total amount due;

and shall also have attached such lien waiver and other documentation verifying the Builder's payment to subcontractors and suppliers as the Owner or a Professional may request.

15.4 **Payment Procedures.**

15.4.1 The Professional will review the Builder's applications for payment, including such accompanying data, information and schedules as the Professional requires, to determine the amounts due to the Builder and, based upon such review, together with its inspections of the Work, shall authorize payment by the Owner to the Builder in writing. Such authorization will constitute the Professional's certification to the Owner that

(i) the Work described in the Builder's invoice has progressed to the level indicated and has been performed in accordance with the Contract For Construction;

(ii) all necessary and appropriate lien waivers have been submitted; and

(iii) the amount requested is currently due and owing to the Builder.

15.4.2 In the case of unit price work, the Professional's recommendations for payment will constitute a final determination of quantities and classifications of such work.

15.4.3 Payments shall be deemed timely if postmarked at least two business days before the Payment Date defined in Chapter 1 or any other payment due date stated in this Article 15.

15.5 **Owner's Right To Refuse Payment.** A Professional's approval of the Builder's invoice shall not preclude the Owner from exercising any of its remedies under this Contract For Construction. In the event of a dispute, payment shall be made on or before the Payment Date for amounts not in dispute, subject to any setoffs claimed by the Owner. The Owner shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to the Builder due to:

(i) the Builder's failure to perform the Work in compliance with the requirements of this Contract For Construction or any other agreement between the parties;

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(ii) the Builder's failure to correctly and accurately represent the Work performed in a payment request, or otherwise;

(iii) the Builder's performance of the Work at a rate or in a manner that, in the Owner's opinion, is likely to result in the Project or any portion of the Project being inexcusably delayed;

(iv) the Builder's failure to use funds previously paid the Builder by the Owner, to pay the Builder's Project-related obligations including, but not limited to, the Builder's subcontractors, materialmen, and suppliers;

(v) claims made, or likely to be made, against the Owner or its property;

(vi) loss caused by the Builder or the Builder's subcontractors, or suppliers; or

(vii) the Builder's failure or refusal to perform any of its obligations to the Owner.

15.6 **Builder's Right To Refuse Performance For Non-Payment.** If within thirty calendar days from the Payment Date the Owner, without cause or basis hereunder, fails to pay the Builder any amounts then due and payable to the Builder, the Builder shall have the right, in addition to all other rights and remedies contained herein, to cease performance of the Work until receipt of proper payment after first providing fourteen calendar days written notice to the Owner of its intent to cease work.

15.7 **Correction Of Past Payments.** All prior payments, whether based on estimates or otherwise, may be corrected and adjusted in any subsequent payment and shall be corrected and adjusted in the final payment. In the event that any invoice contains a defect or impropriety which would prevent payment by the Payment Date, the Owner shall notify the Builder in writing of such defect or impropriety. Any disputed amounts determined by the Owner to be payable to the Builder shall be due thirty calendar days from the date the dispute is resolved.

15.8 **Interest On Outstanding Amounts Due.** Interest shall accrue on amounts owed by the Owner to the Builder which remain unpaid thirty calendar days following the date on which payment is due. Said interest shall accrue at the discounted ninety-day U.S. Treasury bill rate as established by the Weekly Auction and as reported in *The Wall Street Journal* on the weekday following each such Weekly Auction.

15.8.1 No interest shall accrue when payment is delayed because of a dispute between the Owner and the Builder, or a dispute as to the accuracy or completeness of any request for payment received. This exception to the accrual of interest shall apply only to that portion of a delayed payment which is actually the subject of the dispute and shall apply only for the duration of such disagreement.

15.9 **Invoice Warranties And Guarantees.** The Builder expressly warrants and guarantees to the Owner that:

(i) title to all goods, products, materials, equipment and systems covered by an invoice will pass to the Owner either by incorporation into the Work, or upon receipt of payment by the Builder, whichever occurs first;

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(ii) all goods, products, materials, equipment and systems covered by an invoice are free and clear of liens, claims, security interests or encumbrances; and

(iii) no goods, products, materials, equipment or systems covered by an invoice have been acquired by the Builder, or its subcontractors or suppliers, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Builder, or its subcontractors or suppliers.

15.10 **Builder's Signature.** The signature of the Builder on any invoice constitutes the Builder's certification to the Owner that (i) the Builder's services listed in the invoice have progressed to the level indicated and have been performed as required by this Contract For Construction; (ii) the Builder has paid its subcontractors and suppliers their proportional share of all previous payments received from the Owner; and (iii) the amount requested is currently due and owing.

15.11 **Taxes.** The Builder shall incorporate into the Construction Price, and pay, all sales, consumer, use and similar taxes for goods, products, materials, equipment and systems incorporated into the Work which were legally required at the time of execution of this Contract For Construction, whether or not yet effective or merely scheduled to go into effect. The Builder shall secure, defend, protect, hold harmless, and indemnify the Owner from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants) relating to any taxes assessed or imposed upon, incurred by or asserted against the Owner by any taxing authority with respect to such taxes. The Builder shall cooperate with and assist the Owner in securing qualified refunds of any sales or use tax paid by the Owner or Builder on goods, products, materials, equipment or systems. Any refund secured shall be paid to the Owner.

15.12 **Compensation Of Builder's Subcontractors And Suppliers.** Upon receipt of payment from the Owner, the Builder shall pay each of its subcontractors and suppliers out of the amount received by the Builder on account of such subcontractor's or supplier's portion of the Work, the amount to which each entity is entitled. The Owner shall have no obligation to pay, and shall not be responsible for payments to, the Builder's subcontractors or suppliers. However, the Owner reserves the right, but has no duty, to make payment jointly to the Builder and to any of its subcontractors or suppliers in the event that the Owner becomes aware that the Builder fails to pay or unreasonably withholds payment from one or more of those entities. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

15.13 **Final Payment.** Prior to being entitled to receive final payment, and as a condition precedent thereto, the Builder must achieve Final Completion. The Owner shall, subject to its rights set forth above in this Article, make final payment of all sums due the Builder by Owner within fourteen calendar days of a Professional's execution of a final approval for payment.

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Final payment shall become due until the Builder submits to the Professional (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or Owner property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance, required by the Contract Documents to remain in force after final payment, is currently in effect and will not be canceled or allowed to expire until at least 30 calendar days prior written notice has been given to the Owner, (3) a written statement that the Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) a release or waiver of liens, claims, security interests, and encumbrances by all subcontractors and material suppliers, and (6), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, to the extent and in such form as may be designated by the Owner. If a subcontractor or material supplier refuses to furnish a release or waiver as required by the Owner, the Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

ARTICLE 16
SCHEDULE REQUIREMENTS

16.1 **Construction Schedule.** The Construction Schedule shall include all pertinent dates and periods for timely completion of the Work.

16.1.1 Unless otherwise directed and approved by the Owner, the Builder shall prepare the Construction Schedule as a critical path schedule with separate divisions for each major portion of the Work or operations. The Construction Schedule shall include and properly coordinate dates for performance of all divisions of the Work, including completion of off-Site requirements and tasks, so that the Work can be completed in a timely and orderly fashion consistent with the required dates of Substantial Completion and Final Completion.

16.1.2 The Construction Schedule shall include (i) the required Commencement Date, the required dates of Substantial Completion and Final Completion; (ii) any guideline and milestone dates required by the Owner; (iii) any applicable subcontractor and supplier subschedules; (iv) a submittal schedule which allows sufficient time for review of documents and submittals; (v) the complete sequence of construction by activity, with dates for beginning and completion of each element of construction; and (vi) required decision dates.

16.1.3 By reviewing the Construction Schedule, the Owner and a Professional do not assume any of the Builder's responsibility (i) that the Construction Schedule be coordinated or complete; or (ii) for timely and orderly completion by the required

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dates of Substantial Completion, Final Completion and any milestone dates required by the Owner.

16.1.4 The Builder shall review, on a weekly basis, the actual status of the Work against the Construction Schedule. The Builder shall discuss the status of the Work weekly with the designated Professional, so that proper overall management may be provided.

16.1.5 The Builder shall periodically and in all instances when the Builder anticipates that performance of the Work will be delayed or in fact has been delayed, but not less frequently than monthly, prepare a revised Construction Schedule and show actual progress of the Work through the revision date, projected completion of each remaining activity, activities modified since previous submittal, major changes in scope, and other identifiable changes. The updated Construction Schedule shall be accompanied by a narrative report which (i) states and explains any modifications of the critical path schedule, including any changes in logic; (ii) defines problem areas and lists areas of anticipated delays; (iii) explains the anticipated impact the problems and delays will have on the schedule and scheduled activities; (iv) reports corrective action taken or proposed; and (v) states how problems anticipated by projections shown on the schedule will be resolved to avoid delay in delivering the Work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by the Owner, if any.

16.2 **Delay In Performance**. If at any time the Builder anticipates that performance of the Work will be delayed or in fact has been delayed, the Builder shall (i) immediately notify the designated Professional of the probable cause of and effect from the delay, and possible alternatives to minimize the delay; and (ii) take all corrective actions reasonably necessary to deliver the Work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by the Owner, if any.

16.3 **Modifications To Time For Performance**. The Builder shall determine and promptly notify the Owner and the Professional(s) in writing when it believes adjustments to the required dates of Substantial Completion or Final Completion, or other milestone dates required by the Owner, if any, are necessary, but no such adjustments shall be effective unless approved in writing by the Owner and Professional(s).

16.4 **Early Completion**. The Builder may attempt to achieve Substantial Completion before the required date of Substantial Completion. However, such planned early completion shall be for the Builder's sole convenience and shall not create any additional Builder rights or Owner obligations under this Contract For Construction, nor shall it change the required dates of Substantial Completion or Final Completion. The Owner shall not pay the Builder any additional compensation for achievement of Substantial Completion or Final Completion prior to the required dates nor will the Owner owe the Builder any compensation should the Owner cause the Builder not to achieve Substantial Completion earlier than the required date of Substantial Completion or Final Completion earlier than the required date of Final Completion.

16.5 **Modification Dates Of Substantial Completion Or Final Completion**. The Builder may propose modifications to the required dates of Substantial Completion or Final

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Completion. The Owner may, but is not required to, accept the Builder's proposal. Modification(s) of the required dates of Substantial Completion or Final Completion shall be accomplished only by duly authorized and accepted change order(s) stating the new date(s) with specificity and reciting that all references in this Contract For Construction to the required dates of Substantial Completion or Final Completion shall thereafter refer to the date(s) as modified, and all rights and obligations, including the Builder's liability for actual damages, delay damages and liquidated damages, shall be determined in relation to the date(s) as modified.

16.6 **Document Review**. The Builder shall provide documents to the Owner and Professional(s) for review in accordance with schedule requirements and with sufficient lead time to allow the Owner and Professional(s) reasonable time for review.

ARTICLE 17
LIQUIDATED DAMAGES

17.1 **Time Of The Essence.** The parties hereto mutually understand and agree that time is of the essence in the performance of this Contract For Construction and that the Owner will incur damages if the Work is not completed on time. The Builder shall at all times carry out its duties and responsibilities as expeditiously as possible and shall begin, perform and complete its services so that (i) the Work progresses in accordance with the Construction Schedule; (ii) the Work is substantially completed by the required date of Substantial Completion; and (iii) the Work is finally complete by the date of Final Completion.

17.2 **Failure To Timely Achieve Completion.** The parties hereto mutually understand and agree that the Owner will sustain substantial monetary and other damages in the event of a failure or delay by the Builder in the completion of the Work. If the Builder inexcusably fails to achieve Substantial Completion by the required date of Substantial Completion as established and previously set forth in this Contract For Construction, the Builder shall pay to the Owner, as liquidated damages for delay and not as a penalty, the daily amount specified in Chapter 1 for each and every day after the required date of Substantial Completion until Substantial Completion. This liquidated damages provision shall apply and remain in full force and effect in the event that the Builder is terminated by Owner for default and shall apply until Substantial Completion has been achieved by any completing builder. If the Builder fails to achieve Final Completion by the required date of Final Completion as established and previously set forth in this Contract For Construction, the Builder shall pay to the Owner, as liquidated damages for delay and not as a penalty, fifteen (15%) percent of the daily amount stated for failure to timely achieve Substantial Completion, even if not actually imposed, for each calendar day of unexcused delay in achieving Final Completion.

17.3 **Compensable Delay.** If the Builder is delayed at any time in the progress or performance of the Work by (i) acts or omissions of the Owner or Professional(s); (ii) major changes ordered by the Owner in the scope of Work; or (iii) any other cause which the Owner determines may justify the compensation of the Builder for the delay, the Builder's compensation shall be equitably adjusted to cover the Builder's actual and direct increased costs attributable to such delay.

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17.4 **Excusable Delay**. If the Builder is delayed at any time in the progress or performance of the Work by (i) acts or omissions of the Owner or Professional(s); (ii) major changes ordered by the Owner in the scope of Work; (iii) fire; (iv) unusual delays in transportation; (v) adverse unusual weather conditions not reasonably anticipated by the Builder; (vi) unavoidable casualties; (vii) causes beyond the Builder's control which the Owner agrees in writing are justifiable; or (viii) any other cause which the Owner determines may justify the delay, the Construction Schedule shall be extended for a period equal to the length of such delay, but only if (a) such delay is not in any way caused by default or collusion on the part of the Builder or by any cause which the Builder could reasonably control or circumvent; (b) the Builder would have otherwise been able to timely perform all of its obligations under this Contract For Construction but for such delay; and (c) immediately but not later than seven calendar days after the beginning of any such delay the Builder gives notice of its delay claim to the Owner.

17.5 **Owner's Right To Withhold Payment.** When it reasonably believes (i) that Substantial Completion will be inexcusably delayed; or (ii) that the Builder will fail to achieve Final Completion by the date of Final Completion, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Builder the daily amount specified for liquidated damages in this Article for each calendar day of the unexcused delay.

17.5.1 If and when the Builder overcomes the delay in timely achieving Substantial Completion or Final Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Builder those funds withheld, but no longer applicable, as liquidated damages.

17.5.2 Delay caused by labor disputes, picketing, employee boycotts, or the like which directly or indirectly involves employees of the Builder or its subcontractors and suppliers is not the responsibility of the Owner and will result in time extensions only if agreed to in writing by the Owner at the time such events arise.

ARTICLE 18
CONCEALED AND UNFORESEEN CONDITIONS

18.1 **Notification Regarding Unusual Conditions.** If (i) the Builder encounters concealed and unforeseen conditions of an unusual nature which affect the performance of the Work; or (ii) the conditions vary from those indicated by the Construction Documents; and (iii) such conditions are not ordinarily found to exist or differ materially from those generally recognized as inherent in work of the character provided by the Builder, the Builder shall promptly, but in no event later than three calendar days after first observance of the conditions, notify the appropriate Professional(s) and the Owner before conditions are disturbed and give the Professional(s) or the Owner opportunity to observe the condition in its undisturbed state.

18.1.1 The conditions will be promptly investigated and, if they differ substantially and cause a material increase or decrease in the Builder 's cost of, or time required for, performance of the Work, compensation or time for performance or both will be equitably adjusted.

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18.1.2 All adjustments in compensation or extensions of time shall be by change order. Change order requests must be made within fourteen calendar days from the date of observation of the changed conditions.

18.1.3 The Builder's failure to notify the Professional(s) and Owner as provided in this Article shall constitute a waiver of any claim arising out of or relating to such concealed or unknown condition.

ARTICLE 19
BUILDER'S RECORDS

19.1 **Preparation Of Records.** The Builder shall, concurrently with performance of its services, prepare substantiating records regarding services rendered and goods furnished.

19.2 **Retention Of Records.** The Builder shall retain in its records copies of all (i) written communications; (ii) memoranda of verbal communications; (iii) accounting records (including original estimates and estimating work sheets, purchase orders and invoices); (iv) job site notes; (v) daily logs; (vi) reports; (vii) notices; (viii) all subcontract files (including proposals of successful and unsuccessful bidders); (ix) change order files (including documentation covering negotiated settlements); (x) written policies and procedures, (xi) records necessary to evaluate and verify direct and indirect costs (including by way of example overhead allocations, payroll records, time sheets, rental receipts, fixed asset records); and (xii) other documents such as plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, accounting records, documents reflecting the unit price of construction and other writings or things which document the Project, its design, its cost, and its construction.

19.2.1 The Builder shall maintain substantiating records for five years after the date of Final Completion or for any longer period of time as may be required by law or good construction practice. If the Builder receives notification of a dispute or the commencement of litigation regarding the Project within this five-year period, the Builder shall continue to maintain all Project records until final resolution of the dispute or litigation.

19.2.2 The Builder shall, upon seven days' request from the Owner, secure from its subcontractors and suppliers copies of (i) written communications; (ii) memoranda of verbal communications; (iii) accounting records (including original estimates and estimating work sheets, purchase orders and invoices); (iv) job site notes; (v) daily logs; (vi) reports; (vii) notices; (viii) all subcontract files (including proposals of successful and unsuccessful bidders); (ix) Change Order files (including documentation covering negotiated settlements); (x) written policies and procedures, (xi) records necessary to evaluate and verify direct and indirect costs (including overhead allocations), and (xii) other documents generated with respect to the Project.

19.3 **Access To Records.** Upon the request of the Owner, the Builder shall make its records available during normal business hours to the Owner, its authorized representative(s) or

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to any state, federal or other regulatory authority. Any such authority, the Owner and its authorized representative(s) shall be entitled to inspect, examine, review and copy the Builder's records at the copying party's reasonable expense, within adequate work space at the Builder 's facilities. Failure by the Builder to supply substantiating records from itself and its subcontractors and suppliers upon the request of the Owner shall be reason to exclude the related costs from amounts which might otherwise be payable by the Owner pursuant to this Contract For Construction.

ARTICLE 20
PROPRIETARY DOCUMENTS AND CONFIDENTIALITY

20.1 **Nature And Use Of Information.** All information, documents, and electronic media furnished by the Owner to the Builder (i) belong to the Owner; (ii) are proprietary and confidential; (iii) are furnished solely for use on the Owner's Project; (iv) shall be kept confidential by the Builder; and (v) shall not be used by the Builder on any other project or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than services rendered to the Owner hereunder is specifically authorized in writing by the Owner in advance. The Owner hereby grants to the Builder a limited license to use and reproduce applicable portions of the Construction Documents necessary for execution of the Work. All copies made under this license shall bear the statutory copyright notice, if any, shown on the documents.

20.2 **Ownership Of Information.** All information, documents, and electronic media prepared by or on behalf of the Builder for the Project are the sole property of the Owner free of any retention rights of the Builder. The Builder hereby grants to the Owner an unconditional right to use, for any purpose whatsoever, any information, documents or electronic media prepared by or on behalf of the Builder for the Project, free of any copyright claims, trade secrets or other proprietary rights with respect to such documents.

20.3 **Disclosure Of Information.** The Builder shall not disclose any information it receives from the Owner to any other person or entity except to the extent necessary to allow it to perform its duties under this Contract For Construction.

20.4 **Instructions To Employees.** Because it is difficult to separate proprietary and confidential information from that which is not, the Builder shall instruct its employees and agents to regard all information which is not in the public domain as information which is proprietary and confidential.

20.5 **Non-Publication.** Submission or distribution of documents to meet official regulatory requirements or for other required purposes in connection with the Project is not to be construed as publication in derogation of the Owner's common law copyrights or other reserved rights.

ARTICLE 21
GENERAL INSURANCE REQUIREMENTS

21.1 **General Insurance Requirements.** Unless otherwise required, each insurance policy:

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(i) shall be issued by an insurance carrier acceptable to the Owner;

(ii) shall be kept in force throughout performance of the Builder's services and for one year after the end of such performance;

(iii) shall be an occurrence policy; and

(iv) shall be evidenced by a certificate of insurance acceptable to the Owner which provides that the coverage evidenced thereby shall not be substantially modified or canceled without twenty-eight calendar days' prior written notice to the Owner.

21.2 **Certificates Of Insurance.** Prior to performance of services on the Project, the Builder shall (i) have all required insurance coverage in effect; and (ii) deliver to the Owner certificates of insurance for all its required minimum insurance coverage. The Builder shall (i) require that its subcontractors, and suppliers have similar coverage in effect, and prior to the performance of any services on the Project by the Builder's subcontractors and suppliers, and (ii) shall ensure that all required insurance coverages of its subcontractors and suppliers is in effect. The Owner shall have no responsibility to verify compliance by the Builder or its subcontractors and suppliers. Upon the request of the Owner, the Builder shall deliver to the Owner certificates of insurance and/or copies of policies for all required insurance coverage.

21.3 **Effect Of Insurance.** Compliance with insurance requirements shall not relieve the Builder of any responsibility to indemnify the Owner for any liability to the Owner as specified in any other provision of this Contract For Construction, and the Owner shall be entitled to pursue any remedy in law or equity if the Builder fails to comply with the contractual provisions of this Contract For Construction. Indemnity obligations specified elsewhere in this Contract For Construction shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.

21.4 **Waiver Of Subrogation.** The Builder hereby releases and discharges the Owner and the Owner's Related Parties of and from all liability to the Builder, and to anyone claiming by, through or under the Builder, by subrogation or otherwise, on account of any loss or damage to tools, machinery, equipment or other property, however caused.

ARTICLE 22
GENERAL BOND REQUIREMENTS

22.1 **General Bond Requirements.** If the Builder is required to provide performance and payment bond(s), the penal sum of each bond shall be in an amount not less than the Construction Price, as adjusted by any change order(s), and each bond shall:

(i) be in a form approved by the Owner;

(ii) incorporate by reference the terms of this Contract For Construction;

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(iii) be executed by a company certified by the Secretary of the United States Department of Treasury pursuant to the Act of July 30, 1947 (61 Stat. 646, as amended; 6 U.S.C. 6-13);

(iv) be executed by a company licensed and authorized to do business in the state in which the Project is located; and

(v) be accompanied by a power of attorney certifying that the person(s) executing the bond have the authority to do so.

22.2 **Delivery Of Bonds.** The Builder shall deliver any required bond(s) and power(s) of attorney to the Owner prior to commencement of the Work.

ARTICLE 23
OWNER'S RIGHT TO STOP WORK

23.1 **Cease And Desist Order.** If the Builder fails or refuses to perform or fails to correct defective Work as required, or persistently fails to carry out the Work in accordance with the Contract For Construction, the Owner may, by written notice, order the Builder to cease and desist in performing the Work or any portion of the Work until the cause for the order has been eliminated to the satisfaction of the Owner. Upon receipt of such instruction, the Builder shall immediately cease and desist as instructed by the Owner and shall not proceed further until the cause for the Owner's order has been corrected, no longer exists, or the Owner instructs that the Work may resume.

23.1.1 The Builder shall not be entitled to an adjustment in the time for performance or the Construction Price under this clause since such stoppages are considered to be the fault of the Builder.

23.1.2 The right of the Owner to stop Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Builder or others.

23.1.3 In the event the Owner issues instructions to cease and desist, and in the further event that the Builder fails and refuses with seven calendar days to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the Work or any portion of the Work with its own forces, or with the forces of another builder, and the Builder shall be responsible for the cost of performing such Work by the Owner.

23.1.4 The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Builder.

ARTICLE 24
TERMINATION OR SUSPENSION OF CONTRACT FOR CONSTRUCTION

24.1 **Termination For Cause By Owner.**

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24.1.1 The Owner may terminate this Contract For Construction for cause if the Builder materially breaches this Contract For Construction by:

(i) refusing, failing or being unable to properly manage or perform on any Project;

(ii) refusing, failing or being unable to supply the Project with sufficient numbers of workers, properly skilled workers, proper materials, or maintain applicable schedules;

(iii) refusing, failing or being unable to make prompt payment to subcontractors or suppliers;

(iv) disregarding laws, ordinances, rules, regulations or orders of any public authority or quasi-public authority having jurisdiction over the Project;

(v) refusing, failing or being unable to substantially perform in accordance with the terms of the Contract For Construction as determined by the Owner, or as otherwise defined elsewhere herein, or

(vi) refusing, failing or being unable to substantially perform in accordance with the terms of any other agreement between the Owner and Builder.

24.1.2 Upon the occurrence of any of the events described in Paragraph 24.1.1, the Owner may give written notice to the Builder setting forth the nature of the default and requesting cure within seven calendar days from the date of notice. At any time thereafter, if the Builder fails to initiate the cure or if the Builder fails to expeditiously continue such cure until complete, the Owner may give written notice to the Builder of immediate termination, and the Owner, without prejudice to any other rights or remedies, may take any or all of the following actions:

(i) complete all or any part of the Work, including supplying workers, material and equipment which the Owner deems expedient to complete the Work;

(ii) contract with others to complete all or any part of the Work, including supplying workers, material and equipment which the Owner deems expedient to complete the Work;

(iii) take such other action as is necessary to correct such failure;

(vi) take possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the Builder;

(v) directly pay the Builder's subcontractors and suppliers compensation due to them from the Builder;

(vi) finish the Work by whatever method the Owner may deem expedient; and

(vii) require the Builder to assign the Builder's right, title and interest in any or all of Builder's subcontracts or orders to the Owner.

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24.1.3 If the Owner terminates the Contract For Construction for cause, and the Owner takes possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the Builder, the Builder's compensation shall be increased by fair payment, either by purchase or rental at the election of the Owner, for any materials, tools, construction equipment and machinery items retained, subject to the Owner's right to recover from the Builder the Owner's damages resulting from the termination.

24.1.4 If the Owner terminates this Contract For Construction for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, then in such event, said termination shall be deemed a termination for convenience as set forth in Paragraph 24.3.

24.2 **Termination For Cause By Builder.**

24.2.1 The Builder may terminate this Contract For Construction for cause if the Owner materially breaches this Contract For Construction by:

(i) refusing, failing or being unable to make prompt payment to the Builder without just cause;

(ii) disregarding laws, ordinances, rules, regulations or orders of any public authority of quasi-public authority having jurisdiction over any Project; or refusing, failing or being unable to substantially perform in accordance with the terms of this Contract For Construction or any other agreement between the Owner and the Builder.

24.2.2 Upon the occurrence of any of the events described in Paragraph 24.2.1, the Builder may give written notice to the Owner setting forth the nature of the default and requesting cure within seven calendar days from the date of notice. If the Owner fails to cure the default within seven calendar days, the Builder, without prejudice to any rights or remedies, may give written notice to the Owner of immediate termination.

24.3 **Termination Or Suspension For Convenience.** The Owner may at any time give written notice to the Builder terminating this Contract For Construction or suspending the Project, in whole or in part, for the Owner's convenience and without cause. If the Owner suspends the Project for convenience, the Builder shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of suspension.

24.4 **Statutory Termination.** In compliance with O.C.G.A. § 36-60-13, if the Term of this Contract continues beyond the calendar year in which this Contract is executed, the parties agree that this Contract shall terminate absolutely and without further obligation on the part of the Owner on December 31 each calendar year of the Term, and further, that this Contract shall automatically renew on January 1 of each subsequent calendar year absent the Owner's provision of written notice of non-renewal to Builder at least five (5) calendar days prior to the end of the then current calendar year. Title to any supplies, materials, equipment, or other personal property shall remain in Builder until fully paid for by Owner. Further, this Contract shall terminate immediately and

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absolutely at such time as appropriated or otherwise unobligated funds are no longer available to satisfy the obligation of the Owner.

24.5 Builder's Compensation When Builder Terminates For Cause Or Owner Terminates For Convenience or Per Statute. If this Contract For Construction is (i) terminated by the Builder pursuant to Paragraph 24.2; (ii) terminated by the Owner pursuant to Paragraph 24.3; (iii) suspended more than three months by the Owner pursuant to Paragraph 24.3; (iv) or by Owner pursuant to O.C.G.A. § 36-60-13, the Owner shall pay the Builder specified amounts due for Work actually performed prior to the effective termination date and reasonable costs associated with termination. The Owner may agree to additional compensation, if any, due to the Builder. Absent agreement on the additional amount due the Builder, the Owner shall pay the Builder:

(i) reasonable costs incurred in preparing to perform the terminated portion of the Work, and in terminating the Builder's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided, however, that if it appears that the Builder would not have profited or would have sustained a loss if the Work had been completed, no profit shall be allowed or included, and the amount of compensation shall be reduced to reflect the anticipated rates of loss, if any; and

(ii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or supplier orders. These costs shall not include amounts paid in accordance with other provisions hereof.

24.5 **Builder's Compensation When Owner Terminates For Cause.** If this Contract For Construction is terminated by the Owner for cause pursuant to Paragraph 24.1, no further payment shall be made to the Builder until Final Completion of the Project. At such time, the Builder shall be paid the remainder of the Construction Price less all costs and damages incurred by the Owner as a result of the default of the Builder, including liquidated damages applicable thereto. The Builder shall additionally reimburse the Owner for any additional costs or expenses incurred.

24.6 **Limitation On Termination Compensation.** Irrespective of the reason for termination or the party terminating, the total sum paid to the Builder shall not exceed the Contract Construction Price, as properly adjusted, reduced by the amount of payments previously made and penalties or deductions incurred pursuant to any other provision of this Contract For Construction, and shall in no event include duplication of payment.

24.7 **Builder's Responsibility Upon Termination.** Irrespective of the reason for termination or the party terminating, if this Contract For Construction is terminated, the Builder shall, unless notified otherwise by the Owner,

(i) immediately stop work;

(ii) terminate outstanding orders and subcontracts;

(iii) settle the liabilities and claims arising out of the termination of subcontracts and orders; and

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(iv) transfer title and deliver to the Owner such completed or partially completed Work, and, if paid for by the Owner, materials, equipment, parts, fixtures, information and such contract rights as the Builder has;

(v) promptly deliver to the County all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Contractor in performing this Agreement, whether completed or in process, in the form specified by the County

24.8 **Lack Of Duty To Terminate.** The right to terminate or suspend the Work shall not give rise to a duty on the part of either the Owner or the Builder to exercise that right for the benefit of the Owner, the Builder or any other persons or entities.

24.9 **Limitation On Termination Claim.** If the Builder fails to file a claim within one year from the effective date of termination, the Owner shall pay the Builder only for services actually performed and expenses actually incurred prior to the effective termination date.

24.10 Assumption of Contracts. The Owner reserves the right in termination for cause to take assignment of all contracts between the Builder and its subcontractors, vendors, and suppliers. The Owner will promptly notify the Builder of the contracts the Owner elects to assume. Upon receipt of such notice, the Builder shall promptly take all steps necessary to effect such assignment.

ARTICLE 25
APPLICABLE LAW AND DISPUTE RESOLUTION

25.1 **Applicable State Law.** This Contract For Construction shall be deemed to be entered into in and shall be interpreted under the laws of the state of Georgia.

25.2 **Court Actions.** Except as expressly prohibited by law:

(i) all legal actions hereunder shall be conducted only in the Superior Court of Cobb County, Georgia or federal court in the Northern District of Georgia ("Court");

(ii) the choice of jurisdiction and venue described in the preceding paragraph shall be mandatory and not permissive in nature, thereby precluding the possibility of litigation or trial in any jurisdiction or venue other than that specified herein;

(iii) the parties waive any right to assert the doctrine of forum *non conveniens* or to object to venue; and

(iv) the parties waive any right to a jury trial, and agree that all legal actions shall be tried, both as to factual and legal issues, only to the Court.

25.3 **Mutual Discussion.** In case of any dispute, claim, question or disagreement arising from or relating to the Project or arising out of this Contract For Construction or the breach thereof, the parties shall first attempt resolution through mutual discussion.

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25.4 **Facilitative Mediation.** If the parties cannot resolve any dispute, claim, question, or disagreement arising from or relating to the Project or arising out of this Contract For Construction or the breach thereof through mutual discussion, as a condition precedent to any litigation, the parties shall in good faith participate in private, non-binding facilitative mediation seeking a just and equitable solution satisfactory to all parties.

25.4.1 All parties to a mediation shall promptly provide all other parties to the mediation with copies of essential documentation relevant to the support or defense of the matter being mediated.

25.4.2 The parties shall not be required to mediate for a period greater than ninety-one calendar days unless otherwise agreed to in writing by the parties. The parties shall share equally any administrative costs and fees of such proceedings, but shall each be responsible for their own expenses otherwise incurred.

25.4.3 In the event that the statute of limitations would run during the required mediation period, either party may institute litigation so as to avoid the running of such statute upon the condition that such party immediately seek a stay of such litigation pending the conclusion of the mediation period.

25.4.4 During the course of mediation, any party to the mediation may apply for injunctive relief from any court of competent jurisdiction until the mediation period expires or the dispute is otherwise resolved.

25.4.5 The Owner, the Professional(s), the Builder, and any other parties involved in any way in the design or construction of the Project are bound, each to each other, by this requirement to mediate prior to commencement of any litigation, provided that they have signed this Contract For Construction or an agreement that incorporates this Contract For Construction by reference or signed any other agreement which binds them to mediate. Each such party agrees that it may be joined as an additional party to a mediation involving other parties under any such agreement. In the case where more than one mediation is begun under any such agreement and any party contends that the mediations are substantially related, the mediations may be conducted by the mediator selected in the first mediation which was commenced.

25.5 **Conflicting Dispute Resolution Provisions.** Neither party to this Contract For Construction shall enter into any contract with regard to the Project which directly or indirectly gives the right to resolve any dispute with, involving, or affecting the other to any other person or legal entity which is in conflict with the dispute resolution procedures required by this Article.

25.6 **Arbitration Preclusion.** In case of a dispute relating to the Project, or arising out of this Contract For Construction, no party to this Contract For Construction shall be required to participate in or be bound by, any arbitration proceedings.

25.7 **Performance During Dispute Resolution.** The Owner and the Builder agree that pending the resolution of any dispute, controversy, or question, the Owner and the

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Builder shall each continue to perform their respective obligations without interruption or delay, and the Builder shall not stop or delay the performance of the Work.

ARTICLE 26
DAMAGES AND REMEDIES

26.1 **Builder's Repair.** The Builder shall, at its expense, promptly correct, repair, or replace all goods, products, materials, systems, labor and services which do not comply with the warranties and guarantees set forth in this Contract For Construction, or any other applicable warranty or guarantee.

26.2 **Builder's Reimbursement.** The Builder shall promptly reimburse the Owner for any expenses or damages incurred by the Owner as a result of (i) the Builder 's failure to substantially perform in accordance with the terms of this Contract For Construction; (ii) deficiencies or conflicts in the Construction Documents attributable to the Builder or of which the Builder was or should have been aware; (iii) breach of the warranties and guarantees set forth in this Contract For Construction or any other applicable warranty or guarantee; or (iv) other acts or omissions of the Builder.

26.3 **General Indemnity.** To the fullest extent permitted by law the Builder shall secure, defend, protect, hold harmless, and indemnify the Owner and the Owner's Related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, and regardless of the legal theories upon which premised, including, but not limited to, those actually or allegedly arising out of bodily injury to, or sickness or death of, any person, or property damage or destruction (including loss of use), which may be imposed upon, incurred by or asserted against the Owner or the Owner's Related Parties allegedly or actually arising out of or resulting from the Builder's services, including without limitation any breach of contract or negligent act or omission (i) of the Builder; or (ii) of the Builder's subcontractors or suppliers, or (iii) of the agents, employees or servants of the Builder or its subcontractors or suppliers.

26.3.1 To the fullest extent permitted by law, the Builder, for itself and for its subcontractors and suppliers, and the respective agents, employees and servants of each, expressly waives any and all immunity or damage limitation provisions available to any agent, employee or servant under any workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts, to the extent such statutory or case law would otherwise limit the amount recoverable by the Owner or the Owner's Related Parties pursuant to the indemnification provision contained in the paragraph above.

26.4 **Intellectual Property Indemnity.** To the fullest extent permitted by law, the Builder shall defend, protect, hold harmless, and indemnify the Owner and the Owner's Related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the Owner or

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Professional(s) in writing. If the Builder has reason to believe the use of a required design, process or product is an infringement of a patent, the Builder shall be responsible for such loss unless such information is promptly given to the Owner.

26.5 **Non-Exclusivity Of Owner's Remedies.** The Owner's selection of one or more remedies for breach of this Contract For Construction contained herein shall not limit the Owner's right to invoke any other remedy available to the Owner under this Contract For Construction or by law.

26.6 **Waiver Of Damages.** The Builder shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect consequential damages.

26.7 **Interest.** The Owner is entitled to interest on all amounts due from the Builder that remain unpaid thirty days after the amount is deemed due, whether as a result of a resolution of a dispute or otherwise. Any such interest shall be calculated by the same method as set forth in Paragraph 15.8.

ARTICLE 27
MISCELLANEOUS PROVISIONS

27.1 **Integration.** This Contract For Construction represents the entire and integrated agreement between the Owner and the Builder, and supersedes all prior negotiations, representations or agreements, either written or oral, for the Project. This Contract For Construction may be amended only by written instruments signed by both the Owner and the Builder, and is subject to such reasonable modifications as may be required by the Owner's lender(s) or insurer(s), if any.

27.2 **Severability.** If any provision of this Contract For Construction, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions shall remain valid and enforceable.

27.3 **Waiver.** No provision of this Contract For Construction may be waived except by written agreement of the parties. A waiver of any provision on one occasion shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of this Contract For Construction.

27.4 **Strict Compliance.** No failure of the Owner to insist upon strict compliance by the Builder with any provision of this Contract For Construction shall operate to release, discharge, modify, change or affect any of the Builder's obligations.

27.5 **Third-Party Beneficiaries.** This Contract For Construction shall inure solely to the benefit of the parties hereto and their successors and assigns, and, except as otherwise specifically provided in this Contract For Construction, nothing contained in this Contract For Construction is intended to or shall create a contractual relationship with, or any rights or cause of action in favor of, any third party against either the Owner or the Builder.

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27.6 **Survival.** All provisions of this Contract For Construction which contain continuing obligations shall survive its expiration or termination.

27.7 **Assignment.** Except as prohibited by applicable law, neither party shall assign any or all of its benefits or executory obligations under this Contract For Construction without the approval of the other party, except in case of assignment solely for security or assignment by the Owner to a Related Party of the Owner, or except as otherwise specifically provided for in this Contract For Construction in case of default. The Owner and the Builder bind their successors and assigns to the other party to this Contract For Construction.

27.8 **Execution Of Documents.** Upon the request of the Owner, the Builder shall execute documents required by the Owner's lender whereby the Builder agrees that in the event of the Owner's default under, or the termination of, any construction loan agreement, the Builder will complete the services required by this Contract For Construction under the terms and conditions contained herein so long as the lender fulfills the obligations of the Owner toward the Builder as set forth in this Contract For Construction.

ARTICLE 28
DEFINITIONS

When one of the following capitalized words, terms or phrases is used in this contract, it shall be interpreted or construed first as defined below, second according to its generally accepted meaning in the construction industry, and third according to its common and customary usage.

Builder: An entity, including but not limited to a general contractor, a trade contractor or a construction manager, engaged directly by the Owner pursuant to a Contract For Construction.

Construction Price: The dollar amount for which a Builder agrees to perform the Work set forth in a Contract For Construction.

Construction Documents: Plans, specifications, change orders, revisions, addenda, and other information which set forth in detail the Work.

Construction Schedule: The timetable which sets forth pertinent dates for timely completion of the Work.

Contract For Construction: A written agreement between the Owner and a Builder for provision of goods, products, materials, equipment, systems, management, supervision, labor and services required to construct all or part of a Project.

Contract For Professional Services: A written agreement between the Owner and a Professional for provision of services and related items required to design or engineer all or part of a Project.

Declaration Of Substantial Completion: Document declaring the Work substantially complete and suitable for occupancy or beneficial use by the Owner.

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Final Completion: The stage of construction when the Work has been completed in accordance with the Contract For Construction and the Owner has received all documents and items necessary for closeout of the Work.

Hazardous Substances: The term "Hazardous Substance" shall have the same meaning and definition as set forth in the Comprehensive Environmental Response Compensation and Liability Act as amended, 42 U.S.C. § 6901 *et seq*, and regulations promulgated thereunder (collectively "CERCLA") and any corresponding state or local law or regulation, and shall also include: (a) any Pollutant or Contaminant as those terms are defined in CERCLA; (b) any Solid Waste or Hazardous Constituent as those terms are defined by, or are otherwise identified by, the Resource Conservation and Recovery Act as amended, 42 U.S.C. § 6901 *et seq*, and regulations promulgated thereunder (collectively "RCRA") and any corresponding state or local law or regulation; (c) crude oil, petroleum and fractions of distillates thereof; (d) any other material, substance or chemical defined, characterized or regulated as toxic or hazardous under any applicable law, regulation, ordinance, directive or ruling; and (e) any infectious or medical waste as defined by any applicable federal or state laws or regulations.

Owner's Related Parties: Any parent, subsidiary or affiliated entities of the Owner, including the respective officers, trustees, office holders, directors, shareholders, partners, and employees of each.

Professional: An entity, including but not limited to an architect, civil engineer or geotechnical engineer, engaged directly by the Owner to provide design or engineering services.

Project: A planned construction undertaking as more specifically described immediately preceding the recitals in Chapter 1 of a Contract For Professional Services or in a Contract For Construction.

Project Design Schedule: The timetable which sets forth the required relationships between, and pertinent dates for, required completion of design and engineering services, documents and related activities.

Site: The geographical location of a Project, usually defined by legal boundary lines, and the location characteristics including, but not limited to, grades and lines of streets, alleys, pavements and adjoining structures, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, existing buildings and improvements, and service and utility lines.

Substantial Completion: The stage of construction when the Owner can occupy or beneficially use satisfactorily completed Work for its intended purpose.

Total Project Construction Cost: The total cost to the Owner to complete construction of the Project, including, without limitation, the Work, the cost of utilities, the cost of fees for permits and licenses, and modifications necessitated by local conditions.

Work: Any and all computers, construction machinery, documents, equipment, facilities, fixtures, furnishings, goods, heat, items, labor, licenses, management, materials, permits, products, services, supervision, supplies, systems, taxes, testing, tools, utilities, transportation, vehicles, and water, required to be performed or supplied and/or necessary for proper execution and completion of the Project, or some portion thereof, whether or not incorporated or to be

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incorporated into the Project; provided, however, that Work does not include performance of pre-construction services by a Construction Manager.

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Revised May, 2003

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FTA REQUIRED GENERAL ASSURANCES

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.

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.

Access to Third Party Contract Records

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.

Changes to Federal Requirements

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.

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.

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.* The County's overall goal for DBE participation is **5%.**

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 County deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

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 the County. In addition, the contractor may not hold retainage from its subcontractors. It is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed. It is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the County and contractor's receipt of the partial retainage payment related to the subcontractor's work.

e. The contractor must promptly notify County 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 County.

Incorporation of Federal Transit Administration (FTA) Terms

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

Terminations

Termination for Convenience

a.The County 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 County to be paid the Contractor. If the Contractor has any property in its possession belonging to the County, the Contractor will account for the same, and dispose of it in the manner the County directs.

b. Termination for Default

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 County 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.

c. Opportunity to Cure

The County in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 30 days 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 the Contractor fails to remedy to the County's Satisfaction, the breach or default or any terms, covenants, or conditions of the Contract within (10) days after receipt by Contactor or written notice from the County setting forth the nature of said breach, the County shall have the right to terminate the Contract without any further obligation to the Vendor. Any such termination for default shall not in any way operate to preclude the County from pursuing all available remedies against the Contractor and its sureties for said breach or default.

Equal Opportunity (EEO) Provision

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) the contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(b) *Federally assisted construction contracts.* (1) Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided,* That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(c) *Subcontracts.* Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d) *Incorporation by reference.* The equal opportunity clause may be incorporated by reference in all Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts and subcontracts as the Deputy Assistant Secretary may designate.

(e) *Incorporation by operation of the order.* By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written.

(f) *Adaptation of language.* Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

Debarment and Suspension

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 County. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to County 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.

Buy America

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

Resolution of Disputes, Breaches, or Other Litigation

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

Performance During Dispute - Unless otherwise directed by County, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

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

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

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

Lobbying

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 County.

Clean Air

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.

Clean Water

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.

Cargo Preference

To the extent applicable, the Recipient agrees to comply with 46 U.S.C. § 55305 and U.S. Maritime Administration regulations, “Cargo Preference - U.S.-Flag Vessels,” 46 C.F.R. Part 381.

Fly America Requirements

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an

appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

Contract Work Hours and Safety Standards Act

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** – The County upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

Patent and Rights In Data

The FTA patent clause is substantially similar to the text of 49 C.F.R. Part 19, Appendix A, Section 5, but the rights in data clause reflects FTA objectives. For patent rights, FTA is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This model clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. **Rights in Data** - This following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

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

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or

programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

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

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause , provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e. , a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. **Patent Rights** - This following requirements apply to each contract involving experimental, developmental, or research work:
(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser

and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA

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.

Recycled Products

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

Recovered Materials

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

ADA Access

The Recipient agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq*., which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq*., which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow

applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

(3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

(4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

(5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

(6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

(7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

(8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;

(9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;

(10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

(11) Federal civil rights and nondiscrimination directives implementing those Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. To the extent applicable, the Recipient agrees to comply with the confidentiality and civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq*., the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq*., and the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

i. Access to Services for Persons with Limited English Proficiency. The Recipient agrees to facilitate compliance with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and follow applicable provisions of U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 *Fed. Reg*. 74087, December 14, 2005, except to the extent that FTA determines otherwise in writing.

j. Environmental Justice. The Recipient agrees to facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note; and DOT Order 5620.3, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 *Fed. Reg*. 18377 *et seq*., April 15, 1997, except to the extent that the Federal Government determines otherwise in writing.

k. Other Nondiscrimination Laws. The Recipient agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable Federal directives prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

Assignably

The covenants contained herein shall, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.

Davis-Bacon and Copeland Anti-Kickback Acts

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officershall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and

3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
4. With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and

3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The COUNTY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the COUNTY may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or

program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the COUNTY for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

1. That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension

of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) *Apprentices* - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees* - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training

Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity* - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Bonding Requirements

A. Bid Bond Requirement for Construction

1. **Bid Security** - A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.
2. **Rights Reserved** - In submitting this Bid, it is understood and agreed by bidder that the right is reserved by COUNTY to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of COUNTY.
   It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of COUNTY, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of COUNTY's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.
   It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by COUNTY as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense COUNTY for the damages occasioned by default, then the undersigned bidder agrees to indemnify COUNTY and pay over to COUNTY the difference between the bid security and COUNTY's total damages, so as to make COUNTY whole.
   The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

B. Performance and Payment Bonding Requirements for Construction

The Contractor shall be required to obtain performance and payment bonds as follows:

Performance bonds:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the COUNTY.
2. The COUNTY may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The COUNTY may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

Payment bonds:

1. The penal amount of the payment bonds shall equal:
   A. Fifty percent of the contract price if the contract price is not more than $1 million.

B. Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or
C. Two and one half million if the contract price is more than $5 million.

2. If the original contract price is $5 million or less, the COUNTY may require additional protection as required by subparagraph 1 if the contract price is increased.

C. Performance and Payment Bonding Requirements for Non-Construction

The Contractor may be required to obtain performance and payment bonds when necessary to protect the COUNTY's interest.

1. The following situations may warrant a performance bond:
   A. COUNTY property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
   B. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
   C. Substantial progress payments are made before delivery of end items starts.
   D. Contracts are for dismantling, demolition, or removal of improvements.
2. When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:
   A. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the COUNTY determines that a lesser amount would be adequate for the protection of the COUNTY.
   B. The COUNTY may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The COUNTY may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
3. A payment bond is required only when a performance bond is required, and if the use of payment bond is in the COUNTY's interest.
4. When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:
   A. The penal amount of payment bonds shall equal:
      1) Fifty percent of the contract price if the contract price is not more than $1 million;
      2) Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or
      3) Two and one half million if the contract price is increased.

D. Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The COUNTY shall determine the amount of the advance payment bond necessary to protect the COUNTY.

E. Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The COUNTY shall determine the amount of the patent indemnity to protect the COUNTY.

F. Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to COUNTY, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by COUNTY, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by COUNTY and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to COUNTY. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to COUNTY written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

Third Party Rights

Notwithstanding anything herein to the contrary, the services provided under this Agreement shall not give rise to, nor shall be deemed to or construed so as to confer any rights on any other party, as a third party beneficiary or otherwise.

Notice of Federal Requirements

New Federal laws, regulations, policies, and administrative practices may be established after the date of this Contract, which may apply to this contract. If Federal requirements change, the changed requirements will apply to the contract or the performance of work under the contract as required. All standards or limits set forth in this contract to be observed in the performance of the work are minimum requirements.

Environmental Requirements

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq. Consistent with Executive Order No. 11514, as amended, “Protection and Enhancement of Environmental Quality”, 42 U.S.C. § 4321 note; FTA

statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy of 1969, as amended, 40 C.F.R. Part 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures", 23 C.F.R. Part 771 and 49 C.F.R. Part622.

Seismic Safety Requirements

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

Drug and Alcohol Testing

FTA's drug and alcohol rules, 49 CFR 653 and 654, respectively, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with Parts 653 and 654. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

Therefore, FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

Option 1 - The contractor agrees to *participate in COUNTY's drug and alcohol program established in compliance with 49 CFR 653 and 654.*

Option 2 - The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Georgia, or the COUNTY to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before date before March 15) to COUNTY's Project Manager To certify compliance the contractor shall use the "Substance Abuse

Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register

Option 3 - The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of COUNTY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to COUNTY Project Manager To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before (insert date or upon request) a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the recipient wishes the contractor to use) as its policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before (insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: (to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

PRE-CONSTRUCTION SERVICES AGREEMENT

BETWEEN

COBB COUNTY, GEORGIA
1890 COUNTY SERVICES PARKWAY
MARIETTA, GEORGIA 30008-4014

AND

[CONSTRUCTION MANAGEMENT AT-RISK CONTRACTOR]

COBBLINC BUS FUELING STATION AND BUS WASH FACILITY IMPROVEMENTS

SAMPLE

COBB COUNTY DEPARTMENT OF TRANSPORTATION
TRANSIT DIVISION

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SAMPLE

STATE OF GEORIA
COUNTYOF COBB

PRE-CONSTRUCTION SERVICES
AGREEMENT

This Agreement is made and entered into by and between **Cobb County**, Georgia, a political subdivision of the State of Georgia **(County)** and **_____,** a Corporation authorized to do business in the State of Georgia (**Contractor**).

WHEREAS, the **County** desires to enter into an agreement with **Contractor** to furnish professional services for the following project (Project):

Project Name/Number: **Cobblinc Bus Fueling Station and Bus Wash Facility Improvements**

Project Description: **The purpose of the Project is to upgrade and improve the existing bus fueling station and bus wash facility to meet the growing Transit Division's needs while reducing the operating costs of CobbLinc.**

WHEREAS, the **County** issued a Request for Proposals, dated **_____, 2016** (RFP), for proposals from Construction Management at Risk Services and **Contractor** responded with a proposal dated **_____, 2016** (Proposal); and

WHEREAS, the **Contractor** has represented to the **County** that it is experienced and qualified to provide the professional services described herein for the aforementioned Project and the **County** has relied upon such representations contained in its Proposal.

WHEREAS, based on the evaluation of interviews conducted and its Price Proposal, the Contractor was determined by the **County** to be the highest ranked Proposer in the Construction Management At-Risk procurement process**.**

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, it is agreed by and between the **County** and the **Contractor** that the **Contractor** shall provide professional services as detailed in the Scope of Services for the aforementioned project (Project) pursuant to this Agreement (Agreement).

WHEREAS, based on the evaluation of interviews conducted and its Price Proposal, the Contractor was determined by the RTC to be the highest ranked Proposer in the CMAR procurement process**.**

This Agreement between the **County** and the **Contractor** includes, but is not limited to the County's RFP and all attached and referenced documents, the Contractor's Proposal and all attached and referenced documents.

SECTION 1. SCOPE OF SERVICES

The professional services to be furnished by the **Contractor** under this Agreement shall be those necessary to provide all related and necessary professional pre-construction services for the Project. The **Contractor** shall perform the services under this Agreement as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Agreement shall be interpreted or construed to constitute the **Contractor** or any of its agents or employees to be the agent, employee, or representative of the **County.**

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Attached hereto is the **Scope of Services and Fee Schedule** (**Exhibit A)**, the **Project Schedule** (**Exhibit B**), **Personnel Origanization Chart (Exhibit C)**, **Disadvantaged Business Enterprise Participation (Exhibit D)**, **General Assurances** (**Exhibit E**), and **FTA Required Clauses** (**Exhibit F)**, which by reference are all specifically incorporated herein and made a part hereof. The Project Schedule constitutes a material term of this Agreement and **Contractor** shall strictly abide by such schedule. Should **Contractor** anticipate delays it shall notify the **County** immediately. Any modifications to the schedule will need to be submitted in writing for approval by the **County.**

Services shall be provided in accordance with the Scope of Services for each phase of the work and in accordance with the **Federal, State, and Local (City of Marietta and Cobb County)** rules and regulations.

The **Contractor** shall gather from the **County** all available data and information pertinent to the performance of the services for the project. The **County** shall have the final decision as to what data and information is pertinent.

The **Contractor** shall ensure that the data and information meet applicable standards as specified herein.

The **Contractor** shall immediately upon discovery report in writing to the **County** any discovery of errors or omissions contained in the data and information furnished by the **County.**

The **Contractor** shall visit and become familiar with the project site and shall become acquainted with local conditions involved in carrying out this Agreement. The **Contractor** may request that a representative of the **County** be present during the site visit.

The **Contractor** shall recommend and secure the **County's** written approval of the manner of Project plans presentation and the methods to be used in the plan preparation so that these plans can be best utilized, as determined by the **Contractor** and approved by the **County,** in the orderly preparation of negotiated services. The **Cobb County Department of Transportation Engineering Design Procedures Manual**, current edition as may be amended, shall be utilized in the production of plans for locally funded projects. All state- and federal-funded projects shall follow state and federal plan production guidelines and requirements, as may be amended.

Upon receipt of the **County's** written approval of the manner of the project plan presentation and methods of plan preparation, the **Contractor** shall proceed with implementation of plan preparation.
The completion schedule shall be mutually agreed to by the **County** and the **Contractor** prior to written authorization to proceed and as detailed on Project Schedule **(Exhibit B**), for each phase or work task contained in Scope of Services and Fee Schedule **(Exhibit A)**. The **Contractor** shall recognize that time is of the essence for each phase of the Project.

SECTION 2. EFFECTIVE DATE, TERM OF SERVICES

The effective date of this Agreement shall be the date said Agreement is signed by the Chairman of the Cobb County Board of Commissioners. The term of this Agreement shall be in effective until completion of project construction.

SAMPLE

SECTION 3. AMOUNT OF AGREEMENT

It is agreed that the compensation hereinafter specified to perform the services required by this Agreement includes both direct and indirect costs chargeable to the project, as defined in Scope of Services and Fee Schedule (Exhibit A).

Pre-Construction Services: **$_____**

The maximum obligation of the **County** to the **Contractor** under the terms of this Agreement shall be: **$_____**

SECTION 4. GENERAL CONDITIONS

A. CONTRACTOR COORDINATION

The **Contractor** shall cooperate fully with the Cobb County Department of Transportation (DOT), Georgia Department of Transportation (GDOT), contractors on adjacent projects, contractors for final bridge plans, municipalities and local government officials, utility companies, railroads, and others, as may be directed by the **County.** Such cooperation shall include attendance at meetings, discussions, and hearings, as may be requested by the **County**, and furnishing plans and other data produced in the course of work on the project, as may be requested from time to time by the **County** to effect such cooperation and compliance with all directives issued by the **County.**

It is understood and agreed that Cobb County DOT and other governmental agencies may have access to the work and be furnished information as directed by the **County.**

B. COORDINATION WITH COUNTY HISTORIC PRESERVATION PLANNER

The **Contractor** shall request from and coordinate with the Cobb County Historic Preservation Planner (HP) or the HP's designee information relative to the presence of cultural, historical, archaeological, or other important sites located in the land lots to be affected by design or construction. This coordination shall be implemented as soon as possible after receipt of Notice to Proceed from the **County.** Coordination with the HP will not relieve the **Contractor** of additional responsibilities related to historic properties which may be required in order to secure a U.S. Army Corps of Engineers permit, if required, for the project.

C. COORDINATION WITH THE NATIONAL GEODETIC SURVEY

The **Contractor** shall contact the National Geodetic Survey (NGS) advisor at the Georgia Department of Community Affairs (DCA) to request data on geodetic control points during the preliminary evaluation phase of project design. Continued coordination with the advisor to relocate and/or preserve affected control points will be maintained throughout the project duration. This coordination shall be implemented as soon as possible after receipt of Notice to Proceed (NTP) by the **County.**

D. COORDINATION WITH UTILITIES

The **Contractor** shall furnish prints and/or electronic files to the County, or as directed by the County, and check the utilities' submitted plans for avoidance of conflicts with the road construction details or with the facilities of other utilities. This will require numerous submittals to the County. The **County** shall provide a final set of construction plans to all affected utility owners when the project is being bid. The **Contractor** shall make no commitments with the utilities that are binding upon the **County.**

SAMPLE

If the project includes work for the Cobb County Water System (**CCWS**), the **Contractor** shall research all **CCWS** records and act on behalf of the **CCWS** to identify the existing facilities on the submitted roadway plans for avoidance, or resolution, of conflicts with the road construction details or with the existing or proposed facilities of other utilities. If the project does not include work for the **CCWS**, the **Contractor** shall provide **CCWS** electronic files of preliminary and final plans for **CCWS** to perform its designs. The **Contractor** shall incorporate **CCWS**-provided plans and quantities into the final construction bid set. Coordination with other municipal water systems may also be required.

If the project includes work for the **Cobb County Marietta Water Authority (CCMWA)**, a **CCMWA** Project Manager will act in the same capacity as the Cobb County DOT Project Manager does for the roadway design work on matters directly related to **CCMWA** work. Both the **CCMWA** and Cobb County DOT Project Manager shall be copied on **all** correspondence including documented phone conversations and minutes of meetings. The **Contractor** shall coordinate directly with the **CCMWA** Project Manager on matters directly related to **CCMWA** work.

E. RIGHT TO ENTER

The **Contractor** will notify all property owners or occupants of the intent to enter properties for the purpose of accomplishing surveys or other field investigations in accordance with state law and the practices of the **County.** The **Contractor** shall discuss with and receive approval from Cobb County DOT prior to sending said notices of intent to enter private property. Upon request by the **Contractor**, the **County** will provide the necessary documents identifying the **Contractor** as being in the employ of the **County** for the purpose described in the Agreement. If the property owner or occupant denies the **Contractor** permission to enter, such incident will be reported to the **County** and the **County** will initiate such action as is dictated by current policy and procedure.

F. ACCURACY OF WORK

Contractor agrees to furnish all skill and labor of every description necessary to carry out and complete in good, firm and substantial, workman-like manner, the work specified, in strict conformity with the Bid Proposal and Scope of Services. The **Contractor** shall be responsible for the accuracy of the work and shall promptly correct errors and omissions without additional compensation.

Acceptance of the work by the **County** will not relieve the **Contractor** of the responsibility for subsequent correction of any errors and the clarification of any ambiguities.

At any time during the construction of the improvement provided for by the plans or during any phase of work performed by others based on data secured by the **Contractor** under the Agreement, the **Contractor** shall confer with the **County** for the purpose of interpreting the information obtained and to correct any errors or omissions made by it. The **Contractor** shall prepare any plans or data required by the **County** to correct its errors or omissions. The above consultation, clarification, or correction shall be made without added compensation to the **Contractor.** The **Contractor** shall give immediate attention to these changes so there will be a minimum of delay to others.

G. PROJECT MANAGER

The Director of the Cobb County DOT or her duly appointed representatives shall act as the Project Manager between the **Contractor** and the **County** and all utilities, and authorities or governments whose properties will be affected. The **Contractor** shall arrange for conferences and exchanges of data and information and for necessary approvals.

SAMPLE

All correspondence, data, information, and reports shall be directed to the Project Manager to provide for proper distribution to the parties concerned.

All conferences, including telephone conversations and decisions, shall be reduced to writing by the **Contractor** and a copy of the minutes shall be forwarded to the Project Manager within seven (7) calendar days of the event.

The **Contractor** shall meet with the **County** for review of the work on a regular monthly basis or as determined by the Project Manager.

The Project Manager will expedite any necessary decisions affecting the performance of the **Contractor's** Agreement, but the **Contractor** shall not make use of the Project Manager's services on trivial or minor matters normally to be decided by the **Contractor.**

H. DELIVERY OF NOTICES

All written notices, demands, and other papers or documents to be delivered to the **County** under this Agreement shall be delivered to the **County DOT** office, 1890 County Services Parkway, Marietta, Georgia, 30008-4014, Attention: Pre-Construction Engineer, or at such other place or places as may be subsequently designated by written notice to the **Contractor**. All written notices, demands, and other papers or documents to be delivered to the **Contractor** under this Agreement shall be directed to or at such a place or places subsequently to be designated in writing by the **Contractor** to the **County.**

I. SUPERVISION AND CONTROL

The **Contractor** shall perform the services required to accomplish the Scope of Services as stated above under such control and supervision as the **County** may deem appropriate.

J. COVENANT AGAINST CONTINGENT FEES

The **Contractor** shall comply with the relevant requirements of all federal, state, county, or local laws. The **Contractor** warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the **Contractor**, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the **Contractor,** any fee, commission, percentage, brokerage fee, gifts, or any consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the **County** shall have the right to annul this Agreement without liability, or, at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

K. EMPLOYMENT OF COUNTY'S PERSONNEL

The **Contractor**, directly or through its subcontractors, shall not employ any person or persons that are currently or were in the employ of the **County** at any time during the term of this Agreement for any work required by the terms of this Agreement, without the written permission of the **County** except as may otherwise be provided for herein.

L. CONTRACTORS TO COOPERATE WITH OTHER CONTRACTORS

If the **County** undertakes or awards other contracts for additional related work, the **Contractor** shall fully cooperate with such other Contractors and the **County** employees or appointed committee(s), and carefully fit its own work to such additional work as may be directed by the **County.** The **Contractor** shall not commit or permit any act which will interfere with the performance of work by any other **Contractor** or by **County** employees.

SAMPLE

M. REVIEW OF WORK

Authorized representatives of the **County** may at all reasonable times review and inspect the project activities and data collected under this Agreement and any amendments thereto. All reports, drawings, studies, specifications, estimates, maps, and computations prepared by or for the **Contractor**, shall be available to authorized representatives of the **County** for inspection and review at all reasonable times in the main offices of the **County.** Acceptance shall not relieve the **Contractor** of its professional obligation to correct, at its expense, any of its errors in work. Cobb County DOT may request at any time and the **Contractor** shall produce progress prints or copies of any work as performed under this Agreement. Refusal by the **Contractor** to submit progress reports and/or plans shall be cause to withhold payment to the **Contractor** until the **Contractor** complies with the **County's** request in this regard.

The **County's** review recommendations shall be incorporated into the plans by the **Contractor.**

SECTION 5. RESPONSIBILITY FOR CLAIMS AND LIABILITY AND INDEMNIFICATION AND HOLD HARMLESS

The **Contractor** agrees to protect, defend, indemnify, and hold harmless and shall be responsible for any and all damages to properties or persons caused by its employees, subcontractors, or agents, and shall hold harmless the **County**, its commissioners, its officers, agents, and employees from and against any and all liabilities, damages, suits, claims, liens and judgments actions, or damages of any nature, including claims for contribution and/or indemnification, for injuries to or death of any person or persons, or damage to the property or other rights of any person or persons to the extent arising out of and attributed to the negligent errors, acts, or omissions of the **Contractor. Contractor's** obligation to protect, defend, indemnify, and hold harmless, as set forth hereinabove shall include any matter arising out of any patent, trademark, copyright, or service mark, or any actual or alleged unfair completion disparagement of product or service, or other business tort of any type whatsoever, or any actual or alleged violation of trade regulations. These indemnities shall not be limited by reason of the listing of any insurance coverage.

Contractor further agrees to protect, defend, indemnify, and hold harmless the **County**, its commissioners, officers, agents, and employees from and against any and all claims or liability for compensation under the Worker's Compensation Act arising out of injuries sustained by an employee of the **Contractor.**

SECTION 6. INSURANCE

A. <u>Requirements</u>:

The Builder shall have and maintain in full force and effect for the duration of this Contract, insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work by the Builder, its agents, representatives, employees or subcontractors. All policies shall be subject to approval by the County Attorney and/or Risk Manager to form and content. These requirements are subject to amendment or waiver if so approved in writing by the County Manager.

B. <u>Minimum Limits of Insurance</u>:

Builder shall maintain the following insurance policies with coverage and limits no less than:

(a) *Commercial General Liability*: $1,000,000 (one million dollars) combined single limit per occurrence and $2,000,000 (two million dollars) aggregate comprehensive/extended/enhanced Commercial General Liability policy with coverage including bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting

SAMPLE

therefrom, damage for premises/operations, products/completed operations, independent consultants and contractual liability (specifically covering the indemnity), broad-from property damage, and underground, explosion and collapse hazard. This coverage may be achieved by using an excess or umbrella policy. The policy or policies must be on "an occurrence" basis ("claims made" coverage is not acceptable).

(b) *Commercial Automobile Liability* (owned, non-owned, hired): $1,000,000 (one million dollars) combined single limit per occurrence for comprehensive Commercial Automobile Liability coverage including bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.

(c) *Professional Liability*: $1,000,000 (one million dollars) limit for claims arising out of professional services and caused by the Builder's errors, omissions, or negligent acts. **(required if any professional services will be provided)**

(d) *Workers' Compensation and Employers Liability*: Workers' Compensation limits as required by the State of Georgia and Employers' Liability limits of $1,000,000 (one million dollars) per occurrence or disease. (If Builder is a sole proprietor, who is otherwise not entitled to coverage under Georgia's Workers' Compensation Act, Builder must secure Workers' Compensation coverage approved by both the State Board of Workers' Compensation and the Commissioner of Insurance. The amount of such coverage shall be the same as what is otherwise required of employers entitled to coverage under the Georgia Workers' Compensation Act. Further, the Builder shall provide a certificate of insurance indicating that such coverage has been secured and that no individual has been excluded from coverage.)

(e) *Builder's Risk Insurance*: Builder shall provide a Builder's Risk Insurance Policy to be made payable to the County and Builder, as their interests may appear. The policy amount shall be equal to 100% of the Maximum Contract Price, written on a Builder's Risk "All Risk," or its equivalent. The policy shall provide, or be endorsed to provide, as follows: "The following may occur without diminishing, changing, altering or otherwise affecting the coverage and protection afforded the insured under this policy: i) Equipment may be delivered to the insured premises and installed in place ready for use; and ii) Partial or complete occupancy by County; and iii) Performance of Work in connection with construction operations insured by the County, by agents or lessees, or other Builders of the County or Using Agency." The insurance coverage shall include extended coverage, and providing coverage for transit, with sub-limits sufficient to insure the full replacement value of the property or equipment removed from its site and while located away from its site until the date of final acceptance of the Work.

(f) *Commercial Umbrella Liability Coverage*: $_____ (_____) per occurrence shall be provided and will apply over all liability policies, without exception, including but not limited to Commercial General Liability, Commercial Automobile Liability, Employers' Liability, and Professional Liability.

C. <u>Deductibles and Self-Insured Retentions</u>:

Any deductibles or self-insured retentions must be declared to and approved by the County in writing so that the County may ensure the financial solvency of the Builder; self-insured retentions should be included on the certificate of insurance.

D. <u>Other Insurance Provisions</u>:

Each policy shall contain, or be endorsed to contain, the following provisions respectively:

SAMPLE

(a) General Liability, Automobile Liability and Umbrella Liability Coverage.

(i) *Additional Insured Requirement.* The County and the County's elected and appointed officials, officers, boards, commissions, employees, representatives, consultants, servants, agents and volunteers (individually "Insured Party" and collectively "Insured Parties") shall be named as additional insureds as respects: liability arising out of activities performed by or on behalf of the Builder; products and completed operations of the Builder; premises owned, leased, or used by the Builder; automobiles owned, leased, hired, or borrowed by the Builder. The coverage shall contain no special limitations on the scope of protection afforded to the Insured Parties. Nothing contained in this section shall be construed to require the Builder to provide liability insurance coverage to any Insured Party for claims asserted against such Insured Party for its sole negligence.

(ii) *Primary Insurance Requirement.* The Builder's insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to the Insured Parties. Any insurance or self-insurance maintained by the Insured Parties shall be in excess of the Builder's insurance and shall not contribute with it.

(iii) *Reporting Requirement.* Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Insured Parties.

(iv) *Separate Coverage.* Coverage shall state that the Builder's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to limits of insurance provided.

(v) *Defense Costs/Cross Liability.* Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion.

(vi) *Subrogation*. The insurer shall agree to waive all rights of subrogation against the Insured Parties for losses arising from Work performed by the Builder for the County.

(b) Workers' Compensation Coverage.

The insurer providing Workers' Compensation Coverage will agree to waive all rights of subrogation against the Insured Parties for losses arising from Work performed by the Builder for the County.

(c) All Coverages.

(i) Notice Requirement. Each insurance policy required by this Contract shall be endorsed to state that coverage shall not be suspended, voided, or canceled except after thirty (30) calendar days prior written notice (or 10 calendar days if due to non-payment) has been given to the County. Such notice shall be sent directly to: _____[Department, Cobb County, Address]. The County reserves the right to accept alternate notice terms and provisions, provided they meet the minimum requirements under Georgia law.

(ii) Starting and Ending Dates. Policies shall have concurrent starting and ending dates.

SAMPLE

E. <u>Acceptability of Insurers</u>:

The insurance to be maintained by Builder must be issued by a company licensed or approved by the Insurance Commissioner to transact business in the State of Georgia. Such insurance shall be placed with insurers with an A.M. Best Policyholder's rating of no less than "A-" and with a financial rating of Class VII or greater. The Builder shall be responsible for any delay resulting from the failure of its insurer to provide proof of coverage in the proscribed form.

F. <u>Verification of Coverage</u>:

Builder shall furnish the County with certificates of insurance and endorsements to the policies evidencing all coverage required by this Contract along with the declarations page for each insurance policy listed on the certificate of insurance prior to submission of this Contract to the County for execution and must be approved by the County before commencement of the Work. Without limiting the general scope of this requirement, Builder is specifically required to provide an endorsement naming the County as an additional insured when required. The certificates of insurance and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf, unless alternate sufficient evidence of their validity and incorporation into the policy is provided. The certificates of insurance, endorsements and declarations page shall be furnished on a form utilized by Builder's insurer in its normal course of business. The County reserves the right to require complete, certified copies of all required insurance policies at any time. The Builder shall provide proof that any expiring coverage has been renewed or replaced prior to the expiration of the coverage.

G. <u>Subcontractors</u>:

Builder shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated in this Contract, including, but not limited to, naming the Insured Parties as additional insureds.

H. <u>Claims-Made Policies</u>:

Builder shall extend any claims-made insurance policy for at least six (6) years after termination or final payment under the Contract, whichever is later, and have an effective date which is on or prior to the date of the Builder's initial contract date with the County.

I. <u>County as Additional Insured and Loss Payee</u>:

The County shall be named as an additional insured and loss payee on all policies required by this Contract, except the County need not be named as an additional insured and loss payee on any Professional Liability policy or Workers' Compensation policy.

J. <u>Progress Payments</u>:

The making of progress payments to the Builder shall not be construed as relieving the Builder or its subcontractors or insurance carriers from providing the coverage required in this Contract.

SECTION 7. COMPENSATION

The **County** shall compensate the **Contractor** for actual services and quantity performed and that have been authorized by the **County** under the terms of this **Agreement**. The fees for the work to be performed under this **Agreement** shall be charged to the **County** in accordance with the rate schedule referenced in **Exhibit B.** Significant reduction in project scope as determined by the Pre-Construction Engineer may result in a

SAMPLE

corresponding reduction in compensation. Any increase in scope of services shall receive approval by the Director prior to incurring any additional costs.

The **Contractor** may submit to the **County** a monthly invoice, in a form acceptable to the **County** and accompanied by all support documentation requested by the **County**, for payment for the services which were completed during the billing period. The **County** shall review for approval said invoices. The **County** shall have the right to reject payment of any invoice or part thereof if not properly supported, or if the costs requested or a part thereof, as determined solely by the **County,** are unreasonably in excess of the actual stage of completion of each phase. The **County** shall pay each such invoice or portion thereof as approved, provided that the approval or payment of any such invoice shall not be considered to be evidence of performance by the **Contractor** to the point indicated by such invoice, or of receipt of acceptance by the **County** of the services covered by such invoice. The **County** shall pay any undisputed items contained in such invoices.

Each invoice shall be accompanied by a letter of progress report describing the total work accomplished for each phase and any problems which have been encountered which may inhibit execution of the work. The **Contractor** shall also submit an accurate updated schedule, and an itemized description of the percentage of total work completed for each phase during the billing period.

Compensation for design services for the **County** shall be per percent complete for work authorized by the **County.** The **Contractor** shall invoice based on the percent of work completed during the billing period. Upon completion by the **Contractor** of the work and approval thereof by the **County,** the **County** will pay the **Contractor** a sum equal to one hundred percent (100%) of the compensation approved for the completed work, not to exceed the contract amount for each phase of work, less the total of all previous partial payments paid or in the process of payment except as otherwise stated below for Water and Sewer design services.

Compensation for design services for the **CCWS** shall be invoiced based on the sum of actual costs incurred in the performance of the work, including all direct, payroll, overhead, and profit costs in an amount not to exceed the compensation set forth herein for the Water and Sewer Plans Phase.

SECTION 8. CONTRACT DISPUTES

This Agreement shall be deemed to have been executed in Cobb County, Georgia, and all questions of interpretation and construction shall be governed by the Laws of the State of Georgia.

SECTION 9. CONTRACT TERMINATION FOR CAUSE FOR TERMINATION

The **County** may terminate this Agreement for cause upon ten (10) days prior written notice to the **Contractor** in part or in whole upon the **Contractor's** default in the performance of any term of this **Agreement**. Such termination shall be without prejudice to any of the **County's** rights or remedies provided by law.

The **Contractor** shall be paid for any validated services under this Agreement up to the time of termination.

SECTION 10. TERMINATION FOR CONVENIENCE

The **County** may terminate this **Agreement** for its convenience at any time upon 30 days written notice to the **Contractor.** In the event of the **County's** termination of this **Agreement** for convenience, the **Contractor** will be paid for those services actually performed. Partially completed performance of the **Agreement** will be compensated based upon a signed statement of completion to be submitted by the **Contractor**, which shall itemize each element of performance.

SAMPLE

All such expenses shall be properly documented and submitted to the Director or her designee for processing and payment. The Cobb County Board of Commissioners shall be the final authority in the event of any disputes over authorized costs between the Director and the **Contractor.**

SECTION 11. TERMINATION FOR FUND APPROPRIATION

The **County** may unilaterally terminate this Agreement due to a lack of funding at any time by written notice to the **Contractor**. In the event of the **County's** termination of this Agreement for fund appropriation, the **Contractor** will be paid for those services actually performed. Partially completed performance of the Agreement will be compensated based upon a signed statement of completion to be submitted by the Contractor which shall itemize each element of performance and said completion shall be subject to verification by the **County**.

SECTION 12. PERSONNEL

The **Contractor** represents that it has secured or will secure, at its own expense, all personnel necessary to complete this Agreement, none of whom shall be employees of, or have any contractual relationship with, the **County.** Primary liaison with the **County** will be through its designee. If the project includes **CCWS** work, the **Contractor** shall identify, in writing, a water/sewer project manager responsible for direction and coordination of this portion of the project. All of the services required hereunder will be performed by the **Contractor** under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under law to perform such services.

All professional personnel, including subcontractors, engaged in performing services for the **Contractor** under this Agreement are indicated in personnel listing attached hereto as **Exhibit C**, and incorporated herein by reference. No changes or substitutions shall be permitted in the **Contractor's** key personnel as set forth herein without the prior approval of the Director or his designee.

The **Contractor** shall employ, in responsible charge of supervision and design of the work, only persons duly registered in the appropriate category; and further employs only qualified surveyors in responsible charge of any survey work.

The **Contractor** shall endorse all reports, contract plans, and survey data. Such endorsements shall be made by a person duly registered in the appropriate category by the Georgia State Board of Registration for Professional Engineers and Land Surveyors, being in the full employ of the **Contractor** and responsible for the work prescribed by this Agreement

SECTION 13. DISADVANTAGED BUSINESS ENTERPRISE AND SMALL BUSINESS PARTICIPATION

Disadvantaged Business Enterprise (DBE) Participation and Small Business Participation in all DOT contracts is encouraged. Contractors must submit a DBE participation report to the **County** prior to beginning work on a project and a final DBE report must be submitted at the end of a project. **Monthly DBE utilization reports must be submitted with each monthly invoice.** If DBE participation changes during the course of a project, an updated participation report must be submitted to the **County** at the time of such change. No Small Business reports are currently required; however, this is subject to change at the **County's** discretion.

SECTION 14. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this **Agreement,** the **Contractor** agrees as follows: (1) the **Contractor** will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age or disability; (2) the **Contractor** will, in all solicitations or advertisements for employees placed for

SAMPLE

qualified applicants, provide applicants consideration for employment without regard to race, creed, color, sex, national origin, age or disability; (3) the **Contractor** will cause the foregoing provisions to be inserted in all subcontracts for any work covered by the **Agreement** so that such provision will be binding upon each subcontractor, provided that the foregoing provision shall not apply to contracts or subcontracts for standard commercial supplies of raw materials.

SECTION 15. ASSIGNMENT

The **Contractor** shall not sublet, assign, transfer, pledge, convey, sell or otherwise dispose of the whole or any part of this **Agreement** or his right, title, or interest therein to any person, firm, or corporation without the previous consent of the **County** in writing.

SECTION 16. WAIVER

A waiver by either party of any breach of any provision, term, covenant, or condition of this **Agreement** shall not be deemed a waiver of any subsequent breach of the same or any other provision, term, covenant, or condition.

SECTION 17. SEVERABILITY

The parties agree that each of the provisions included in this **Agreement** is separate, distinct and severable from the other and remaining provisions of this **Agreement**, and that the invalidity of any Agreement provision shall not affect the validity of any other provision or provisions of this **Agreement**.

SECTION 18. GOVERNING LAW

The parties agree that this **Agreement** shall be governed and construed in accordance with the laws of the State of Georgia. This **Agreement** has been signed in Cobb County, Georgia.

SECTION 19. MERGER CLAUSE

The parties agree that the terms of this **Agreement** include the entire **Agreement** between the parties, and as such, shall exclusively bind the parties. No other representations, either oral or written, may be used to contradict the terms of this **Agreement**.

SECTION 20. ANTI-KICKBACK CLAUSE

The **Contractor** hereby promises to comply with all applicable "Anti-kickback" laws, and shall insert appropriate provisions in all subcontracts covering work under this Agreement.

SECTION 21. AUDITS AND INSPECTORS

At any time during normal business hours and as often as the **County** may deem necessary, the **Contractor** shall make available to the **County** for examination all of its records with respect to all matters covered by this **Agreement.** It shall also permit the **County** to audit, examine and make copies, excerpts or transcripts from such records of personnel, conditions of employment and other data relating to all matters covered by this **Agreement.**

The **Contractor** shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred on the **Project** and used in support of its proposal and shall make such material available at all reasonable times during the period of the **Agreement** and for three years from the date of final payment under the **Agreement** for inspection by the **County** or any reviewing agencies, and copies thereof shall be furnished

SAMPLE

upon request. The **Contractor** agrees that the provisions of this Article shall be included in any **contracts** it may make with any subcontractor, assignee, or transferee.

SECTION 22. CONFIDENTIALITY

The **Contractor** agrees that its conclusions and any reports are for the confidential information of the **County** and that it will not disclose its conclusions in whole or in part to any persons whatsoever, other than to submit its written documentation to the **County**, and will only discuss the same with it or its authorized representatives. Upon completion of this Agreement term, all documents, reports, maps, data, and studies prepared by the **Contractor** pursuant thereto shall become the property of the **County** and be delivered to the Pre-Construction Engineer.

Articles, papers, bulletins, reports, or other materials reporting the plans, progress, analyses, or results and findings of the work conducted under this Agreement shall not be presented publicly or published without prior approval in writing of the **County.**

It is further agreed that if any information concerning the project, its conduct, results, or data gathered or processed should be released by the **Contractor** without prior approval from the **County,** the release of same shall constitute grounds for termination of this Agreement without indemnity to the **Contractor**, but should any such information be released by the **County** or by the **Contractor** with such prior written approval, the same shall be regarded as public information and no longer subject to the restrictions of this Agreement.

SECTION 23. OWNERSHIP, PUBLICATION, REPRODUCTION AND USE

All documents and materials prepared pursuant to this **Agreement** are the property of the **County.** The **County** shall have the unrestricted authority to publish, disclose, distribute, and otherwise use, in whole or in part, any reports, data, maps or other material prepared under this **Agreement** without according credit of authorship. The **County** shall hold harmless and indemnify the **Contractor** against all claims arising out of such use of documents and materials without the **Contractor's** knowledge and consent.

SAMPLE

IN WITNESS WHEREOF, said parties have hereunto set their seals the day and year above first written.

So Agreed, this _____ day of _____20__.

Executed on behalf of **Contractor.**

HNTB CORPORATION

By:_____

Printed Name:_____

Title:_____

Date:_____

[CORPORATE SEAL]

ATTEST:

By:_____

Printed Name:_____

Title:_____

COBB COUNTY
BOARD OF COMMISSIONERS

_____
Timothy D. Lee, Chairman

Date:_____

[COUNTY SEAL]

ATTEST:

By:_____
County Clerk

RECOMMEND FOR APPROVAL:

DEPARTMENT OF TRANSPORTATION

By:_____

Printed Name:_____

Title:_____

APPROVED AS TO FORM:

_____
COUNTY ATTORNEY'S OFFICE

SAMPLE

Insert EXHIBIT A

Scope of Services and Fee Schedule

SAMPLE

Insert EXHIBIT B

Project Schedule

SAMPLE

Insert EXHIBIT C

Personnel Listing

SAMPLE

EXHIBIT D

COBB COUNTY DEPARTMENT OF TRANSPORTATION
INITIAL/FINAL DBE PARTICIPATION REPORT

Cobb County...Expect the Best!

Cobb County Project Name: _____

Cobb County Project Number: _____

Prime Consultant: _____

Authorization Date _____

Contract Amount ($): _____

Date: _____

% DBE _____

DBE FIRM	DESCRIPTION OF WORK	CONTRACTED AMOUNT	DBE CERTIFICATION EXPIRATION DATE
	TOTAL ($)		

REMARKS:

I hereby certify that the above is true and correct and that supporting documentation is on file.

Signed: _____

Consultant Project Manager

Revised 10/06 - DRM

SAMPLE

EXHIBIT E
GENERAL ASSURANCES

I. INDEPENDENT CONTRACTOR STATUS AND COMPLIANCE WITH THE IMMIGRATION REFORM AND CONTROL ACT OF 1986

CONTRACTOR acknowledges that it is functioning as an independent contractor in performing under the terms of this Agreement, and it is not acting as an employee of Cobb County. CONTRACTOR acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986, located at 8 U.S.C. Section 1324, *et seq.*, and regulations relating thereto. Failure to comply with the above provisions of this Agreement shall be considered a material breach and shall be grounds for immediate termination of the Agreement.

II. GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT OF 2006

CONTRACTOR acknowledges that it is responsible for complying with the provisions of the Georgia Security and Immigration Compliance Act of 2006 located at O.C.G.A. §13-10-90 *et seq.* and Georgia Department of Labor Rule 300-10-1-.02.

A. That affidavits in the required form be executed from a CONTRACTOR (and any subcontractors, regardless of tier) and notarized, showing compliance with the requirements of O.C.G.A. § 13-10-91 and that such be made part of the contract and/or subcontracts;

B. That the CONTRACTOR (and any subcontractors, regardless of tier) fully comply with the requirements for completing and submitting the "Immigration Compliance Certification" and that such certification be received by the COUNTY prior to the commencement of any work under this Agreement or subcontract;

C. That the CONTRACTOR (or any subcontractor, regardless of tier) notify the COUNTY within five (5) business days of entering into a contract or other agreement for hire with any subcontractor(s), regardless of tier;

D. That the CONTRACTOR be responsible for obtaining and providing to the COUNTY the "Subcontractor Affidavit & Agreement" and "Immigration Compliance Certification" required under these COUNTY'S "Procedures & Requirements" from each subcontractor, regardless of tier, employed or retained for work under this Agreement prior to the commencement of any work under the contract or any subcontract;

E. That COUNTY reserves the right to dismiss, or require the dismissal of, any CONTRACTOR or subcontractor for failing to provide the required affidavit or certification and/or for failure to comply with the statutory requirements of O.C.G.A. §13-10-91 and/or for providing false or misleading information upon the required affidavit(s) or certification(s);

F. That CONTRACTOR and/or subcontractor retaining any other subcontractor to perform services under the contract provide legal notice to any subcontractor of the requirements of Cobb COUNTY for immigration compliance and further provide notice that the COUNTY reserves the right to dismiss, or require the dismissal of, any CONTRACTOR or subcontractor for failing to provide the required affidavit or certification and/or for failure to comply with the statutory requirements of O.C.G.A. § 13-10-91 and/or for providing false or misleading information upon the required affidavit(s) or certification(s);

SAMPLE

G. That failure to comply with any of the requirements and procedures of the COUNTY (i.e., failure to timely supply required affidavits or compliance certification documents; failure to utilize federal work authorization procedures; failure to permit or facilitate audits or reviews of records by COUNTY or State officials upon request; and/or failure to continue to meet any of the statutory or COUNTY obligations during the life of the Agreement) shall constitute a material breach of the Agreement and shall entitle the COUNTY to dismiss CONTRACTOR or to require the dismissal of any subcontractor or sub/subcontractor (irrespective of tier) for failing to fully comply with these requirements;

H. That upon notice of a material breach of these provisions, the CONTRACTOR (or subcontractor, regardless of tier) shall be entitled to cure the breach within ten (10) days and provide evidence of such cure. Should the breach not be cured, the COUNTY shall be entitled to all available remedies, including termination of the Agreement, the requirement that a subcontractor be dismissed from performing work under the contract, and any and all damages permissible by law.

SAMPLE

NON-CONFLICT OF INTEREST

CERTIFICATION

I, _____, as the legal representative of _____ _____, do certify that we will not perform any type of engineering services for property owners adjacent or contiguous to any road project assigned by Cobb County, during the active life of such a project. Further, I additionally certify that if we already have an engineering agreement(s) with property owner(s) adjacent or contiguous to a road project assigned by Cobb County, we will either reject the **County** assignment, or cancel the property owner agreement already in effect if so directed by Cobb County Board of Commissioners. In no case will our firm utilize our knowledge of the ongoing Cobb County Road Improvement Program for professional gain during the active life of such program.

_____
Name

_____
Title

_____
Date

Witness

_____
Name

_____
Title

_____
Date

[CORPORATE SEAL]

SAMPLE

STATE OF GEORGIA
COUNTY OF COBB

COMPETITIVE PUBLIC WORK AFFIDAVIT
(O.C.G.A. §36-91-21)

The undersigned, an officer of _____, hereby certifies in connection with the award of this Agreement with Cobb County that the undersigned did not by itself, its agents, employees, representatives, contractors, or otherwise, prevent or attempt to prevent competition in the procurement or selection for such Agreement by any means whatsoever. The undersigned further certifies that in the procurement of this work no attempt was made by the undersigned, its agents, employees, representatives, contractors, or otherwise to prevent or endeavor to prevent any person or entity from attempting to procure work by any means whatsoever, nor was any attempt made to procure or induce any other person or entity to withdraw a request for the said work.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand and its seal this the _____ day of _____, 201___.

By:_____

Title:_____

Witness

_____
Name

_____
Title

[CORPORATE SEAL]

_____
Date

SAMPLE

Appendix A
Title VI Assurances for Consultants, Contractors, Subcontractors, Suppliers and Manufacturers
Page 1 of 2

During the performance of this Agreement, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agree as follows:

1. ***Compliance with Regulations***

   The Contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter referred to as DOT), Title 49, Code of Federal Regulations, part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

2. ***Nondiscrimination***

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

3. ***Solicitations for Subcontracts, Including Procurement of Materials and Equipment***

   In all solicitations either by competitive bidding or negotiations made by the Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, national origin, disability, or age.

4. ***Information and Reports***

   The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by Cobb County, Georgia, Department of Transportation (Cobb DOT) or the Georgia Department of Transportation (GDOT) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to Cobb DOT, or GDOT as appropriate, and shall set forth what efforts it has made to obtain the information.

SAMPLE

5. ***Sanctions for Noncompliance***

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, Cobb DOT and GDOT shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- Withholding of payments to the Contractor under the Agreement until the Contractor complies; and/or
- Cancellation, termination, or suspension of the Agreement, in whole or in part.

The Contractor shall take such action with respect to any subcontractor or procurement as Cobb DOT or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request Cobb DOT to enter into such litigation to protect the interests of Cobb DOT and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

SAMPLE

EVIDENCE OF COMPLIANCE
WITH
GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT

The County and Contractor agree that compliance with the requirements of O.C.G.A. Sec. 13-10-91 and Rule 300-10-1-.02 of the Rules of the Georgia Department of Labor are conditions of this Agreement for the physical performance of services.

The Contractor represents that it employs:

_____500 or more employees;

_____100 or more employees; or

_____fewer than 100 employees

(*Contractor must initial appropriate category).*

The Contractor further agrees that its compliance with the requirements of O.C.G.A. Sec. 13-10-91 and DOL Rule 300-10-1-.02 is attested to on the executed Contractor Affidavit and Agreement attached hereto as EXHIBIT A**.**

If employing or contracting with any subcontractor(s) in connection with this Agreement, Contractor further agrees:

(1) To secure from the subcontractor(s) such subcontractor(s)') indication of the employee-number category applicable to the subcontractor(s); and

(2) To secure from the subcontractor(s) an affidavit attesting to the subcontractor's compliance with O.C.G.A. Sec. 13-10-91 and DOL Rule 300-10-1-.02; such affidavit being in the form attached hereto and referenced as EXHIBIT A-1; and

(3) To submit such contractor affidavit(s) to the County when the subcontractor(s) is retained, but in any event, prior to the commencement of work by the subcontractor(s),

(4) To submit to the County, such contractor and subcontractor affidavit(s) of "Immigration Compliance Certification," EXHIBIT A-2,

The failure of Contractor to comply with any of the requirements and procedures of the County (i.e. failure to timely supply required affidavits or compliance certification documents; failure to utilize federal work authorization procedures; failure to permit or facilitate audits or reviews of records by County or State officials upon request; and/or failure to continue to meet any of the statutory or County obligations) and to supply the affidavit of compliance at the time of execution of this Agreement and/or the failure of the Contractor to continue to satisfy the obligations of O.C.G.A. Sec. 13-10-91 and DOL Rule 300-10-1-.02 as set forth in this Agreement and during the term of the Agreement shall constitute a material breach of the Agreement and shall entitle the County to dismiss any general contractor or to require the dismissal of any subcontractor of sub/subcontractor (irrespective of tier) for failing to fully comply with these requirements and that upon notice of a material breach of these provisions, the Contractor shall be entitled to cure the breach within ten (10) days and provide evidence of such cure and in compliance with the terms of this Agreement and State law. Should the breach not be cured, the County shall be entitled to all available remedies, including termination of the Agreement, the requirement that a subcontractor be dismissed from performing work under the Agreement, and any and all damages permissible by law.

SEE AFFIDAVIT ON THE FOLLOWING PAGE

SAMPLE

CONTRACTOR AFFIDAVIT & AGREEMENT
(EXHIBIT A)

This affidavit must be signed, notarized and submitted with any proposal requiring the performance of physical services. If the affidavit is not submitted with the proposal, proposal will be determined non-responsive and will be disqualified.

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is contracting with Cobb County, Georgia, has registered with, is authorized to use, and is participating in a federal work authorization program (an electronic verification of work authorization program operated by the U.S. Department of Homeland Security or any equivalent federal work authorization program operated by the U.S. Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA)). The undersigned contractor further attests that it will continue to use the federal Employment Eligibility Verification (EEV) work authorization program throughout the contract period.

The undersigned further agrees that should it employ or contract with any subcontractor(s) or should its subcontractor(s) employ other subcontractor(s) for the physical performance of services pursuant to the contract with Cobb County, Georgia, the contractor or subcontractor will:

(1) Notify the County within five business days of entering into a contract or agreement for hire with any subcontractor(s);
(2) Secure from any subcontractor(s) and/or their subcontractor(s) verification of compliance with O.C.G.A. § 13-10-91 on the attached Subcontractor Affidavit & Agreement (EXHIBIT A-1) prior to the commencement of any work under the contract/agreement;
(3) Secure from any subcontractor(s) and/or their subcontractor(s) a completed Immigration Compliance Certification (EXHIBIT A-2) prior to the commencement of any work under the contract/agreement;
(4) Provide the subcontractor(s) with legal notice that Cobb County, Georgia, reserves the right to dismiss, or require the dismissal of, any contractor or subcontractor for failing to provide the affidavit and/or for failure to comply with the requirements referenced in the affidavit;
(5) Maintain records of such compliance and provide a copy of each such verification to Cobb County, Georgia, at the time the subcontractor(s) is retained to perform such services or upon any request from Cobb County, Georgia; and
(6) Maintain such records for a period of five (5) years.

_____ _____
EEV (E-Verify) Program User ID Number EEV Program Date of Authorization

_____ _____
BY: Authorized Officer or Agent Contractor Business Name
[Contractor Name]

_____ _____
Printed Name Date

SWORN AND SUBSCRIBED BEFORE ME
ON THIS THE ____ DAY OF _____, 201_

_____
Notary Public

Commission Expires: _____

Effective 9/20/2013 Supersedes All Previous Versions)

SAMPLE

SUBCONTRACTOR AFFIDAVIT & AGREEMENT
(EXHIBIT A-1)

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of Cobb County, Georgia, has registered with, is authorized to use, and is participating in a federal work authorization program (an electronic verification of work authorization program operated by the U.S. Department of Homeland Security or any equivalent federal work authorization program operated by the U.S. Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA)). The undersigned subcontractor further attests that it will continue to use the federal Employment Eligibility Verification (EEV) work authorization program throughout the contract period.

The undersigned further agrees that should it employ or contract with any subcontractor(s) or should its subcontractor(s) employ other subcontractor(s) for the physical performance of services pursuant to the contract with Cobb County, Georgia, the undersigned subcontractor will:

(1) Notify the County within five business days of entering into a contract or agreement for hire with any subcontractor(s);
(2) Secure from any subcontractor(s) and/or their subcontractor(s) verification of compliance with O.C.G.A. § 13-10-91 on this Subcontractor Affidavit & Agreement (EXHIBIT A-1) form prior to the commencement of any work under the contract/agreement;
(3) Secure from any subcontractor(s) and/or their subcontractor(s) a completed Immigration Compliance Certification (EXHIBIT A-2) prior to the commencement of any work under the contract/agreement;
(4) Provide the subcontractor(s) with legal notice that Cobb County, Georgia, reserves the right to dismiss, or require the dismissal of, any contractor or subcontractor for failing to provide the affidavit and/or for failure to comply with the requirements referenced in the affidavit; and
(5) Maintain records of such compliance and provide a copy of each such verification to Cobb County, Georgia, at the time the subcontractor(s) is retained to perform such services or upon any request from Cobb County, Georgia; and
(6) Maintain such records for a period of five (5) years.

_____	_____
EEV (E-Verify) Program User ID Number	EEV Program Date of Authorization
_____	_____
BY: Authorized Officer or Agent [Subcontractor Name]	Subcontractor Business Name
_____	_____
Printed Name	Date

SWORN AND SUBSCRIBED BEFORE ME
ON THIS THE ____ DAY OF _____, 201_

_____
Notary Public

Commission Expires: _____

SAMPLE

IMMIGRATION COMPLIANCE CERTIFICATION
(To be completed by Contractor and all Subcontractors)
(EXHIBIT A-2)

I certify to the Cobb County Board of Commissioners that the following employees will be assigned to:

_____
(Project Name/Description)

_____ _____ _____

_____ _____ _____

_____ _____ _____

I further certify to Cobb County, Georgia the following:

- The E-Verify program was used to verify the employment eligibility of each of the above-listed employees hired after the effective date of our contract to use the program;
- We have not received a Final Nonconfirmation response from E-Verify for any of the employees listed.
- If we receive a Final Nonconfirmation response from E-Verify for any of the employees listed above, we will immediately terminate that employee's involvement with the project.
- I have confirmed that we have an I-9 on file for every employee listed above and that to the best of my knowledge all the I-9s are accurate.
- To the best of my knowledge and belief, all of the employees on the above list are legally authorized to work in the United States.
- If any other employee is assigned to this Cobb County project, a certification will be provided for said employee prior to the employee commencing work on the project.

To the best of my knowledge and belief, the above certification is true, accurate and complete.

Sworn to by: **Employer Name & Address:**

_____ _____
Signature of Officer

_____ _____
Printed Name/Title

_____ _____
Date

SWORN AND SUBSCRIBED BEFORE ME
ON THIS THE ____ DAY OF _____, 201_

_____
Notary Public
Commission Expires: _____

(Effective 9/20/2013 Supersedes All Previous Versions)

SAMPLE

EXHIBIT F
REQUIRED FTA CLAUSES

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.

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.

Access to Third Party Contract Records

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,

SAMPLE

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.

Changes to Federal Requirements

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.

SAMPLE

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.

Disadvantaged Business Enterprises

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part

SAMPLE

26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.* The County's overall goal for DBE participation is **5%.**

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 County deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

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 the County. In addition, the contractor may not hold retainage from its subcontractors. It is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed. It is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the County and contractor's receipt of the partial retainage payment related to the subcontractor's work.

e. The contractor must promptly notify County 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 County.

Incorporation of Federal Transit Administration (FTA) Terms

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

Terminations

Termination for Convenience

a.The County 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 County to be paid the Contractor. If the Contractor has any property in its possession belonging to the County, the Contractor will account for the same, and dispose of it in the manner the County directs.

b. Termination for Default

SAMPLE

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 County 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.

c. Opportunity to Cure

The County in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 30 days 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 the Contractor fails to remedy to the County's Satisfaction, the breach or default or any terms, covenants, or conditions of the Contract within (10) days after receipt by Contactor or written notice from the County setting forth the nature of said breach, the County shall have the right to terminate the Contract without any further obligation to the Vendor. Any such termination for default shall not in any way operate to preclude the County from pursuing all available remedies against the Contractor and its sureties for said breach or default.

Equal Opportunity (EEO) Provision

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

SAMPLE

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) the contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(b) *Federally assisted construction contracts.* (1) Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided,* That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

SAMPLE

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(c) *Subcontracts.* Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d) *Incorporation by reference.* The equal opportunity clause may be incorporated by reference in all Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts and subcontracts as the Deputy Assistant Secretary may designate.

(e) *Incorporation by operation of the order.* By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written.

(f) *Adaptation of language.* Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

Debarment and Suspension

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 County. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to County the Federal Government may pursue available remedies,

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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.

Buy America

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

Resolution of Disputes, Breaches, or Other Litigation

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

Performance During Dispute - Unless otherwise directed by County, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

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

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

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

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Lobbying

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 County.

Clean Air

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.

Clean Water

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.

Cargo Preference

To the extent applicable, the Recipient agrees to comply with 46 U.S.C. § 55305 and U.S. Maritime Administration regulations, “Cargo Preference - U.S.-Flag Vessels,” 46 C.F.R. Part 381.

Fly America Requirements

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an

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appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

Contract Work Hours and Safety Standards Act

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** – The County upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

Patent and Rights In Data

The FTA patent clause is substantially similar to the text of 49 C.F.R. Part 19, Appendix A, Section 5, but the rights in data clause reflects FTA objectives. For patent rights, FTA is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This model clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

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CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. **Rights in Data** - This following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

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

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or

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programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

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

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause , provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e. , a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. **Patent Rights** - This following requirements apply to each contract involving experimental, developmental, or research work:
(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser

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and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA

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.

Recycled Products

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

Recovered Materials

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

ADA Access

The Recipient agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq*., which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq*., which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow

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applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

(3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

(4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

(5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

(6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

(7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

(8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;

(9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;

(10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

(11) Federal civil rights and nondiscrimination directives implementing those Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. To the extent applicable, the Recipient agrees to comply with the confidentiality and civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq*., the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq*., and the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

i. Access to Services for Persons with Limited English Proficiency. The Recipient agrees to facilitate compliance with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and follow applicable provisions of U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 *Fed. Reg*. 74087, December 14, 2005, except to the extent that FTA determines otherwise in writing.

j. Environmental Justice. The Recipient agrees to facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note; and DOT Order 5620.3, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 *Fed. Reg*. 18377 *et seq*., April 15, 1997, except to the extent that the Federal Government determines otherwise in writing.

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k. Other Nondiscrimination Laws. The Recipient agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable Federal directives prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

Assignably

The covenants contained herein shall, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.

Davis-Bacon and Copeland Anti-Kickback Acts

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officershall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and

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3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
4. With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
2. The classification is utilized in the area by the construction industry; and

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3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The COUNTY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the COUNTY may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or

program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the COUNTY for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

1. That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension

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of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) *Apprentices* - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees* - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training

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Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity* - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

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Bonding Requirements

A. Bid Bond Requirement for Construction

1. **Bid Security** - A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.
2. **Rights Reserved** - In submitting this Bid, it is understood and agreed by bidder that the right is reserved by COUNTY to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of COUNTY.
   It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of COUNTY, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of COUNTY's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.
   It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by COUNTY as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense COUNTY for the damages occasioned by default, then the undersigned bidder agrees to indemnify COUNTY and pay over to COUNTY the difference between the bid security and COUNTY's total damages, so as to make COUNTY whole.
   The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

B. Performance and Payment Bonding Requirements for Construction

The Contractor shall be required to obtain performance and payment bonds as follows:

Performance bonds:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the COUNTY.
2. The COUNTY may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The COUNTY may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

Payment bonds:

1. The penal amount of the payment bonds shall equal:
   A. Fifty percent of the contract price if the contract price is not more than $1 million.

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B. Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or
C. Two and one half million if the contract price is more than $5 million.

2. If the original contract price is $5 million or less, the COUNTY may require additional protection as required by subparagraph 1 if the contract price is increased.

C. Performance and Payment Bonding Requirements for Non-Construction

The Contractor may be required to obtain performance and payment bonds when necessary to protect the COUNTY's interest.

1. The following situations may warrant a performance bond:
   A. COUNTY property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
   B. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
   C. Substantial progress payments are made before delivery of end items starts.
   D. Contracts are for dismantling, demolition, or removal of improvements.
2. When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:
   A. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the COUNTY determines that a lesser amount would be adequate for the protection of the COUNTY.
   B. The COUNTY may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The COUNTY may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
3. A payment bond is required only when a performance bond is required, and if the use of payment bond is in the COUNTY's interest.
4. When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:
   A. The penal amount of payment bonds shall equal:
      1) Fifty percent of the contract price if the contract price is not more than $1 million;
      2) Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or
      3) Two and one half million if the contract price is increased.

D. Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The COUNTY shall determine the amount of the advance payment bond necessary to protect the COUNTY.

E. Patent Infringement Bonding Requirements (Patent Indemnity)

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The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The COUNTY shall determine the amount of the patent indemnity to protect the COUNTY.

F. Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to COUNTY, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by COUNTY, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by COUNTY and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to COUNTY. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to COUNTY written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

Third Party Rights

Notwithstanding anything herein to the contrary, the services provided under this Agreement shall not give rise to, nor shall be deemed to or construed so as to confer any rights on any other party, as a third party beneficiary or otherwise.

Notice of Federal Requirements

New Federal laws, regulations, policies, and administrative practices may be established after the date of this Contract, which may apply to this contract. If Federal requirements change, the changed requirements will apply to the contract or the performance of work under the contract as required. All standards or limits set forth in this contract to be observed in the performance of the work are minimum requirements.

Environmental Requirements

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq. Consistent with Executive Order No. 11514, as amended, “Protection and Enhancement of Environmental Quality”, 42 U.S.C. § 4321 note; FTA

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statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy of 1969, as amended, 40 C.F.R. Part 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures", 23 C.F.R. Part 771 and 49 C.F.R. Part622.

Seismic Safety Requirements

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

Drug and Alcohol Testing

FTA's drug and alcohol rules, 49 CFR 653 and 654, respectively, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with Parts 653 and 654. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

Therefore, FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

Option 1 - The contractor agrees to *participate in COUNTY's drug and alcohol program established in compliance with 49 CFR 653 and 654.*

Option 2 - The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Georgia, or the COUNTY to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before date before March 15) to COUNTY's Project Manager To certify compliance the contractor shall use the "Substance Abuse

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Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register

Option 3 - The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of COUNTY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to COUNTY Project Manager To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before (insert date or upon request) a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the recipient wishes the contractor to use) as its policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before (insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: (to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

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